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April 5, 2019

RECEIVED

APR 05 2019

TOWN CLERK

Town Clerk
Town of Palm Beach
360 South County Road
Palm Beach, Florida 33480

Re: APPEAL: ARCOM approval of Major Project- Old Business Case No. B-046-2017

Dear Madame Clerk:

This Firm represents 100 Emerald Beach Way LC ("100 Emerald Beach Way"), owner of the abutting property located at 100 Emerald Beach Way¹. John L. Thornton and Margaret B. Thornton have filed an application for major project review for 1236 South Ocean Boulevard (the "Application") for the "[a]ddition of two tennis courts. One court will be a hard court and the other a grass court. The courts will be surrounded by a fence approximately 10' tall and various landscaping at or above the height of the fence. Additional landscaping will be provided to buffer courts accordingly. Separate staff parking area ~~will be~~ is also included." (the "Tennis Complex.")

On March 27, 2019, ARCOM approved the application. Undersigned counsel appeared at the hearing and provided the attached objection letter (Ex. A) which is incorporated as if fully stated herein. Pursuant to Section 18-177, this is an appeal of the ARCOM approval for Case No. B-046-2017. 100 Emerald Beach Way is the immediate neighbor to the East, is an aggrieved person, and is presently, directly, and detrimentally affected by the Application.

The Appeal should be GRANTED because:

- 1. 100 EMERALD BEACH WAY WAS DENIED PROCEDURAL DUE PROCESS. ARCOM considered that the Tennis Court was already approved and built, despite the fact that (a) 100 Emerald Beach Way was the prevailing party in the previous Petition for Certiorari styled *100 Emerald Beach Way v. Town of Palm Beach*; and (b) the Circuit Court quashed the previous ARCOM approval and thus any building permits or other permits that were issued pursuant to the ARCOM approval are void and illegal.**
- 2. ARCOM FAILED TO FOLLOW THE ESSENTIAL REQUIREMENTS OF LAW.**
 - a. A variance is required to locate the tennis courts within the required 30-foot side yard setback, and ARCOM does not have the jurisdiction to grant variances; and**

¹ The property is Lot 3 as shown on the Boundary Survey included in the Application, as well as on the Site Plan.

- b. A special exception is required for the tennis courts and the supplemental parking lot, and ARCOM does not have the jurisdiction to grant special exceptions; and
 - c. ARCOM refused to even consider or determine whether a special exception or variance was required for the Tennis Court Complex, in violation of Section 18-205(a)(9) which requires compliance with all other applicable ordinances.
 - d. The Application proposes permanent improvements and a refuse area within the 35-foot wide Emerald Beach Way which is a platted private street for ingress and egress.
3. **THERE IS NO COMPETENT SUBSTANTIAL EVIDENCE IN THE RECORD that the Application meets the criteria set forth in Section 18-205.**

**100 Emerald Beach Way was Denied Procedural Due Process Because
The Tennis Court Complex is Not Approved**

At the March 27, 2019 hearing, the members of the ARCOM board were annoyed and angry that they had to hear the Application. It was the position of several members of the ARCOM Board that they had already approved the Application and should not have to waste their time hearing it again. This violates 100 Emerald Beach Way's procedural due process because the Application is not being heard again- it is a new application. See Section 18-203. The Board's (a) refusal to treat the Application as a new application in violation of Section 18-203; (b) the Board's foregone conclusion that the Tennis Court Complex was already approved; and (c) the Board's consideration of the fact that the Tennis Court Complex was already approved is a blatant denial of 100 Emerald Beach Way's procedural due process.

ARCOM approved an application for the Tennis Court Complex in June 2017. However, 100 Emerald Beach Way appealed to the Town Council, and subsequently filed a petition for writ of certiorari to the Circuit Court Appellate Division. In *100 Emerald Beach Way LC v. Town of Palm Beach*, the Circuit Court sitting in its appellate capacity, quashed the decision of the Town Council and found that the 2017 ARCOM approval was not supported by competent substantial evidence. See Mandate, Ex. A.

Upon review of the Petition for Writ of Certiorari, we find that the Town Council failed to rely on competent, substantial evidence when it denied Petitioner's appeal from the Town Architectural Committee. The Town Architectural Committee did not make findings sufficient to ensure that Respondent Thornton's "proposed development [would be] in conformity with the standards of this Code and other applicable ordinances insofar as the location and appearance of the buildings and structures are involved." Specifically, there was no finding by the Town Architectural Committee or Town Council, or evidence in the record, to suggest that Respondent Thornton's proposed development would comply with section 134-1759. Because the Town Council's failure to rely on competent, substantial evidence is sufficient cause to grant the Petition, we issue no opinion regarding the remaining arguments on appeal. We GRANT the Petition for Writ of Certiorari and QUASH the decision of the Town Council.

During the pendency of the Circuit Court proceeding, the Thorntons applied for and the Town issued a building permit for the tennis courts and supplemental parking lot. However, those permits

are void. Section 18-201 et. Seq. requires ARCOM approval prior to issuance of a building permit for the Tennis Court Complex. Section 18-203 of the Town Code states that if a building permit expires or is voided, an application for approval shall be required in the same form and manner **as if submitted as a new project**. Since the ARCOM approval was quashed, the building permit is void, and Section 18-203 requires that the application must be submitted as a new project. *See e.g. Broward County v. GBV International*, 787 So. 2d 838 (Fla. 2001).

To find otherwise would completely obliterate all citizen appellate rights and ignore the jurisdiction of the Circuit Court to review the decisions of the Town Council. *See Hernandez-Canton v. City of Miami*, 971 So. 2d 829 (Fla. 3d DCA 2007). ARCOM approval is required for the issuance of a building permit, and that approval has been quashed. Section 18-201. et. Seq. There is no vested right in an application. *Boynton Beach v. Carroll*, 272 So. 2d 171 (4th DCA 1973). Therefore, the Tennis Court Complex has been built without the required permits, and this Board is legally required to review the Application as a new project. Section 18-203.

ARCOM treated the Application as already approved and considered that the Tennis Court Complex was already built- even though the building permits are void and illegal. Therefore, ARCOM refused to respect the jurisdiction of the Circuit Court and mooted the successful appeal by 100 Emerald Beach Way. Therefore, 100 Emerald Beach Way was denied procedural due process and the Appeal should be GRANTED.

**ARCOM Failed to follow the Essential Requirements of Law Because
The Tennis Complex Requires a Variance**

ARCOM failed to follow the essential requirements of law because the Tennis Court Complex requires a variance to construct the tennis courts within the required East and West side yard setbacks. A variance of Sections 134-1759(c), 134-1669 and/or 134-793(a)(8) would be required to approve the tennis courts in the proposed configuration. Since ARCOM does not have the authority to grant variances, nor does the Application include a request for a variance, ARCOM cannot approve the Application.

Section 134-1759(c) requires a 10-foot fence or wall around a tennis court, which fence or wall cannot be within the setbacks if Sections 134-1666 through 1670 prohibit a 10 foot tall fence within the setback. Such is the case here- the tennis courts cannot be located within the required 30-foot side yard because Section 134-1669 prohibits fences or walls above 7 feet within the setback. Section 134-1759(c) states:

Tennis courts shall include as an integral part of the construction thereof proper fence or wall enclosures contiguous to the court. Such fence or wall enclosures are to be at least ten feet in height. Said fence or wall enclosure shall be out of the required principal structure setback if said enclosure exceeds the maximum height allowed in section 134-1666 through 134-1670 of the Code.

However, Section 134-1669 prohibits walls or fences greater than 7 feet within the side or rear yard: The height of a wall or fence located in a side or rear yard shall be measured from the lowest grade on either side of the side or rear property line adjacent to said wall or fence to the top of the wall or fence and shall not exceed seven feet in height.

In the R-AA large estate residential district, the required side yard is 30 feet. See Section 134-793(a)(8).

Sheet L2 shows the 10-foot tennis court fences for both tennis courts are 10 feet from the East and West side property line- within the required 30-foot side yard. Since the tennis court fence is 10 feet high- higher than the maximum 7 feet for a fence within a side yard- the tennis court and the required fence SHALL be out of the required 30-foot side yard setback in the R-AA zoning district. Section 134-1759(c).

ARCOM failed to follow the essential requirements of law because ARCOM cannot approve the Tennis Court Complex to be constructed within the required side yard setback- only the Town Council has the authority or jurisdiction to grant a variance. See Section 134-201. The tennis courts require a 10-foot fence, and a 10-foot fence is not permitted within the 30-foot side yard setback in the R-AA zoning district. This Appeal should be GRANTED because ARCOM failed to follow the essential requirements of law because construction of the Tennis Courts in the required side yard setback requires a variance.

ARCOM Failed to Follow the Essential Requirements of Law Because The Supplemental Parking Lot Requires a Special Exception

ARCOM failed to follow the essential requirements of law because the supplemental parking lot requires a special exception. At the March 19, 2019 Town Council meeting, Paul Castro stated on the record that based on the language of the Code, 100 Emerald Beach Way has a good argument that a special exception is required for the supplemental parking. March 19, 2019 Transcript at 22, 37. Although the Application casually refers to a “separate staff parking area,” such parking area also requires a special exception. Section 134-790(7) unambiguously states that all supplemental parking requires a special exception in the R-AA zoning district and is “allowed only in a manner consistent with the zoning of the district in which it is located.” Supplemental parking is defined as parking in addition to the required parking. § 134-2.

The supplemental parking lot, which is ALREADY CONSTRUCTED AND BEING USED, holds at least ten (10) trucks. Conspicuously absent from the plans is (a) the total number of parking spaces in the “small service parking area”; (b) any parking calculations whatsoever; and (c) the setback of the parking area from Emerald Beach Way. Section 134-2171 et. Seq. (attached as Ex. K) sets forth specific requirements for off street parking including the number and dimensions of spaces, turning radii, configuration, location, and other detailed requirements. The plans submitted with the Application contain absolutely none of those requirements.

Zoning staff has taken a position that they previously interpreted the special exception requirement for supplemental parking to only apply if the supplemental parking is a principal use. This is contrary to the unambiguous language of the code. Section 134-790(7) lists supplemental parking as a special exception use in the R-AA zoning district. Supplemental parking is all parking over and above the required parking. Section 134-2. Section 134-2177 addresses supplemental parking, and states that supplemental parking may be on the same lot, or an adjoining lot as the permitted or special exception use. There is absolutely no language that states that supplemental parking is only a parking lot that is a principal use.

At the March 19, 2019 Town Council meeting, staff gave an example in the staff report:

An example of supplemental parking would be if a property owner bought a piece of property across the street from the main house, and pursued approval to build only supplemental parking on that residential lot for the use of the main property.

This Application squarely fits that example and is the perfect example of why a special exception is required- the 10+ car parking lot is not even accessible from the home at 1236 S. Ocean Boulevard- it is accessible only if you drive out of the main house, onto South Ocean Boulevard, and make a right turn onto a completely separate street- Emerald Beach Way. The 10+ car parking lot is intentionally separate and independent from the main house- it cannot be seen or accessed from the house. It can only be seen by the occupants of 100 Emerald Beach Way. This is the perfect example of why a special exception is required for a parking lot in the R-AA zoning district. These are large estate homes, and a parking lot accessed on a different street and that cannot be seen or accessed from the main house clearly requires a special exception in accordance with the unambiguous language of the code.

ARCOM failed to follow the essential requirements of law because supplemental parking in the R-AA zoning district can only be permitted by special exception. Since ARCOM lacks the jurisdiction or authority to approve a special exception, ARCOM failed to follow the essential requirements of law and this Appeal should be GRANTED.

ARCOM failed to follow the Essential Requirements of Law because a Special Exception and Site Plan Review Are Mandatory for Tennis Courts

ARCOM failed to follow the essential requirements of law because a special exception is required for the tennis courts, and ARCOM does not have the jurisdiction to grant a special exception. Applicants in fact filed an application for a special exception for the Tennis Complex. The Special Exception Application (Z-18-00162) was scheduled for public hearing before the Town Council on January 9, 2019. However, on December 13, 2018, Applicants withdrew the Special Exception Application “based on the Town’s determination that no special exception or site plan approval is required for the Applicant’s tennis courts.”

§ 134-1759 (e) The construction of any tennis court, shuffleboard court or similar use upon any structure in the town shall be subject to an application for special exception as specified in section 134-227 through section 134-233.

Most importantly, the Town Council is the entity vested with authority to grant or deny special exceptions:

§134-226 (a) The town council shall hear and decide special exceptions, decide such questions as are involved in determining if and when special exceptions should be granted, and grant special exceptions with appropriate conditions and safeguards or deny special exceptions when not in harmony with the purpose and intent of this chapter.

In November 8, 2018- *after* the Mandate of the Circuit Court- Logan Elliott, John Lindgren, Paul Castro, and Skip Randolph **all** concurred and advised the applicant that a special exception was required for the tennis courts. See Ex. D. On November 8, 2018, Logan Elliott advised the applicant

that a special exception is required for the tennis courts. John Lindgren also advised the applicant that Section 134-1759 requires a special exception. Then, Paul Castro and Logan Elliott met with Skip Randolph, and **Paul Castro confirms “Yes, they will need a special exception as well.”** Thus, John Lindgren, Logan Elliott, and Paul Castro- after consultation with Skip Randolph - ALL concurred with our position that the tennis courts need a special exception.

On November 9, 2018, Logan Elliott followed up and asked Paul Castro “Have we gotten back to Dustin Mizell about the necessity to go to Council with the tennis courts at 1236 SOB?” Paul Castro suddenly changed his mind after Tim Hanlon, attorney for the applicant, insisted that a special exception was not required. However, Mr. Hanlon notes that the Thorntons filed the special exception application in November 2018 “after Bob Critton discussed the matter with Skip after the appeal ruling was handed down.”

The requirement for a special exception was unanimously determined by staff, and the applicant filed an application in accordance with staff’s determination. However, even after John Lindgren, Logan Elliott, Paul Castro, and Skip Randolph ALL concurred and advised the Thorntons that a special exception was required for the tennis courts, Paul Castro did an about face and advised on December 5, 2018, that a special exception application would not be required.

The subject property at 1236 South Ocean Blvd. is located in the R-AA zoning district. Several accessory uses are enumerated in the Town Code which are permitted without a special exception, including private nurseries, private greenhouses, private garages, private swimming pools, etc. § 134-788. Notably absent from the list of permitted accessory uses are private tennis courts. Therefore, as the zoning staff initially determined, a special exception must be required in accordance with § 134-1759. For these reasons, this Appeal should be GRANTED for failure to observe the essential requirements of law.

ARCOM failed to follow the Essential Requirements of Law Because ARCOM refused to consider or determine whether a special exception or variance is required

ARCOM failed to follow the essential requirements of law because Section 18-205(a)(9) requires ARCOM to find that “[t]he proposed development is in conformity with the standards of this Code and other applicable ordinances insofar as the location and appearance of the buildings and structures are involved.” However, ARCOM refused to consider or make any findings that the Application was in compliance with any of the aforementioned sections of Chapter 134.

Instead, Josh Martin, Director of Planning and Zoning, testified on the record that compliance with Chapter 134 is not within the purview of ARCOM. Furthermore, multiple members of ARCOM were adamant that they would not consider compliance with any provision in Chapter 134 as they felt it was outside of their jurisdiction.² However, ARCOM is required to consider, determine, and make findings that the Application is in compliance with all applicable ordinances, including Chapter 134. Since ARCOM failed to comply with the essential requirements of law, including Section 18-205(a)(9), the Appeal should be GRANTED.

² 100 Emerald Beach Way reserves the right to supplement this Appeal with specific citations to the transcript of the March 27 hearing.

ARCOM failed to follow the Essential Requirements of Law Because the Application Includes Permanent Improvements Within Emerald Beach Way – the 35-foot Platted Street for Ingress/ Egress

ARCOM failed to follow the essential requirements of law because Section 106-1(2) specifically states that “[i]t shall be unlawful to erect, build, construct, deposit or place upon or in any street...any structure or obstruction of any kind.” On the plans, the refuse area, catch basin, and at least 3 feet of landscaping and driveway are located within the ingress and egress easement for Emerald Beach Way. The only way for 100 Emerald Beach Way to access its oceanfront estate is via Emerald Beach Way. Emerald Beach Way is a 35-foot platted private street for ingress and egress. Nobody- including the Thorntons- is permitted to install landscaping or designate a portion of Emerald Beach Way for garbage dumping.

Furthermore, designation of the “refuse area” adjacent to the catch basin obstructs the drainage of Emerald Beach Way. Section 102-45 prohibits dumping landscaping or other debris or garbage more than 1 day prior to pickup. The Thorntons use this “refuse area” to dump all of their debris and garbage from the entire property on a daily basis- in blatant disregard of Town regulations. The Thorntons are not permitted to install any permanent improvements- not landscaping, a driveway, a “refuse” garbage dumping area, or anything else within the ingress/egress easement of Emerald Beach Way. Therefore, the Appeal should be GRANTED because ARCOM failed to observe the essential requirements of law when it approved the Application that includes permanent improvements within the platted street for ingress and egress of Emerald Beach Way.

There is No Competent Substantial Evidence in the Record that the Application Meets the Criteria Set Forth in Section 18-205

There is no competent substantial evidence in the record that the Application meets the criteria for ARCOM approval set forth in Section 18-205(a), as follows.

Sec. 18-205. - Criteria for building permit.

- (a) The architectural commission may approve, approve with conditions, or disapprove the issuance of a building permit in any matter subject to its jurisdiction only after consideration of whether the following criteria are complied with:**
 - (1) The plan for the proposed building or structure is in conformity with good taste and design and in general contributes to the image of the town as a place of beauty, spaciousness, balance, taste, fitness, charm and high quality.**

Objection: There is no competent substantial evidence that the supplemental parking lot for at least 10 trucks and cars abutting oceanfront estates in the R-AA zoning district is in conformity with good taste and design. The R-AA zoning district requires a special exception for supplemental parking, for the exact reason that a commercial parking lot is not generally appropriate or in conformity with the large estate residential district. Article 9 of the Zoning Code provides specific requirements for off

street parking and requires special exception approval as set forth herein, to prevent exactly what is proposed here- a parking lot for commercial trucks abutting large oceanfront residential estates.

The Tennis Court Complex is also viewable from the Emerald Beach Way right of way as well as the home at 100 Emerald Beach Way. There is no competent substantial evidence that there are any other private tennis courts that are viewable from the right of way, or that are viewable from the abutting property. The only evidence in the record is that there are other tennis courts which are screened and enveloped within the estate. However, since the Tennis Court Complex is proposed to be constructed (illegally) within the required setbacks, and encompasses the entire large residential estate lot, it is undeniably overbearing on the property located at 100 Emerald Beach Way.

Since there is no competent substantial evidence in the record that the Application meets these criteria, the Appeal should be GRANTED.

- (2) The plan for the proposed building or structure indicates the manner in which the structures are reasonably protected against external and internal noise, vibrations, and other factors that may tend to make the environment less desirable.**

Objection: There is no competent substantial evidence in the record that there is any noise buffer for the Tennis Court Complex. In fact, the evidence in the record is that the use of the tennis courts is fully audible from the abutting property and constitutes a nuisance. Therefore, the Appeal should be GRANTED.

- (3) The proposed building or structure is not, in its exterior design and appearance, of inferior quality such as to cause the nature of the local environment to materially depreciate in appearance and value.**

Objection: There is no competent substantial evidence in the record that the supplemental parking lot, which is fully viewable from the abutting oceanfront estate at 100 Emerald Beach Way and the street of Emerald Beach Way. The Supplemental Parking Lot is just that- a parking lot full of commercial trucks that is fully viewable from the street and from 100 Emerald Beach Way materially depreciates the appearance and value of the local environment. Furthermore, the Tennis Court Complex encompasses the entire lot, and even encroaches into the required setbacks, so that the tennis courts are not properly screened for view or noise impacts. Therefore, the Appeal should be GRANTED.

- (4) The proposed building or structure is in harmony with the proposed developments on land in the general area, with the comprehensive plan for the town, and with any precise plans adopted pursuant to the comprehensive plan.**

Objection: There is no competent substantial evidence in the record that the Tennis Court Complex is in harmony with the existing developments on neighboring properties. The site for the Tennis Court Complex is in between two single family estates. The subject site is separately and similarly platted and zoned for a single-family estate, as it is designated Single Family on the Comprehensive Plan and zoned R-AA large estate residential zoning district. The Tennis Complex is a stand-alone tennis complex, only connected to the principal structure at 1236 South Ocean Boulevard by a gravel pedestrian path. The subject site was not contemplated as a tennis center- it is designated and zoned for a single-family estate in harmony with the abutting single-family estates.

The only competent substantial evidence in the record is that this would be the only estate in Palm Beach that has two tennis courts. There is also no competent substantial evidence in the record that there are any other tennis courts that are accessible by a completely separate entrance on a separate street from the principal residence. Therefore, the Appeal should be GRANTED.

- (6) **The proposed building or structure is not excessively dissimilar in relation to any other structure existing or for which a permit has been issued or to any other structure included in the same permit application within 200 feet of the proposed site in respect to one or more of the following features:**
- a. **Height of building or height of roof.**
 - b. **Other significant design features including, but not limited to, materials or quality of architectural design.**
 - c. **Architectural compatibility.**
 - d. **Arrangement of the components of the structure.**
 - e. **Appearance of mass from the street or from any perspective visible to the public or adjoining property owners.**
 - f. **Diversity of design that is complimentary with size and massing of adjacent properties.**
 - g. **Design features that will avoid the appearance of mass through improper proportions.**
 - h. **Design elements that protect the privacy of neighboring property.**

Objection: There is no competent substantial evidence in the record that the Tennis Court Complex is not excessively dissimilar to any other property within a 200- foot radius. The only competent substantial evidence in the record is that this is the ONLY Palm Beach estate with 2 tennis courts that are accessible via a separate entrance on a separate street. There are two estates within a 200-foot radius that have tennis courts. However, those tennis courts are accessible through the main entrance of the property and are accessory to the principal use. Here, the Tennis Court Complex includes TWO tennis courts and a supplemental parking lot, all accessible from a separate entrance on a separate street from the principal residence. This design creates an autonomous and independent recreational acre separate and apart from the principal residence, and in fact, so separate that the impacts from the Tennis Court Complex are forced onto 100 Emerald Beach Way instead of Applicant. Because there is no competent substantial evidence that the application complies with 18-205(a)(6), this Appeal should be GRANTED.

- (7) **The proposed addition or accessory structure is subservient in style and massing to the principal or main structure.**

Objection: There is no competent substantial evidence that this is an accessory structure at all. There are no renderings or photos of how the Tennis Court Complex will be integrated into the estate, and subservient to the principal use of the lot. Section 134-1756 plainly states: "an accessory use shall be clearly supplementary and incidental and shall not be separated from the principal use of the lot." The Tennis Court Complex is physically separated from the principal use by landscaping- there is a gravel pedestrian path through the landscaping to the principal use. There is a separate entrance on a separate street, with a parking lot, creating an autonomous recreational area. This separation from the principal

use, combined with the fact that it encompasses every square inch of the platted lot, imposes all of the impacts on the abutting single-family estate at 100 Emerald Beach Way.

The Applicant separated and screened all of the noise and view impacts of the Tennis Court Complex from the principal structure at 1236 South Ocean Boulevard, such that those impacts are imposed on Emerald Beach Way at 100 Emerald Beach Way. There are no pictures or renderings of the principal use or main residence, or zoning calculations to show how the addition of 2 tennis courts with a separate entrance on a separate street is subservient and incidental to the principal use of the lot. Therefore, the Appeal should be GRANTED.

- (8) The proposed building or structure is appropriate in relation to the established character of other structures in the immediate area or neighboring areas in respect to significant design features such as material or quality or architectural design as viewed from any public or private way (except alleys).**

Objection: There is no competent substantial evidence that the Tennis Court Complex is appropriate in relation to the established character of other structures in the immediate area or neighboring areas. The Tennis Court Complex is completely separate from the principal structure at 1236 South Ocean Boulevard- it has a separate vehicular entrance and is only connected to the principal structure via gravel pedestrian path. The Tennis Court Complex includes 2 tennis courts, the supplemental parking lot and tennis canopy. The complete separation from the principal use, together with the fact that the Tennis Complex occupies an entire large estate residential lot makes the Tennis Court Complex inappropriate in relation to the established character of the abutting single-family estates.

There is no competent substantial evidence that there are any residences in Palm Beach that have more than 1 tennis court, and no evidence that there are any residences in Palm Beach that have a tennis court that is accessible via a separate street with its own parking lot. In fact, the only competent substantial evidence in the record is that this is the only residence in the entire Town of Palm Beach that will have 2 tennis courts with a separate entrance on a separate street. Therefore, the Appeal should be GRANTED.

- (9) The proposed development is in conformity with the standards of this Code and other applicable ordinances insofar as the location and appearance of the buildings and structures are involved.**

Objection: As previously discussed, ARCOM failed to comply with the essential requirements of law because ARCOM refused to even consider whether the Application complied with the requirements of Chapter 134, as set forth herein. Furthermore, there is no competent substantial evidence that the Application complies with Chapter 134 because the Application Tennis Court Complex requires a special exception for the tennis courts, a special exception for the supplemental parking lot, and a variance to locate the

There is no competent substantial evidence that the Application complies with Sections 134-1759, 134-1759(c), 134-1669, 134-793(a)(8), 134-790, 134-2, and/or 134-2171 et. Seq. Furthermore, the Application does not include the detailed stormwater management plan required by Section 86-91. A stormwater management plan is required at the time of Application to ARCOM, and the Tennis

Court Complex includes a driveway, parking area, and proposed work includes the redevelopment of more than 20 percent of landscaped open space, 20 percent of the impervious area of the site including buildings, patios, etc., or a combination thereof which exceeds 20 percent.

Since there is no competent substantial evidence that the Application complies with applicable provisions of the Code, and ARCOM refused to even consider whether the Application was compliant, the Appeal should be GRANTED.

Conclusion

This Appeal should be GRANTED because 100 Emerald Beach Way was denied procedural due process, the Application fails to comply with the essential requirements of law, and there is no competent substantial evidence that the Application complies with Section 18-205(a) and other applicable sections of the Code as cited herein. The Town Council should GRANT the Appeal and require the Applicant to obtain a special exception for the tennis courts, a special exception for the supplemental parking lot, and a variance for the location of the tennis court within the required setback, as well as comply with all other applicable sections of the Code as set forth herein.

LEHTINEN SCHULTZ PLLC

By: /s/ Amanda Quirke Hand
Amanda Quirke Hand, P.A.

Enclosures:

- A- March 26, 2019 Objection Letter to ARCOM
- B- Transcript of March 27, 2019 ARCOM hearing
- C- Transcript of March 19, 2019 Town Council hearing
- D- Staff Report for March 19, 2019 Town Council hearing
- E- PB 45 Pg 177
- F- Minutes and Transcript Excerpt Planning and Zoning Commission Nov. 28, 2017
- G- Petition for Writ of Certiorari- 100 Emerald Beach Way v. Town of Palm Beach
- H- December 28, 2018 Administrative Appeal
- I- Materials Submitted by Applicant at March 27, 2019 hearing
- J- Boards presented by 100 Emerald Beach Way at ARCOM hearing March 27, 2019
- K- Town of Palm Beach Code 134-2177, et. Seq.

A

Amanda Quirke

From: Amanda Quirke
Sent: Tuesday, March 26, 2019 1:52 PM
To: townclerk@townofpalmbeach.com
Cc: John (Skip) C. Randolph; Amanda Quirke
Subject: ARCOM March 27 B-046-2017
Attachments: 100 Emerald Beach March 27 ARCOM letter.pdf; Ex A Mandate.pdf; Ex B Pictures.pdf; Ex C Variance diagram.pdf; Ex D emails.pdf; Ex E PB 45 pg 177.pdf

Madame Clerk,

Please distribute the attached to the ARCOM members in advance of the meeting tomorrow. Thank you for your assistance.

Amanda Quirke Hand

Of Counsel

Board Certified in City, County, and Local Government Law

Lehtinen Schultz | Attorneys

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March 26, 2019

Members of the Architectural Review
Commission
Town of Palm Beach
360 South County Road
Palm Beach, Florida 33480

Re: Major Project- Old Business Case No. B-046-2017

Dear Chairman and Members of the Architectural Review Commission:

This Firm represents 100 Emerald Beach Way LC ("100 Emerald Beach Way"), owner of the abutting property located at 100 Emerald Beach Way¹. John L. Thornton and Margaret B. Thornton have filed an application for major project review for 1236 South Ocean Boulevard (the "Application") for the "[a]ddition of two tennis courts. One court will be a hard court and the other a grass court. The courts will be surrounded by a fence approximately 10' tall and various landscaping at or above the height of the fence. Additional landscaping will be provided to buffer courts accordingly. Separate staff parking area ~~will be~~ is also included." (the "Tennis Complex.") 100 Emerald Beach Way is the immediate neighbor to the East, is an aggrieved person, and is presently, directly, and detrimentally affected by the Application.

The Application must be DENIED because

- (a) ARCOM lacks the jurisdiction to grant special exceptions, and a special exception is required for the tennis courts and the supplemental parking lot;**
- (b) ARCOM lacks the jurisdiction to approve a variance, and a variance is required to locate the tennis courts within the required 30 foot side yard setback;**
- (c) the Application proposes permanent improvements and a refuse area within the 35-foot wide platted ingress/egress easement of Emerald Beach Way; and**
- (d) the Application does not meet the criteria of Section 18-205 as set forth herein.**

¹ The property is Lot 3 as shown on the Boundary Survey included in the Application, as well as on the Site Plan.

The Tennis Courts and the Supplemental Parking Lot are Not Approved

ARCOM approved an application for the Tennis Court Complex in June, 2017. However, 100 Emerald Beach Way appealed to the Town Council, and subsequently filed a petition for writ of certiorari to the Circuit Court Appellate Division. In *100 Emerald Beach Way LC v. Town of Palm Beach*, the Circuit Court sitting in its appellate capacity, quashed the decision of the Town Council and found that the 2017 ARCOM approval was not supported by competent substantial evidence. See Mandate, Ex. A.

Upon review of the Petition for Writ of Certiorari, we find that the Town Council failed to rely on competent, substantial evidence when it denied Petitioner's appeal from the Town Architectural Committee. The Town Architectural Committee did not make findings sufficient to ensure that Respondent Thornton's "proposed development [would be] in conformity with the standards of this Code and other applicable ordinances insofar as the location and appearance of the buildings and structures are involved." Specifically, there was no finding by the Town Architectural Committee or Town Council, or evidence in the record, to suggest that Respondent Thornton's proposed development would comply with section 134-1759. Because the Town Council's failure to rely on competent, substantial evidence is sufficient cause to grant the Petition, we issue no opinion regarding the remaining arguments on appeal. We GRANT the Petition for Writ of Certiorari and QUASH the decision of the Town Council.

During the pendency of the Circuit Court proceeding, the Thorntons applied for and the Town issued a building permit for the tennis courts and supplemental parking lot. However, those permits are void. Section 18-201 et. Seq. requires ARCOM approval prior to issuance of a building permit for the Tennis Court Complex. Section 18-203 of the Town Code states that if a building permit expires or is voided, an application for approval shall be required in the same form and manner **as if submitted as a new project**. Since the ARCOM approval was quashed, the building permit is void, and Section 18-203 requires that the application must be submitted as a new project. See e.g. *Broward County v. GBV International*, 787 So. 2d 838 (Fla. 2001).

To find otherwise would completely obliterate all citizen appellate rights, and ignore the jurisdiction of the Circuit Court to review the decisions of the Town Council. See *Hernandez-Canton v. City of Miami*, 971 So. 2d 829 (Fla. 3d DCA 2007). ARCOM approval is required for the issuance of a building permit, and that approval has been quashed. Section 18-201, et. Seq. There is no vested right in an application. *Boynton Beach v. Carroll*, 272 So. 2d 171 (4th DCA 1973). Therefore, the Tennis Court Complex has been built without the required permits, and this Board is legally required to review the Application as a new project. Section 18-203. For the reasons stated herein, ARCOM does not have the authority or jurisdiction to approve the Tennis Court Complex, and thus, the Application must be denied.

100 Emerald Beach Way is Already Detrimentially Impacted by the Tennis Complex

The impacts of the Tennis Complex are not speculative because the Tennis Complex is already built and Emerald Beach Way is already suffering the negative impacts today, including, but not limited to:

1. The tennis courts and the supplemental parking lot are fully viewable from 100 Emerald Beach Way.

2. The noise is loud at 100 Emerald Beach Way from players grunting nonstop while playing tennis, two large blowers, and the constant cracking of tennis balls.
3. There are even tennis balls hit over the fence onto the 100 Emerald Beach property.
4. The tennis courts are used daily for several hours per day, so the impacts are daily.
5. The supplemental parking lot is fully viewable from both the 100 Emerald Beach property as well as the Emerald Beach Way street that leads to the property.
6. The supplemental parking lot is full of commercial trucks and other vehicles who are servicing the main house and grounds every day. There are always at least 10 trucks and cars in the parking lot- and many vehicles coming and going throughout the day.
7. The Thorntons use the "refuse area" to dump all of their landscape waste on a daily basis- on top of the catch basin- and leave the there until it is picked up a week later.

Since the Tennis Complex has already been built, these impacts are not speculative. The attached photos (Ex. B) clearly show the Tennis Complex is viewable from the 100 Emerald Beach property. The constant grunting and noise from the blowers undeniably interferes with the quiet enjoyment of the 100 Emerald Beach property.

ARCOM Lacks Jurisdiction Because The Tennis Complex Requires a Variance

ARCOM lacks jurisdiction to approve the Tennis Complex because it is illegally constructed within the required East and West side yard setbacks and requires a variance. Ex. C. A variance of Sections 134-1759(c), 134-1669 and/or 134-793(a)(8) would be required to approve the tennis courts in the proposed configuration. Since ARCOM does not have the authority to grant variances, nor does the Application include a request for a variance, ARCOM cannot approve the Application.

Section 134-1759(c) requires a 10-foot fence or wall around a tennis court, which fence or wall cannot be within the setbacks if Sections 134-1666 through 1670 prohibit a 10 foot tall fence within the setback. Such is the case here- the tennis courts cannot be located within the required 30-foot side yard because Section 134-1669 prohibits fences or walls above 7 feet within the setback. Section 134-1759(c) states:

Tennis courts shall include as an integral part of the construction thereof proper fence or wall enclosures contiguous to the court. Such fence or wall enclosures are to be at least ten feet in height. Said fence or wall enclosure shall be out of the required principal structure setback if said enclosure exceeds the maximum height allowed in section 134-1666 through 134-1670 of the Code.

However, Section 134-1669 prohibits walls or fences greater than 7 feet within the side or rear yard:

The height of a wall or fence located in a side or rear yard shall be measured from the lowest grade on either side of the side or rear property line adjacent to said wall or fence to the top of the wall or fence and shall not exceed seven feet in height.

In the R-AA large estate residential district, the required side yard is 30 feet. See Section 134-793(a)(8).

Sheet L2 shows the 10-foot tennis court fences for both tennis courts are 10 feet from the East and West side property line- within the required 30-foot side yard. Since the tennis court fence is 10 feet high- higher than the maximum 7 feet for a fence within a side yard- the tennis court and the required fence SHALL be out of the required 30-foot side yard setback in the R-AA zoning district. Section 134-1759(c).

ARCOM cannot approve the Application because the tennis courts require a 10-foot fence, and a 10-foot fence is not permitted within the 30-foot side yard setback in the R-AA zoning district. ARCOM lacks jurisdiction to grant a variance, and thus, the Application must be denied.

**ARCOM Lacks Jurisdiction Because The Supplemental Parking Lot
Requires a Special Exception**

ARCOM lacks jurisdiction to approve the Application because the supplemental parking lot requires a special exception. At the March 19, 2019 Town Council meeting, Paul Castro stated on the record that based on the language of the Code, 100 Emerald Beach Way has a good argument that a special exception is required for the supplemental parking. March 19, 2019 Transcript at 22, 37. Although the Application casually refers to a “separate staff parking area,” such parking area also requires a special exception. Section 134-790(7) unambiguously states that all supplemental parking requires a special exception in the R-AA zoning district, and is “allowed only in a manner consistent with the zoning of the district in which it is located.” Supplemental parking is defined as parking in addition to the required parking. § 134-2.

The supplemental parking lot, which is ALREADY CONSTRUCTED AND BEING USED, holds at least ten (10) trucks. Conspicuously absent from the plans is (a) the total number of parking spaces in the “small service parking area”; (b) any parking calculations whatsoever; and (c) the setback of the parking area from Emerald Beach Way. Section 134-2171 et. Seq. sets forth specific requirements for off street parking including the number and dimensions of spaces, turning radii, configuration, location, and other detailed requirements. The plans submitted with the Application contain absolutely none of those requirements.

Zoning staff has taken a position that they previously interpreted the special exception requirement for supplemental parking to only apply if the supplemental parking is a principal use. This is contrary to the unambiguous language of the code. Section 134-790(7) lists supplemental parking as a special exception use in the R-AA zoning district. Supplemental parking is all parking over and above the required parking. Section 134-2. Section 134-2177 addresses supplemental parking, and states that supplemental parking may be on the same lot, or an adjoining lot as the permitted or special exception use. There is absolutely no language that states that supplemental parking is only a parking lot that is a principal use.

At the March 19, 2019 Town Council meeting, staff gave an example in the staff report:

An example of supplemental parking would be if a property owner bought a piece of property across the street from the main house, and pursued approval to build only supplemental parking on that residential lot for the use of the main property.

This Application squarely fits that example and is the perfect example of why a special exception is required- the 10+ car parking lot is not even accessible from the home at 1236 S. Ocean Boulevard- it is accessible only if you drive out of the main house, onto South Ocean Boulevard, and make a right turn onto a completely separate street- Emerald Beach Way. The 10+ car parking lot is intentionally separate and independent from the main house- it cannot be seen or accessed from the house. It can only be seen by the occupants of 100 Emerald Beach Way. This is the perfect example of why a special exception is required for a parking lot in the R-AA zoning district. These are large estate homes, and a parking lot accessed on a different street and that cannot be seen or accessed from

the main house clearly requires a special exception in accordance with the unambiguous language of the code.

Furthermore, the rendering on page L2 of the drawings is a misrepresentation of the existing and illegally constructed supplemental parking lot. Photos of the present and actual condition of the supplemental parking lot are included within Exhibit B, and show the visibility from both the Emerald Beach Way right of way and 100 Emerald Beach Way. Supplemental parking in the R-AA zoning district can only be permitted by special exception. Since ARCOM lacks the jurisdiction or authority, and the Application does not include a request for a special exception, the Application must be denied.

A Special Exception and Site Plan Review Are Mandatory for Tennis Courts

Applicants in fact filed an application for a special exception for the Tennis Complex. The Special Exception Application (Z-18-00162) was actually scheduled for public hearing before the Town Council on January 9, 2019. However, on December 13, 2018, Applicants withdrew the Special Exception Application “based on the Town’s determination that no special exception or site plan approval is required for the Applicant’s tennis courts.”

§ 134-1759 (e) The construction of any tennis court, shuffleboard court or similar use upon any structure in the town shall be subject to an application for special exception as specified in section 134-227 through section 134-233.

Most importantly, the Town Council is the entity vested with authority to grant or deny special exceptions:

§ 134-226 (a) The town council shall hear and decide special exceptions, decide such questions as are involved in determining if and when special exceptions should be granted, and grant special exceptions with appropriate conditions and safeguards or deny special exceptions when not in harmony with the purpose and intent of this chapter.

The subject property at 1236 South Ocean Blvd. is located in the R-AA zoning district. Several accessory uses are enumerated in the Town Code which are permitted without a special exception, including private nurseries, private greenhouses, private garages, private swimming pools, etc. § 134-788. Notably absent from the list of permitted accessory uses are private tennis courts. Therefore, as the zoning staff initially determined, a special exception must be required in accordance with § 134-1759. Since ARCOM does not have the jurisdiction or authority to approve a special exception, nor does the Application include such a request, the Application must be denied.

Staff Agreed that the Tennis Court Complex requires a Special Exception After the Successful Appeal By 100 Emerald Beach Way

In November 8, 2018- *after* the Mandate of the Circuit Court- Logan Elliott, John Lindgren, Paul Castro, and Skip Randolph **all** concurred and advised the applicant that a special exception was required for the tennis courts. See Ex. D. On November 8, 2018, Logan Elliott advised the applicant that a special exception is required for the tennis courts. John Lindgren also advised the applicant that Section 134-1759 requires a special exception. Then, Paul Castro and Logan Elliott met with Skip Randolph, and **Paul Castro confirms “Yes, they will need a special exception as well.”** Thus, John

Lindgren, Logan Elliott, and Paul Castro- after consultation with Skip Randolph - ALL concurred with our position that the tennis courts need a special exception.

On November 9, 2018, Logan Elliott followed up and asked Paul Castro "Have we gotten back to Dustin Mizell about the necessity to go to Council with the tennis courts at 1236 SOB?" Paul Castro suddenly changed his mind after Tim Hanlon, attorney for the applicant, insisted that a special exception was not required. However, Mr. Hanlon notes that the Thorntons filed the special exception application in November 2018 "after Bob Critton discussed the matter with Skip after the appeal ruling was handed down."

The requirement for a special exception was unanimously determined by staff, and the applicant filed an application in accordance with staff's determination. However, even after John Lindgren, Logan Elliott, Paul Castro, and Skip Randolph ALL concurred and advised the Thorntons that a special exception was required for the tennis courts, Paul Castro did an about face and advised on December 5, 2018, that a special exception application would not be required.

The Application Must Be Denied Because It Includes Permanent Improvements Within the 35 foot Platted Right Ingress/ Egress Easement of Emerald Beach Way

On the plans, the refuse area, catch basin, and at least 3 feet of landscaping and driveway are located within the ingress and egress easement for Emerald Beach Way. The only way for 100 Emerald Beach Way to access its oceanfront estate is via Emerald Beach Way. Nobody- including the Thorntons- is permitted to install landscaping or designate a portion of Emerald Beach Way for garbage dumping. See Ex. E, Plat.

Furthermore, designation of the "refuse area" adjacent to the catch basin obstructs the drainage of Emerald Beach Way. Section 102-45 prohibits dumping landscaping or other debris or garbage more than 1 day prior to pickup. The Thorntons use this "refuse area" to dump all of their debris and garbage from the entire property on a daily basis- in blatant disregard of Town regulations. The Thorntons are not permitted to install any permanent improvements- not landscaping, a driveway, a "refuse" garbage dumping area, or anything else within the ingress/egress easement of Emerald Beach Way. Therefore, ARCOM does not have the authority to grant this Application, as it includes permanent improvements within the platted ingress and egress of Emerald Beach Way.

The Application Does Not Meet the Criteria for a Building Permit

The Application does not meet the criteria for ARCOM approval set forth in Section 18-205(a), as follows.

Sec. 18-205. - Criteria for building permit.

- (a) The architectural commission may approve, approve with conditions, or disapprove the issuance of a building permit in any matter subject to its jurisdiction only after consideration of whether the following criteria are complied with:**
 - (1) The plan for the proposed building or structure is in conformity with good taste and design and in general contributes to the image of the town as a place of beauty, spaciousness, balance, taste, fitness, charm and high quality.**

Objection: The Supplemental Parking Lot is a parking lot for at least 10 trucks and cars abutting oceanfront estates in the R-AA zoning district. The R-AA zoning district requires a special exception for supplemental parking, for the exact reason that a commercial parking lot is not generally appropriate or in conformity with the large estate residential district. Article 9 of the Zoning Code provides specific requirements for off street parking and requires special exception approval as set forth herein, to prevent exactly what is proposed here- a parking lot for commercial trucks abutting large oceanfront residential estates.

The Tennis Court Complex is also viewable from the Emerald Beach Way right of way as well as the home at 100 Emerald Beach Way. There are no other private tennis courts that are viewable from the right of way, and all are screened and enveloped within the estate. However, since the Tennis Court Complex is proposed to be constructed (illegally) within the required setbacks, and encompasses the entire large residential estate lot, it is undeniably overbearing on the property located at 100 Emerald Beach Way.

- (2) The plan for the proposed building or structure indicates the manner in which the structures are reasonably protected against external and internal noise, vibrations, and other factors that may tend to make the environment less desirable.**

Objection: As stated herein, there is no noise buffer. This objection is not speculative- 100 Emerald Beach Way is already suffering the consequences of daily use of the tennis courts, constant grunting and loud blowers on the court, as well as the nonstop cracking of tennis balls.

- (3) The proposed building or structure is not, in its exterior design and appearance, of inferior quality such as to cause the nature of the local environment to materially depreciate in appearance and value.**

Objection: The Supplemental Parking Lot is just that- a parking lot. A parking lot full of commercial trucks that is fully viewable from the street and from 100 Emerald Beach Way materially depreciates the appearance and value of the local environment. Furthermore, the Tennis Court Complex encompasses the entire lot, and even encroaches into the required setbacks, so that the tennis courts are not properly screened for view or noise impacts.

- (4) The proposed building or structure is in harmony with the proposed developments on land in the general area, with the comprehensive plan for the town, and with any precise plans adopted pursuant to the comprehensive plan.**

Objection: The Tennis Court Complex is not in harmony with the existing developments on neighboring properties. The site for the Tennis Court Complex is in between two single family estates. The subject site is separately and similarly platted and zoned for a single-family estate, as it is designated Single Family on the Comprehensive Plan and zoned R-AA large estate residential zoning district. The Tennis Complex is a stand-alone tennis complex, only connected to the principal structure at 1236 South Ocean Boulevard by a gravel pedestrian path. The subject site was not contemplated as a tennis center- it is designated and zoned for a single-family estate in harmony with the abutting single family estates. There are no other single family estates in Palm Beach that include two tennis courts that are accessible by a completely separate street.

- (6) **The proposed building or structure is not excessively dissimilar in relation to any other structure existing or for which a permit has been issued or to any other structure included in the same permit application within 200 feet of the proposed site in respect to one or more of the following features:**
- a. **Height of building or height of roof.**
 - b. **Other significant design features including, but not limited to, materials or quality of architectural design.**
 - c. **Architectural compatibility.**
 - d. **Arrangement of the components of the structure.**
 - e. **Appearance of mass from the street or from any perspective visible to the public or adjoining property owners.**
 - f. **Diversity of design that is complimentary with size and massing of adjacent properties.**
 - g. **Design features that will avoid the appearance of mass through improper proportions.**
 - h. **Design elements that protect the privacy of neighboring property.**

Objection: The Tennis Court Complex is extremely dissimilar to any other property within a 200-foot radius. There are two estates within a 200-foot radius that have tennis courts. However, those tennis courts are accessible through the main entrance of the property and are accessory to the principal use. Here, the Tennis Court Complex includes TWO tennis courts and a supplemental parking lot, all accessible from a separate entrance on a separate street from the principal residence. This design creates an autonomous and independent recreational acre separate and apart from the principal residence, and in fact, so separate that the impacts from the Tennis Court Complex are forced onto 100 Emerald Beach Way instead of Applicant.

- (7) **The proposed addition or accessory structure is subservient in style and massing to the principal or main structure.**

Objection: Section 134-1756 plainly states: “an accessory use shall be clearly supplementary and incidental and shall not be separated from the principal use of the lot.” The Tennis Court Complex is physically separated from the principal use by landscaping- there is a gravel pedestrian path through the landscaping to the principal use. There is a separate entrance on a separate street, with a parking lot, creating an autonomous recreational area. This separation from the principal use, combined with the fact that it encompasses every square inch of the platted lot, imposes all of the impacts on the abutting single family estate at 100 Emerald Beach Way. The Applicant separated and screened all of the noise and view impacts of the Tennis Court Complex from the principal structure at 1236 South Ocean Boulevard, such that those impacts are imposed on Emerald Beach Way at 100 Emerald Beach Way.

- (8) **The proposed building or structure is appropriate in relation to the established character of other structures in the immediate area or neighboring areas in respect to significant design features such as material or quality or architectural design as viewed from any public or private way (except alleys).**

Objection: The Tennis Court Complex is completely separate from the principal structure at 1236 South Ocean Boulevard- it has a separate vehicular entrance and is only connected to the principal

structure via gravel pedestrian path. The Tennis Court Complex includes 2 tennis courts, the supplemental parking lot and tennis canopy. The complete separation from the principal use, together with the fact that the Tennis Complex occupies an entire large estate residential lot makes the Tennis Court Complex inappropriate in relation to the established character of the abutting single family estates.

- (9) The proposed development is in conformity with the standards of this Code and other applicable ordinances insofar as the location and appearance of the buildings and structures are involved.**

Objection: The Application is not in conformity with the standards of this Code because the Tennis Court Complex requires a Variance and two Special Exceptions for the Tennis Court Complex- none of which are included in the Application. As set forth herein, the code specifically prohibits the 10-foot tennis court fence within the required side yard, and thus, the Application is not in conformity with the standards of this Code. Furthermore, the R-AA regulations unambiguously states that a special exception is required for supplemental parking in the large residential estate district – to prevent exactly what is constructed there now- a parking lot for at least 10 trucks and cars abutting an oceanfront single family estate.

Furthermore, the Application does not include the detailed stormwater management plan set forth in Section 86-91. A stormwater management plan is required at the time of Application to ARCOM, and the Tennis Court Complex includes a driveway, parking area, and proposed work includes the redevelopment of more than 20 percent of landscaped open space, 20 percent of the impervious area of the site including buildings, patios, etc., or a combination thereof which exceeds 20 percent.

The Thorntons Cannot Claim Estoppel

There can be no estoppel because the Thorntons “acted at their own peril” in proceeding to construct tennis courts that were the subject of a pending petition for certiorari in which they ultimately lost. In one of the most famous land use cases, the Fourth DCA affirmed a trial court Order to demolish over 40 multi-family residential units that were constructed during the pendency of an appeal. *Pinecrest Lakes v. Shidel*, 795 So.2d 191 (4th DCA 2001). The developer applied for and received a building permit for a multi-family residential project during the pendency of an appeal. However, the developer did not prevail on appeal, and the Court ordered the demolition of over 40 residential units- some of which were already occupied- that were built during the pendency of the appeal. The trial court found that the developer “acted at [its] own peril in doing precisely what this lawsuit sought to prevent and now [is] subject to the power of the court to compel restoration of the status prior to construction.” *Id.* At 196. The Fourth DCA affirmed. “In this case the alleged inequity could have been entirely avoided if developer had simply awaited the exhaustion of all legal remedies before undertaking construction. It is therefore difficult to perceive from the record any great inequity in requiring demolition.” *Id.* At 208.

The application must comply with all code requirements, including the placement of the fence and tennis court outside the principal setback. If the Thorntons assert they cannot comply with the code requirements, then they can apply for a variance. However, they cannot raise the fact that they already built the tennis courts as a basis for estoppel because the caselaw is clear- building a project during the pendency of an appeal is done at one’s own peril. To find otherwise would divest the

Circuit Court of its lawful jurisdiction because anyone could just build a project while the matter is under review by the Circuit Court, and then argue that the damage would be too great if they were forced to comply with the code requirements and the Court Order. *Pinecrest Lakes v. Shidel*, 795 So.2d 191 (4th DCA 2001).

Conclusion

ARCOM cannot approve the Application because the Tennis Court Complex requires a Variance and two Special Exceptions, and ARCOM does not have the authority or jurisdiction to approve those requests. Furthermore, the Application does not meet the criteria set forth in Section 18-205(a), as stated herein. Converting an entire platted lot in the R-AA large residential estate district into a Tennis Complex with two tennis courts and a parking lot for at least 10 vehicles is not in conformity with the code, in harmony with the surrounding uses, consistent with the comprehensive plan, nor appropriate in relation to the abutting single family estates.

Applicant proposes a Tennis Complex which is screened and physically separated from the home at 1236 South Ocean Boulevard, such that all the detrimental impacts are imposed on the Emerald Beach Way at 100 Emerald Beach Way. For the reasons stated herein, the Application must be denied.

LEHTINEN SCHULTZ PLLC

By: /s/ Amanda Quirke Hand

Amanda Quirke Hand, P.A.

M A N D A T E

F R O M

CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT, IN AND FOR
PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION

This cause having been brought to this Court by appeal, and after due consideration the Court having issued its opinion;

YOU ARE HEREBY COMMANDED that such further proceedings be had in said Cause in accordance with the opinion of this Court, and with the rules of procedure and Laws of the State of Florida.

WITNESS THE HONORABLE JUDGE MEENU SASSER Presiding Judge of the Appellate Division (Civil) of the Fifteenth Judicial Circuit and seal of the said Court at West Palm Beach, Florida on this day Monday, November 5, 2018.

CIRCUIT APPEAL CASE NO.: 502017CA010274XXXXMB AY

Style: 100 EMERALD BEACH WAY V THE PALM BEACH TOWN COUNCIL AND MARGARET B. THORNTON



SHARON R. BOCK, CLERK &
COMPTROLLER
Palm Beach County, Florida

By: Catherine Markisen, Deputy Clerk

FILED
NOV 05 2018
SHARON R. BOCK
CLERK & COMPTROLLER
CIRCUIT CIVIL DIVISION

CC:

ROBERT JEFFREY HAUSER hauser@pankauskilawfirm.com, courtfilings@phflorida.com

KARL SANDERS ksanders@jonesfoster.com

SANTO DIGANGI sdigangi@lawcl.com

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION (CIVIL): AY
CASE NO.: 502017CA010274XXXXMB

100 EMERALD BEACH WAY,
Petitioner,

v.

THE PALM BEACH TOWN COUNCIL
AND MARGARET B. THORNTON,
Respondents.

Opinion filed: AUG 30 2018

Petition for Writ of Certiorari from the Town of Palm Beach Town Council.

For Petitioner: Robert Jeffrey Hauser
415 South Olive Avenue
West Palm Beach, Florida 33401
hauser@pankauskilawfirm.com
courtfilings@phfloirida.com

For Respondents: Karl Sanders
505 South Flagler Drive, Suite 1100
West Palm Beach, Florida 33401
ksanders@jonesfoster.com

Santo DiGangi
303 Banyan Boulevard, Suite 400
West Palm Beach, Florida 33401
sdigangi@lawclc.com

PER CURIAM:

Upon review of the Petition for Writ of Certiorari, we find that the Town Council failed to rely on competent, substantial evidence when it denied Petitioner's appeal from the Town Architectural Committee. The Town Architectural Committee did not make findings sufficient to ensure that Respondent Thornton's "proposed development [would be] in conformity with the standards of this Code and other applicable ordinances insofar as the location and appearance of

the buildings and structures are involved." *See* Resp. App. at 7. Specifically, there was no finding by the Town Architectural Committee or Town Council, or evidence in the record, to suggest that Respondent Thornton's proposed development would comply with section 134-1759. *See* Resp. App. at 16. Because the Town Council's failure to rely on competent, substantial evidence is sufficient cause to grant the Petition, we issue no opinion regarding the remaining arguments on appeal. We **GRANT** the Petition for Writ of Certiorari and **QUASH** the decision of the Town Council.

SASSER, GOODMAN, CURLEY JJ. concur.




APPELLATE DIVISION (CIVIL): AY
CASE NO.: 502017CA010274XXXXMB

Opinion/Decision filed: AUG 30 2018

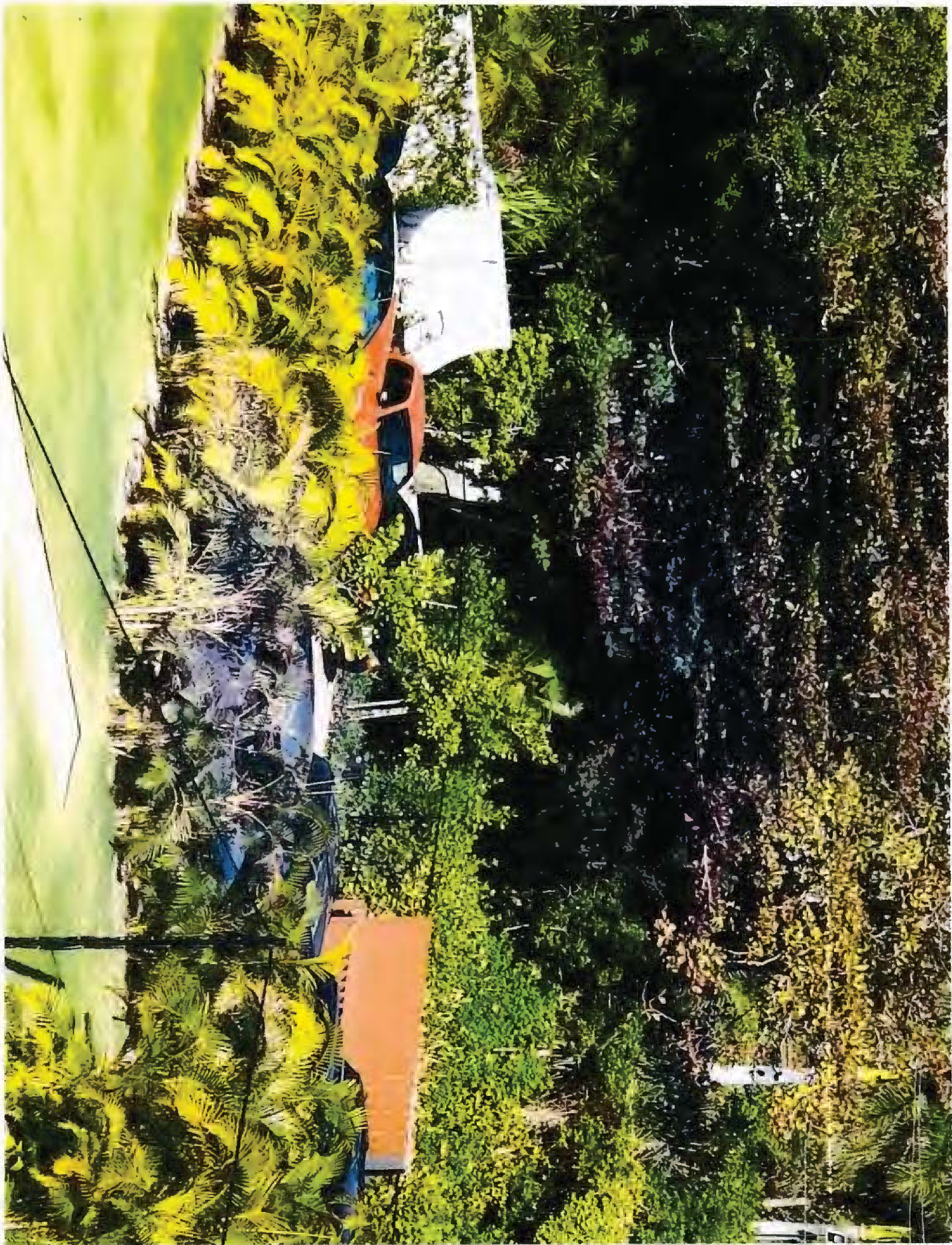
Petition for Writ of Certiorari from the
Town of Palm Beach Town Council

Date of Appeal: September 15, 2017

PER CURIAM OPINION/DECISION BY: PER CURIAM

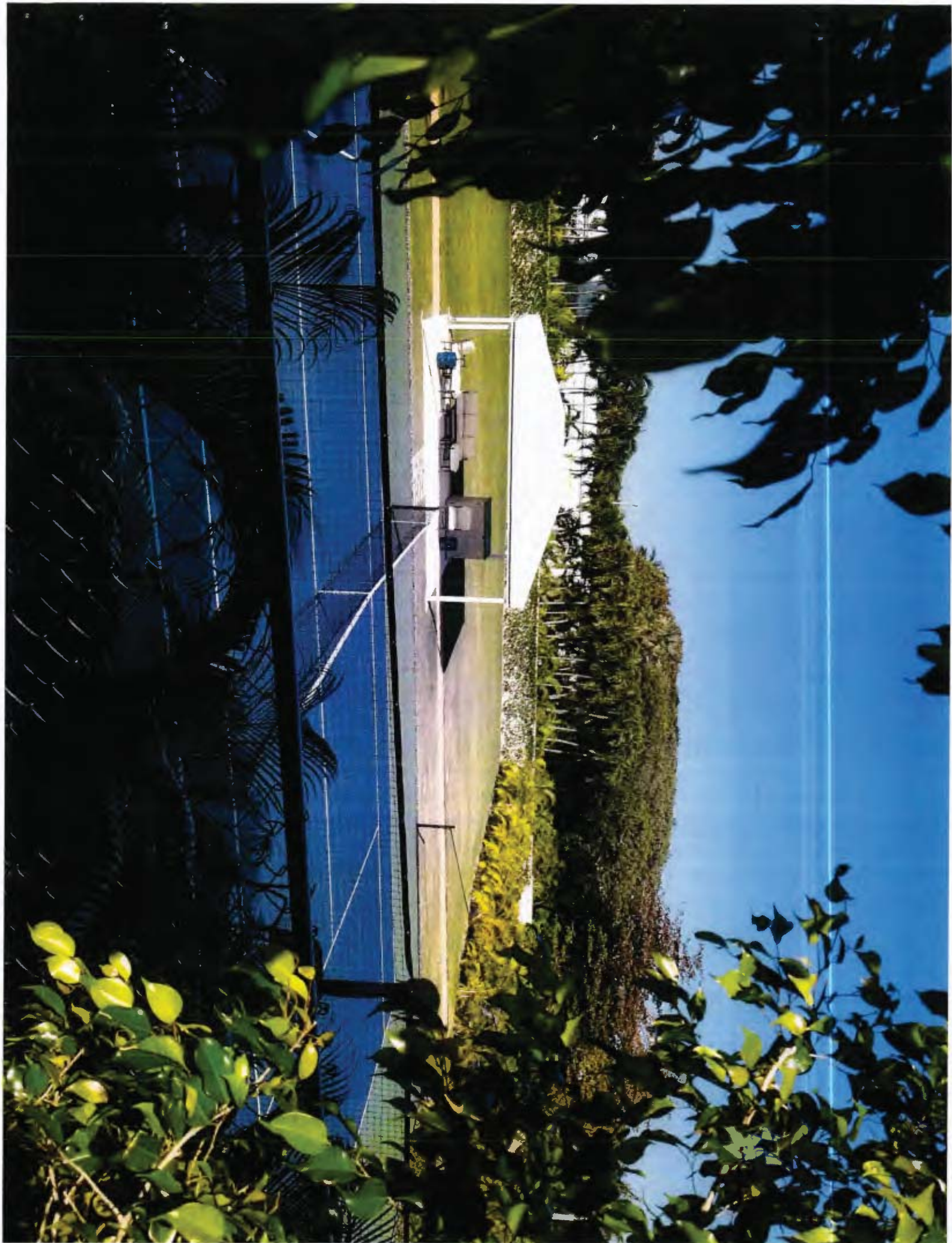
CONCURRING:		DISSENTING:		CONCURRING SPECIALLY:	
		With/Without Opinion		With/Without Opinion	
	J.		J.		J.
DATE:					
	J.		J.		J.
DATE:					
	J.		J.		J.
DATE:					

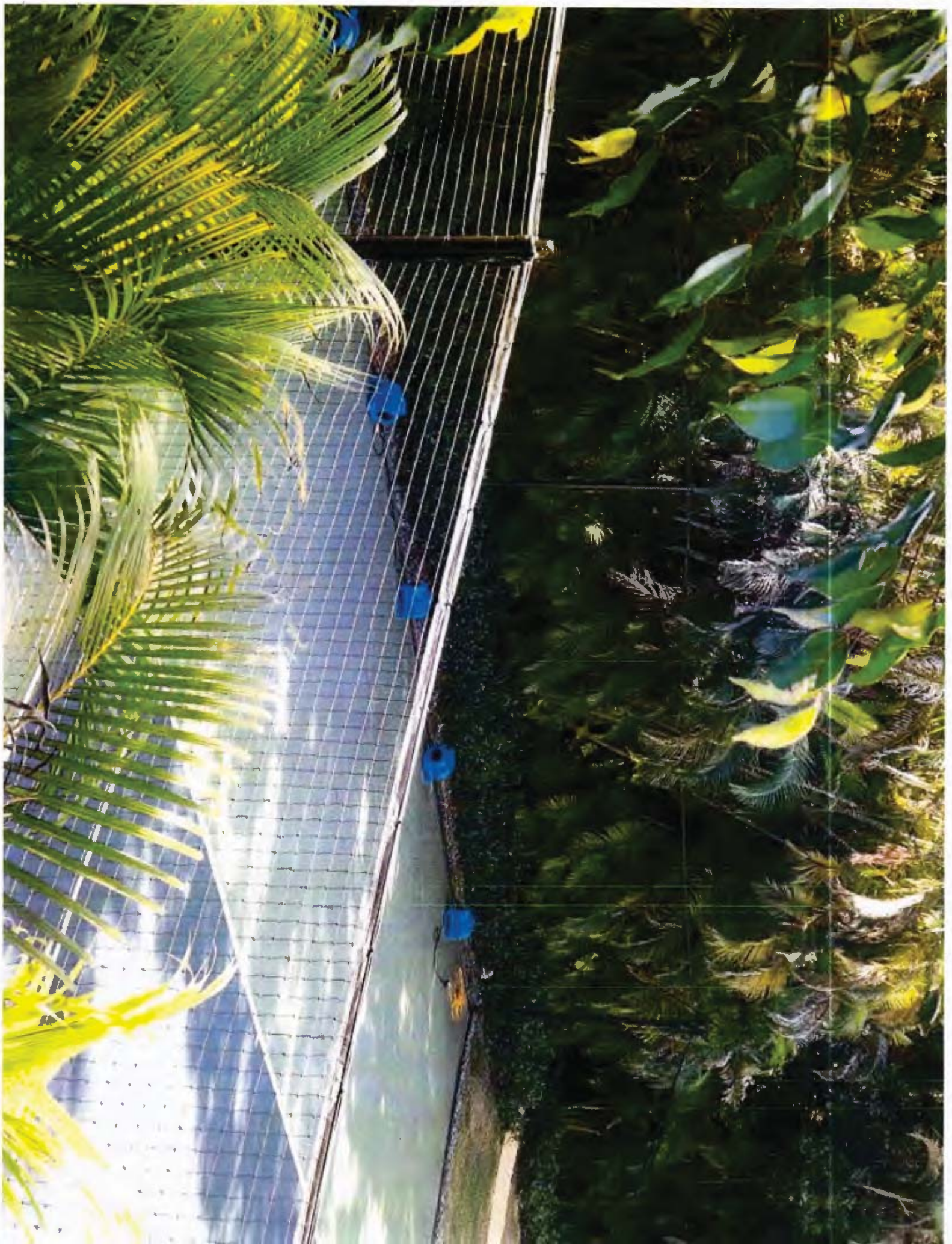


















8-046-2017



8-046-2017

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To: [Dustin Mizell \(dustin@environmentdesigngroup.com\)](mailto:dustin@environmentdesigngroup.com); Logan Elliott; John Lindgren
Cc: [Kelly Churney](#); [Joshua Martin](#)
Subject: RE: 1236 SOB
Date: Thursday, November 08, 2018 11:03:41 AM

From: Dustin Mizell (dustin@environmentdesigngroup.com)
<Dustin@environmentdesigngroup.com>
Sent: Thursday, November 08, 2018 10:51 AM
To: Logan Elliott <LElliott@TownofPalmBeach.com>; John Lindgren
<JLindgren@TownofPalmBeach.com>
Cc: Kelly Churney <KChurney@TownofPalmBeach.com>; Paul Castro
<PCastro@TownofPalmBeach.com>; Joshua Martin <jmartin@TownOfPalmBeach.com>
Subject: RE: 1236 SOB

Thank you for your response.

Our records indicate that we went directly to ARCOM and then subsequently went to Town Council because of the appeal.

Sincerely,

Dustin M. Mizell, MLA-RLA#6666784
LEED[®] AP

www.EnvironmentDesignGroup.com
The Paramount Building
139 North County Road - Suite 20-B
Palm Beach, Florida 33480
ph: 561.832.4600
m: 561.313.4424

God Bless

From: Logan Elliott <LElliott@TownofPalmBeach.com>
Sent: Thursday, November 08, 2018 10:44 AM
To: Dustin Mizell (dustin@environmentdesigngroup.com) <Dustin@environmentdesigngroup.com>; John Lindgren <JLindgren@TownofPalmBeach.com>
Cc: Kelly Churney <KChurney@TownofPalmBeach.com>; Paul Castro
<PCastro@TownofPalmBeach.com>; Joshua Martin <jmartin@TownOfPalmBeach.com>
Subject: RE: 1236 SOB

There is confusion here.

This project did receive or require a special exception. The Tennis Courts ARCOM application was submitted in May of 2017 and the code changed for Tennis Courts at the end of 2017. Tennis Courts now require a special exception so I believe that this project would fall under the purview of the new

code. We will need to confirm this before anything is submitted.

Logan Elliott
Zoning Technician

Town of Palm Beach
Planning, Zoning, Building
360 S. County Road
Palm Beach, FL 33480
Phone: 561-227-6409
www.townofpalmbeach.com

From: Dustin Mizell (dustin@environmentdesigngroup.com)
<Dustin@environmentdesigngroup.com>
Sent: Thursday, November 08, 2018 10:35 AM
To: John Lindgren <JLindgren@TownofPalmBeach.com>
Cc: Logan Elliott <LElliott@TownofPalmBeach.com>; Kelly Churney
<KChurney@TownofPalmBeach.com>; Paul Castro <PCastro@TownofPalmBeach.com>; Joshua
Martin <jmartin@TownOfPalmBeach.com>
Subject: RE: 1236 SOB

Do you have a record of the special exception application?

Sincerely,

Dustin M. Mizell, MLA-RLA#6666784
LEED[®] AP

www.EnvironmentDesignGroup.com
The Paramount Building
139 North County Road - Suite 20-B
Palm Beach, Florida 33480
ph: 561.832.4600
m: 561.313.4424

God Bless

From: John Lindgren <JLindgren@TownofPalmBeach.com>
Sent: Thursday, November 08, 2018 9:46 AM
To: Dustin Mizell (dustin@environmentdesigngroup.com) <Dustin@environmentdesigngroup.com>
Cc: Logan Elliott <LElliott@TownofPalmBeach.com>; Kelly Churney
<KChurney@TownofPalmBeach.com>; Paul Castro <PCastro@TownofPalmBeach.com>; Joshua
Martin <jmartin@TownOfPalmBeach.com>
Subject: RE: 1236 SOB

Dustin,

You would have had to have gotten a special exception for the tennis courts,

because the code requires it (see below).

John

Sec. 134-1759. - Tennis, shuffleboard and racquetball courts.

(e) The construction of any tennis court, shuffleboard court or similar use upon any structure in the town shall be subject to an application for special exception as specified in section 134-227 through section 134-233.

**John Lindgren, AICP
Planning Administrator**

Town of Palm Beach
Planning, Zoning & Building Department
360 S. County Road
Palm Beach, FL 33480
Phone: 561-227-6414
www.townofpalmbeach.com

From: John Lindgren
Sent: Thursday, November 08, 2018 9:36 AM
To: 'Dustin Mizell (dustin@environmentdesigngroup.com)' <Dustin@environmentdesigngroup.com>
Cc: Logan Elliott <LElliott@TownofPalmBeach.com>; Kelly Churney <kchurney@TownofPalmBeach.com>; Paul Castro <PCastro@TownofPalmBeach.com>; Joshua Martin <jmartin@TownOfPalmBeach.com>
Subject: RE: 1236 SOB

Dustin,

Paul said there was a zoning application for the tennis courts (it was a special exception). If this is the case, you will need to coordinate with Paul and Logan

to have this application return to Town Council for approval prior to going to ARCOM.

John

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360 S. County Road
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From: John Lindgren

Sent: Wednesday, November 07, 2018 11:12 AM

To: 'Dustin Mizell (dustin@environmentdesigngroup.com)' <Dustin@environmentdesigngroup.com>

Cc: Logan Elliott <LElliott@TownofPalmBeach.com>; Kelly Churney <KChurney@TownofPalmBeach.com>; Paul Castro <PCastro@TownofPalmBeach.com>; Joshua Martin <jmartin@TownOfPalmBeach.com>

Subject: RE: 1236 SOB

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<Dustin@environmentdesigngroup.com>
Sent: Wednesday, November 07, 2018 10:40 AM
To: John Lindgren <jlindgren@TownofPalmBeach.com>
Cc: Logan Elliott <LElliott@TownofPalmBeach.com>; Kelly Churney
<kchurney@TownofPalmBeach.com>; Paul Castro <PCastro@TownofPalmBeach.com>; Joshua
Martin <jmartin@TownOfPalmBeach.com>
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www.EnvironmentDesignGroup.com
The Paramount Building
139 North County Road - Suite 20 B
Palm Beach, Florida 33480
ph: 561.832.4600
m: 561.313.4424

On Behalf Of

From: John Lindgren <jlindgren@TownofPalmBeach.com>
Sent: Wednesday, November 07, 2018 8:17 AM
To: Dustin Mizell (dustin@environmentdesigngroup.com) <Dustin@environmentdesigngroup.com>
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Martin <jmartin@TownOfPalmBeach.com>
Subject: RE: 1236 SOB

Dustin,

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John

**John Lindgren, AICP
Planning Administrator**

Town of Palm Beach
Planning, Zoning & Building Department
360 S. County Road
Palm Beach, FL 33480
Phone: 561-227-6414
www.townofpalmbeach.com

From: Dustin Mizell (dustin@environmentdesigngroup.com)
<Dustin@environmentdesigngroup.com>
Sent: Tuesday, November 06, 2018 1:44 PM
To: John Lindgren <JLindgren@TownofPalmBeach.com>
Subject: RE: 1236 SOB

Thank you

Sincerely,
Dustin M. Mizell, MLA-RLA#6666784
LEED® AP

www.EnvironmentDesignGroup.com
The Paramount Building
139 North County Road - Suite 20-B
Palm Beach, Florida 33480
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m: 561.313.4424

God Bless

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Subject: RE: 1236 SOB

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with our legal counsel to see if you have to go back to ARCOM or not. This happened before with Testas and a house on Ridgeview, and I believe it was determined that the ARCOM "clock" didn't start until after the legal matter was resolved. I'll let you know what I hear.

John

**John Lindgren, AICP
Planning Administrator**

Town of Palm Beach
Planning, Zoning & Building Department
360 S. County Road
Palm Beach, FL 33480
Phone: 561-227-6414
www.townofpalmbeach.com

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<Dustin@environmentdesigngroup.com>
Sent: Tuesday, November 06, 2018 11:55 AM
To: John Lindgren <JLindgren@TownofPalmBeach.com>
Subject: RE: 1236 SOB

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We already have one and the project is almost completed.

The appellate court reversed ARCOM & Town Council's ruling to approve the project.
Skip Randolph is aware of the situation.
He has been speaking with my client's attorney.

We believe we now have to go back to ARCOM to re-present the project.
If so, we want to be heard in December.
I just don't know the process moving forward if that is the direction we take.

Thanks for your help.

Sincerely,
Dustin M. Mizell, MLA-RLA#6666784
LEED® AP

www.EnvironmentDesignGroup.com

The Paramount Building
139 North County Road - Suite 20-B
Palm Beach, Florida 33480
ph: 561.832.4600
m: 561.313.4424

God Bless

From: John Lindgren <JLindgren@TownofPalmBeach.com>
Sent: Tuesday, November 06, 2018 11:39 AM
To: Dustin Mizell <dustin@environmentdesigngroup.com>
Subject: 1236 SOB

Dustin,
Got your phone message regarding the approval of 1236 South Ocean Boulevard, and what (if anything) is needed to submit a building permit for the 1236 South Ocean Boulevard project that ARCOM approved on 6/28/17 (see attached minutes). Can you put your questions in an e-mail and send it to me so that I can forward to the appropriate people to get a decision? Thanks.
John

John Lindgren, AICP
Planning Administrator

Town of Palm Beach
Planning, Zoning & Building Department
360 S. County Road
Palm Beach, FL 33480
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From: [Joshua Martin](#)
To: [Paul Castro](#)
Cc: [Logan Elliott](#); [Joshua Martin](#)
Subject: RE: 1236 SOB
Date: Thursday, November 08, 2018 7:01:16 PM

Ok thanks!

Josh Martin, AICP, CNU-A
Director

Town of Palm Beach
Planning, Zoning, Building
360 S. County Road
Palm Beach, FL 33480
Office: 561-227-6401
Mobile: 843-247-2057
www.townofpalmbeach.com

From: Paul Castro
Sent: Thursday, November 08, 2018 6:45 PM
To: Joshua Martin <jmartin@TownOfPalmBeach.com>
Subject: Re: 1236 SOB

Yes, they will need a special exception as well. I can brief you tomorrow.

Good night

Sent from my iPhone

On Nov 8, 2018, at 18:00, Joshua Martin <jmartin@TownOfPalmBeach.com> wrote:

. Thanks everyone.

Paul/Logan: Did you guys resolve this matter with Skip today?

Thank you,
Josh

Josh Martin, AICP, CNU-A
Director

Town of Palm Beach
Planning, Zoning, Building
360 S. County Road
Palm Beach, FL 33480
Office: 561-227-6401
Mobile: 843-247-2057
www.townofpalmbeach.com

From: Logan Elliott
Sent: Thursday, November 08, 2018 10:58 AM
To: Dustin Mizell (dustin@environmentdesigngroup.com)
<Dustin@environmentdesigngroup.com>; John Lindgren
<JLindgren@TownofPalmBeach.com>
Cc: Kelly Churney <KChurney@TownofPalmBeach.com>; Paul Castro
<PCastro@TownofPalmBeach.com>; Joshua Martin
<jmartin@TownOfPalmBeach.com>
Subject: RE: 1236 SOB

That is correct. Allow us some time to confirm if you will need to submit under the current code or as a continuation of the initial submittal.

Thanks,

Logan Elliott
Zoning Technician

Town of Palm Beach
Planning, Zoning, Building
360 S. County Road
Palm Beach, FL 33480
Phone: 561-227-6409
www.townofpalmbeach.com

From: Dustin Mizell (dustin@environmentdesigngroup.com)
<Dustin@environmentdesigngroup.com>
Sent: Thursday, November 08, 2018 10:51 AM
To: Logan Elliott <LElliott@TownofPalmBeach.com>; John Lindgren
<JLindgren@TownofPalmBeach.com>
Cc: Kelly Churney <KChurney@TownofPalmBeach.com>; Paul Castro
<PCastro@TownofPalmBeach.com>; Joshua Martin
<jmartin@TownOfPalmBeach.com>
Subject: RE: 1236 SOB

Thank you for your response.

Our records indicate that we went directly to ARCOM and then subsequently went to Town Council because of the appeal.

Sincerely,

Dustin M. Mizell, MLA-RLA#6666784
LEED® AP

www.EnvironmentDesignGroup.com

The Paramount Building
159 North County Road Suite 20-B
Palm Beach, Florida 33480
p: 561.832.4600
m: 561.313.4424

and I'll be

From: Logan Elliott <L.Elliott@TownofPalmBeach.com>
Sent: Thursday, November 08, 2018 10:44 AM
To: Dustin Mizell (dustin@environmentdesigngroup.com)
<Dustin@environmentdesigngroup.com>; John Lindgren
<JLindgren@TownofPalmBeach.com>
Cc: Kelly Churney <kChurney@TownofPalmBeach.com>; Paul Castro
<PCastro@TownofPalmBeach.com>; Joshua Martin
<jmartin@TownOfPalmBeach.com>
Subject: RE: 1236 SOB

There is confusion here.

This project did receive or require a special exception. The Tennis Courts ARCOM application was submitted in May of 2017 and the code changed for Tennis Courts at the end of 2017. Tennis Courts now require a special exception so I believe that this project would fall under the purview of the new code. We will need to confirm this before anything is submitted.

Logan Elliott
Zoning Technician

Town of Palm Beach
Planning, Zoning, Building
360 S. County Road
Palm Beach, FL 33480
Phone: 561-227-6409
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<kChurney@TownofPalmBeach.com>; Paul Castro <PCastro@TownofPalmBeach.com>;
Joshua Martin <jmartin@TownOfPalmBeach.com>
Subject: RE: 1236 SOB

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God Bless

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Planning Administrator**

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Paul said there was a zoning application for the tennis courts (it was a special exception). If this is the case, you will need to coordinate with Paul and Logan to have this application return to Town Council for approval prior to going to ARCOM.
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From: John Lindgren

Sent: Wednesday, November 07, 2018 11:12 AM

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[<Dustin@environmentdesigngroup.com>](mailto:Dustin@environmentdesigngroup.com)

Cc: Logan Elliott [<LElliott@TownofPalmBeach.com>](mailto:LElliott@TownofPalmBeach.com); Kelly Churney

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Sent: Wednesday, November 07, 2018 10:40 AM

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Subject: RE: 1236 SOB

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Send Email

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Town of Palm Beach

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Palm Beach, FL 33480

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From: Dustin Mizell (dustin@environmentdesigngroup.com)
<Dustin@environmentdesigngroup.com>
Sent: Tuesday, November 06, 2018 1:44 PM
To: John Lindgren <JLindgren@TownofPalmBeach.com>
Subject: RE: 1236 SOB

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From: [Logan Elliott](#)
To: [Paul Castro](#)
Subject: 1236 SOB tennis Courts
Date: Friday, November 09, 2018 12:15:14 PM

Paul,

Have we gotten back to Dustin Mizell about the necessity to go to Council with the tennis courts at 1236 SOB?

Logan Elliott
Zoning Technician

Town of Palm Beach
Planning, Zoning, Building
360 S. County Road
Palm Beach, FL 33480
Phone: 561-227-6409
www.townofpalmbeach.com

From: Courtney Lyne
To: Logan Elliott
Cc: Paul Castro; Joshua Martin; Tim Hanlon
Subject: RE: 1236 S. Ocean Blvd. Tennis Courts
Date: Thursday, December 13, 2018 1:47:33 PM
Attachments: [Affidavit of Notice Mailing-Withdrawal.pdf](#)
[Notice to Neighbors of Withdrawal.pdf](#)

Attached are copies of the Affidavit of Notice Mailing and the Notice of Withdrawal for your records.

Thank you,
Courtney

From: Logan Elliott <LElliott@TownofPalmBeach.com>
Sent: Thursday, December 13, 2018 1:35 PM
To: Courtney Lyne <CLyne@amrl.com>
Cc: Paul Castro <PCastro@TownofPalmBeach.com>; Joshua Martin <jmartin@TownOfPalmBeach.com>
Subject: RE: 1236 S. Ocean Blvd. Tennis Courts

Regular mail is fine.

Logan Elliott
Zoning Technician

Town of Palm Beach
Planning, Zoning, Building
360 S. County Road
Palm Beach, FL 33480
Phone: 561-227-6409
www.townofpalmbeach.com

From: Courtney Lyne <CLyne@amrl.com>
Sent: Thursday, December 13, 2018 10:25 AM
To: Logan Elliott <LElliott@TownofPalmBeach.com>
Cc: Paul Castro <PCastro@TownofPalmBeach.com>; Joshua Martin <jmartin@TownOfPalmBeach.com>
Subject: RE: 1236 S. Ocean Blvd. Tennis Courts

I will send to the same list, but I wanted to know if I need to send certified in addition to regular mail to the abutting neighbors.

Thanks,
Courtney

From: Logan Elliott <LElliott@TownofPalmBeach.com>
Sent: Thursday, December 13, 2018 10:15 AM
To: Courtney Lyne <CLyne@amrl.com>

Cc: Paul Castro <PCastro@TownofPalmBeach.com>; Joshua Martin
<jmartin@TownOfPalmBeach.com>

Subject: RE: 1236 S. Ocean Blvd. Tennis Courts

The cancellation notice will need to go to all of the recipients of the original notice of application.
The 300' tax map list. I think that a notice affidavit is appropriate.

Logan Elliott
Zoning Technician

Town of Palm Beach
Planning, Zoning, Building
360 S. County Road
Palm Beach, FL 33480
Phone: 561-227-6409
www.townofpalmbeach.com

From: Courtney Lyne <CLyne@amrl.com>
Sent: Thursday, December 13, 2018 9:57 AM
To: Logan Elliott <LElliott@TownofPalmBeach.com>
Subject: RE: 1236 S. Ocean Blvd. Tennis Courts

Good morning Logan,

I am working on the notification to owners about the termination of the application. Do we need to send certified notice to the across and abutting properties? Also, do you need a Notice Affidavit?

Thanks,

Courtney Lyne
Florida Registered Paralegal
Alley, Maass, Rogers & Lindsay, P.A.
☎ 340 Royal Poinciana Way, Suite 321, Palm Beach, FL 33480
☎ (561) 659-1770 / (561) 804-4606 Direct
☎ (561) 833-2261 / (561) 804-4609 Direct Fax
✉ clyne@amrl.com

From: Kelly Churney <KChurney@TownofPalmBeach.com>
Sent: Tuesday, December 11, 2018 3:36 PM
To: Courtney Lyne <CLyne@amrl.com>
Cc: Logan Elliott <LElliott@TownofPalmBeach.com>
Subject: RE: 1236 S. Ocean Blvd. Tennis Courts

Hi Courtney,

I just talked to Paul. Apparently Tim (or you) were supposed to coordinate with Logan on the letter. I'm sorry I told you differently but I was not made aware of this request. I have copied Logan on this so that he can coordinate with you.

Thanks.

Kelly Churney

Administrative Assistant

Town of Palm Beach

Planning, Zoning & Building

360 S. County Rd.

Palm Beach, FL 33480

561-227-6408

561-835-4621 (fax)

www.townofpalmbeach.com

From: Courtney Lyne <CLyne@amri.com>

Sent: Tuesday, December 11, 2018 12:01 PM

To: Kelly Churney <KChurney@TownofPalmBeach.com>

Subject: RE: 1236 S. Ocean Blvd. Tennis Courts

Ok, so we don't have to notify the neighbors that we are withdrawing the application? I think that was implied to Tim, and I just want to be sure. We will write the letter to the Town today.

Thanks,
Courtney

From: Kelly Churney <KChurney@TownofPalmBeach.com>

Sent: Tuesday, December 11, 2018 11:54 AM

To: Courtney Lyne <CLyne@amri.com>

Subject: RE: 1236 S. Ocean Blvd. Tennis Courts

Hi Courtney,

No, we will not send anything to the neighbors. We will withdraw this from the agenda at the public meeting. However if Tim could write a letter requesting the withdraw, we will place the letter in our backup.

Thanks.

Kelly Churney

Administrative Assistant

Town of Palm Beach
Planning, Zoning & Building
360 S. County Rd.
Palm Beach, FL 33480
561-227-6408
561-835-4621 (fax)
www.townofpalmbeach.com

From: Courtney Lyne <CLyne@amrl.com>
Sent: Tuesday, December 11, 2018 11:51 AM
To: Kelly Churney <kChurney@TownofPalmBeach.com>
Subject: RE: 1236 S. Ocean Blvd. Tennis Courts

Hi Kelly,

Is there a withdrawal form to send to the neighbors? If not, is there anything specific it needs to say?
And, do you need an affidavit of mailing?

Thanks,
Courtney

From: Kelly Churney <kChurney@TownofPalmBeach.com>
Sent: Friday, December 7, 2018 10:37 AM
To: Tim Hanlon <tim.hanlon@amrl.com>
Cc: Courtney Lyne <CLyne@amrl.com>
Subject: FW: 1236 S. Ocean Blvd. Tennis Courts

Good morning Tim,

Please see Debby's note below regarding the refund.

Thanks,

Kelly Churney
Administrative Assistant

Town of Palm Beach
Planning, Zoning & Building
360 S. County Rd.
Palm Beach, FL 33480
561-227-6408
561-835-4621 (fax)
www.townofpalmbeach.com

From: Debby Moody
Sent: Friday, December 07, 2018 10:33 AM
To: Kelly Churney <k.Churney@TownofPalmBeach.com>
Subject: RE: 1236 S. Ocean Blvd. Tennis Courts

Kelly

will take care of this. FYI A refund will be prepared and sent to Alley Maass since the check came from them.

will do a receipt adjustment, bill adjustment and cancel the permit.

Debby Moody, MBTO
Office Manager

Town of Palm Beach
Planning, Zoning & Building Department
360 S County Rd., PO Box 2029
Palm Beach, FL 33480
Phone: 561-227-6411
Fax: 561-835-4621
www.townofpalmbeach.com

From: Kelly Churney
Sent: Friday, December 07, 2018 9:37 AM
To: Debby Moody <D.Moody@TownofPalmBeach.com>
Subject: FW: 1236 S. Ocean Blvd. Tennis Courts

Hi Debby,

Do you need me to do anything for this? This is a Town Council project – number Z-18-00162. I've attached the initial receipt here.

Kelly Churney
Administrative Assistant

Town of Palm Beach
Planning, Zoning & Building
360 S. County Rd.
Palm Beach, FL 33480
561-227-6408

561-835-4621 (fax)
www.townofpalmbeach.com

From: Paul Castro
Sent: Thursday, December 06, 2018 4:01 PM
To: Tim Hanlon <tim.hanlon@amrl.com>
Cc: Kelly Churney <KChurney@TownofPalmBeach.com>; Debby Moody <DMoody@TownofPalmBeach.com>; Logan Elliott <LElliott@TownofPalmBeach.com>
Subject: RE: 1236 S. Ocean Blvd. Tennis Courts

Yes,

Via this email I am asking for Kelly to get with Debby Moody to process a refund.

Regards,

Paul Castro, AICP
Zoning Administrator

360 South County Road
Palm Beach, FL 33480
561-227-6406
www.pcastro@townofpalmbeach.com

From: Tim Hanlon <tim.hanlon@amrl.com>
Sent: Thursday, December 06, 2018 3:57 PM
To: Paul Castro <PCastro@TownofPalmBeach.com>; Logan Elliott <LElliott@TownofPalmBeach.com>
Cc: John (Skip) C. Randolph <JRandolph@jonesfoster.com>; Joshua Martin <jmartin@TownOfPalmBeach.com>
Subject: RE: 1236 S. Ocean Blvd. Tennis Courts

Thanks Paul. I confirmed with Logan that we will send a notice of withdrawal based upon the Town's determination that the Special Exception and Site Plan Approval are not required.

Will the Town reimburse the filing fees to the Thorntons?

Thanks, Tim

M. Timothy Hanlon
Alley, Maass, Rogers & Lindsay P.A.
340 Royal Poinciana Way, Suite 321

Palm Beach, Florida 33480
Phone: (561) 659-1770
Fax: (561) 833-2261
Direct Fax: (561) 804-4617
tim.hanlon@amrl.com

From: Paul Castro <PCastro@TownofPalmBeach.com>
Sent: Wednesday, December 5, 2018 4:15 PM
To: Logan Elliott <LElliott@TownofPalmBeach.com>
Cc: John (Skip) C. Randolph <JRandolph@jonesfoster.com>; Joshua Martin <jmartin@TownOfPalmBeach.com>; Tim Hanlon <tim.hanlon@amrl.com>
Subject: RE: 1236 S. Ocean Blvd. Tennis Courts

To All,

I do not believe that Tim's client need a special exception based on previous and existing code provisions related to tennis courts. Tennis courts without lighting or a backboard and which are not on a structure do not require special exception approval. Please review and advise. If so, the applicant will have to withdraw the application and provide notice to those that notices were sent to advising that they have withdrawn because it has been determined that the special exception approval is not required. The applicant will still need ARCOM approval. Please advise.

Thank you,

Paul Castro, AICP

Zoning Administrator

360 South County Road
Palm Beach, FL 33480
561-227-6406
www.pcastro@townofpalmbeach.com

From: Logan Elliott
Sent: Wednesday, December 05, 2018 12:16 PM
To: Paul Castro <PCastro@TownofPalmBeach.com>
Cc: John (Skip) C. Randolph <JRandolph@jonesfoster.com>
Subject: RE: 1236 S. Ocean Blvd. Tennis Courts

Hi Skip,

In talking with Paul, we will not need a meeting with you there.

Thank you,

Logan Elliott
Zoning Technician

Town of Palm Beach
Planning, Zoning, Building
360 S. County Road
Palm Beach, FL 33480
Phone: 561-227-6409
www.townofpalmbeach.com

From: Paul Castro
Sent: Wednesday, December 05, 2018 11:38 AM
To: Logan Elliott <LElliott@TownofPalmBeach.com>
Cc: John (Skip) C. Randolph <JRandolph@jonesfoster.com>
Subject: FW: 1236 S. Ocean Blvd. Tennis Courts

Logan,

You need to be in the meeting.

Paul Castro, AICP
Zoning Administrator

360 South County Road
Palm Beach, FL 33480
561-227-6406
www.pcastro@townofpalmbeach.com

From: Randolph, John C. <JRandolph@jonesfoster.com>
Sent: Wednesday, December 05, 2018 9:06 AM
To: Paul Castro <PCastro@TownofPalmBeach.com>
Subject: Fwd: 1236 S. Ocean Blvd. Tennis Courts

Paul, let's talk about this and set up a meeting with Tim, if necessary. Thanks.

Sent from my iPhone

Begin forwarded message:

From: Tim Hanlon <tim.hanlon@amrl.com>
Date: December 4, 2018 at 5:38:09 PM EST

To: "John \"Skip\" Randolph" <JPandolph@jonesfoster.com>, Paul Castro
<PCastro@TownofPalmBeach.com>

Subject: 1236 S. Ocean Blvd. Tennis Courts

This message originated from outside your organization

Hi Skip and Paul. I would like to meet with both of you to discuss whether a special exception and site plan approval are required for the Thornton tennis courts.

By my reading of both the current and former versions of Zoning Code Section 134-1759, I believe that a special exception and site plan approval are required only if the courts are to be lighted or if they are to be built on a structure. Neither of such features are proposed, so I don't believe that the approvals are required or the application is appropriate.

I believe that Paul originally made the determination that no special exception or site plan approval was required in 2016 before the original ARCOM application was submitted. I agreed then and still agree now.

We did file the application in an abundance after Bob Critton discussed the matter with Skip after the appeal ruling was handed down, but I think that we need to look more closely at the issue and determine the correct and required course of action.

Copies of both code sections are attached for your reference.

Please let me know dates and times when you will be available, and I will try hard to be available as soon as possible. My clients would like to resolve this issue as soon as possible.

If either of you has any questions, please let me know.

Thanks, Tim

M. Timothy Hanlon
Alley, Maass, Rogers & Lindsay P.A.
340 Royal Poinciana Way, Suite 321
Palm Beach, Florida 33480
Phone: (561) 659-1770
Fax: (561) 833-2261
Direct Fax: (561) 804-4617
tim.hanlon@amrl.com

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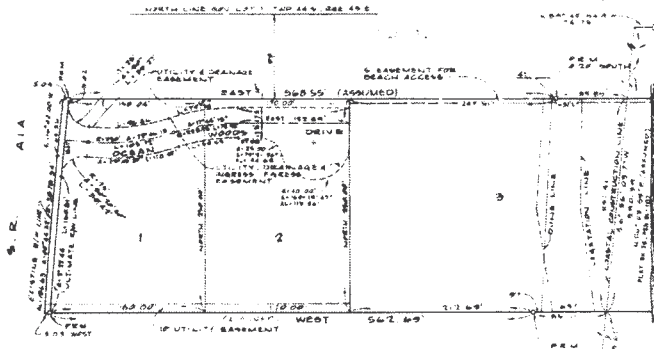
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IN GOVERNMENT LOT 1, SECTION 2, TWP. 44 S., RGE. 43 E.
BEING A REPLAT OF THE REPLAT OF THE EMERALD
RECORDED IN PLAT BOOK 43, PAGE 17
PALM BEACH COUNTY, FLORIDA
TOWN OF PALM BEACH
IN 1 SHEET - SHEET NO. 1



B

TOWN OF PALM BEACH
ARCHITECTURAL COMMISSION

Town Hall
Council Chambers-Second Floor
360 South County Road
Palm Beach, Florida 33480

March 27, 2019

10:00 a.m. - 11:59 a.m.

B-046-2017

BOARD MEMBERS

Robert J. Vila, Chairman
Michael B. Small, Vice Chairman
Robert N. Garrison, Member
Alexander C. Ives, Member
Maisie Grace, Member
John David Corey, Member
Nikita Zukov, Member
Betsy Shiverick, Alternate Member
Katherine Catlin, Alternate Member
Dan Floersheimer, Alternate Member

ALSO PRESENT

John Randolph, Esq., Jones Foster
Amanda Quirke-Hand, Lehtinen Schultz
M. Timothy Hanlon, Alley Maass

Stenographically reported by:
Lisa Higbee, RPR, RMR

Page 2

1 - - - - -

2 CHAIRMAN VILA: And now for B-046-2017

3 modifications, 1236 South Ocean Boulevard.

4 Applicant: John L. and Margaret B. Thornton. The

5 professional is Dustin Mizell, Environmental

6 Design Group.

7 Project Description: Addition of two

8 tennis courts. One court will be a hard court,

9 and the other a grass court. The courts will be

10 surrounded by a fence approximately 10-feet tall

11 and various landscaping at or above the height of

12 the fence. Additional landscaping will be

13 provided to buffer courts accordingly. Separate

14 staff parking area is also included.

15 A motion carried at the June 2017 meeting

16 to approve the project as presented. This project

17 was brought back to the January meeting for

18 reconsideration due to a court ruling. A motion

19 carried at the January meeting to defer the

20 project to the March 27th meeting to allow the

21 town council to make their decision on the

22 administrative appeal.

23 Ex-parte communications.

24 MR. ZUKOV: I reviewed the plans.

25 MR. RANDOLPH: Now let me just -- I know

Page 3

1 that there was a letter submitted by Amanda Hand.

2 I don't know if each of you saw that, but any

3 other -- any other communications that you have,

4 you should declare as in your -- in your -- in

5 what you're -- what you're doing now.

6 So you've not seen those letters?

7 MR. ZUKOV: No.

8 MR. RANDOLPH: You've just reviewed the

9 plans. All right, just a reminder to everybody

10 else.

11 MR. COREY: I did not receive -- I did not

12 see the letter, but I reviewed the plans, and I

13 went by the site.

14 MR. GARRISON: I reviewed the plans and

15 received the letter on an email actually on

16 March 26th about this stating that we had no

17 jurisdiction.

18 MR. SMALL: I visited the site and

19 neighboring properties, reviewed the mini set,

20 reviewed the McCort letter that we had received

21 before in favor of the proposed tennis courts,

22 received an extremely large, massive email late

23 yesterday afternoon which I did not read in its

24 entirety.

25 CHAIRMAN VILA: I'm not -- I haven't looked

Page 4

1 at my email this morning, and nothing since the

2 last time except that I did attend a book party

3 for young Ms. Carpenter at an address here in town

4 where I did meet Mr. and Mrs. Thornton who, by

5 coincidence, were attending the same party, and I

6 chatted with them, and, at one point, I said, "Are

7 you the Thorntons that are building the tennis

8 court?" And they said yes, and we did not discuss

9 the tennis courts.

10 MR. IVES: I received the email yesterday

11 afternoon, which had been previously referred to

12 with -- not just the letter, but I think six

13 attachments in total. I did have a chance to take

14 the time yesterday evening and go through it all,

15 and, you know, I've been here for the previous

16 meetings on this subject.

17 MS. GRACE: I reviewed the plans. I

18 received and reviewed the March 26th letter. I

19 visited the property and I had a tour of the

20 property by the property manager who was on site.

21 MS. SHIVERICK: I read the attachments that

22 were part of Amanda's -- Amanda Quirke's email and

23 letter, and I have reviewed the mini set.

24 MS. CATLIN: I reviewed the mini set. I

25 received the letter via the town. I did review

Page 5

1 some of it, not all of it. As to the late time

2 that I got it yesterday, I didn't have the time to

3 pull it up.

4 MR. FLOERSHEIMER: I reviewed the mini set.

5 I visited the property. I took some photographs

6 and video. I read the letter from Amanda

7 Quirke-Hand and all of the attachments. Yeah,

8 that's it.

9 CHAIRMAN VILA: Thank you.

10 Mr. Randolph, can you help us?

11 MR. RANDOLPH: Yes, please. Let me just

12 lay the groundwork for why you are here hearing

13 this again. As you know, your decision was

14 appealed to the town council -- your decision to

15 approve this project was appealed to the town

16 council. The town council upheld your decision,

17 and, after that, the property owners at 100

18 Emerald Beach Way filed what's called a petition

19 for writ certiorari to the circuit court, which is

20 basically an appeal of your decision and the

21 town's decision.

22 I think it's important that you know, the

23 basis of the court's ruling on this, and I'd like

24 to read a portion of it. First it says that, "We

25 find that the town council failed to rely on

<p style="text-align: right;">Page 6</p> <p>1 competent substantial evidence when it denied 2 petitioner's appeal from the Town Architectural 3 Committee. The Town Architectural Committee did 4 not make findings sufficient to ensure that 5 Respondent Thorntons' proposed development would 6 be in conformity with the standards of this code 7 and other applicable ordinances insofar as the 8 location and appearance of the buildings and 9 structures involved."</p> <p>10 "Specifically, there was no finding by the 11 Architectural Committee or town council or 12 evidence in the record to suggest that Respondent 13 Thorntons' proposed development would comply with 14 Section 134-1759 of the town code. Because the 15 town council's failure to rely on competent 16 substantial evidence as sufficient cause to grant 17 the petition, we issue no opinion regarding the 18 remaining arguments on appeal. We grant the 19 petition for writ of certiorari and quash the 20 decision of the town council."</p> <p>21 So, subsequent to that, there was a mandate 22 issued from the court which states as follows: 23 "You are hereby commanded that such further 24 proceedings be had in said cause in accordance 25 with the opinion of this court and with the rules</p>	<p style="text-align: right;">Page 8</p> <p>1 and there was also discussion in regard to whether 2 or not there was a special exception needed in 3 regard to supplemental parking. I -- Although 4 that is not something for you to consider, I 5 think, because of the court proceeding, that a 6 transcript of that hearing should be made part of 7 the record, and I understand, in speaking to 8 Amanda Hand, that she has a court reporter's 9 transcript which she is going to put in the 10 record. So I think it would behoove us to accept 11 that as part of the record.</p> <p>12 One or more of you made statements at the 13 last time we brought this before you that you 14 didn't understand the court's ruling as it relates 15 to having to make findings in regard to your 16 decision. And you'll notice that today I did not 17 require you to make findings in regard to any of 18 the decisions you made, and that is because we 19 rely upon the case of -- excuse me -- one of -- 20 two of the cases: Alachua Land Investors vs. City 21 of Gainesville, which says, "A circuit court 22 conducting certiori review of a local government's 23 quasi-judicial decision on a development 24 application may uphold the decision even in the 25 absence of supportive factual findings so long as</p>
<p style="text-align: right;">Page 7</p> <p>1 of procedure and laws of the State of Florida." 2 So this basically has been remanded to you to 3 rehear this matter in accordance with the 4 direction of the court.</p> <p>5 In regard to the court's statement that 6 there's nothing in the record to show that the 7 development would comply with Section 134-1759, 8 that is not something that you normally determine. 9 When these applications come to you, they come 10 with the town's planning and zoning director 11 having reviewed it and made certain that all the 12 zoning matters have been taken care of. So you do 13 not look at those things. You look at the 14 criteria that are specifically set forth in your 15 code.</p> <p>16 The staff in this case made a 17 determination, prior to this coming to you, that 18 it met the criteria set forth in Section 134-1759. 19 In fact, Paul Castro, the town's zoning 20 administrator, stated at a hearing last Tuesday, 21 which I think was March 12th, testified in regard 22 to 134-1759 stating that the tennis courts did not 23 need a special exception.</p> <p>24 There was also testimony at that hearing 25 relating to whether or not a variance was needed,</p>	<p style="text-align: right;">Page 9</p> <p>1 the court can locate competent substantial 2 evidence consistent with the decision and, of 3 course, conclude the local government applied the 4 correct law and did not deprive the petitioner of 5 due process. While findings may be useful, the 6 board will not be required to make findings of 7 fact."</p> <p>8 "When assessing the sufficiency of 9 evidence, the circuit court need only review the 10 record to determine simply whether the local 11 government decision is supported by competent 12 substantial evidence."</p> <p>13 And, in addition, to that -- and excuse me 14 for taking this time, but I think it's important 15 for the record to lay this out for you -- there is 16 the case of Board of County Commissioners of 17 Brevard County vs. Snyder, which states, "While 18 they may be useful, the board will not be required 19 to make findings of fact. However, in order to 20 sustain the board's action upon review by certiori 21 in the circuit court, it must be shown that there 22 was competent substantial evidence presented to 23 the board to support its ruling. Further" --</p> <p>24 So that, Mr. Garrison, is in answer to the 25 question that you raised at the last hearing.</p>

<p style="text-align: right;">Page 10</p> <p>1 Nevertheless, this court has ruled in this 2 particular case that this matter should be sent 3 back to you to reconsider and to make findings of 4 fact in support of whatever decision you make. 5 Interestingly, your code, in the event you 6 approve a project, does not require that you make 7 findings of fact. In the event you disapprove of 8 a project, however, you have to make findings of 9 fact as to why you are disapproving it. That's 10 the way that your -- that your code reads. 11 So you've seen, in the letter from Amanda 12 Hand, several arguments, and I won't comment in 13 regard to each argument. I'll let those arguments 14 be made, but I say to you that those arguments 15 relating to whether this is properly in front of 16 you are not for you to consider today. You are to 17 base your decision on the criteria set forth in 18 your code. And I would invoke you to specifically 19 refer today to Section 18-205 of your code, which 20 states -- and I'll not read it all, but just the 21 beginning - "The Architectural Commission may 22 approve, approve with conditions or disapprove OF 23 the issuance of a building permit in any matter 24 subject to its jurisdiction only after 25 consideration of whether the following criteria</p>	<p style="text-align: right;">Page 12</p> <p>1 making a presentation before you. I'm just laying 2 out why this is before you from a legal 3 standpoint. 4 MR. ZUKOV: Well, did Paul look into that 5 possibility? Because why would they have parking 6 where they're building these tennis courts? Why 7 don't the people who come to play tennis park on 8 their property and come over? 9 MR. RANDOLPH: I would ask you to reserve 10 that question for the applicant, and Mr. Castro is 11 here to answer any questions that you may have in 12 regard to these other matters as to whether or not 13 these things were considered prior to it coming to 14 you. 15 CHAIRMAN VILA: Yes, Mr. Ives, did you have 16 a question for Mr. Randolph? 17 MR. IVES: Yes. Mr. Randolph, thank you 18 always for your wise and excellent counsel to the 19 town and this commission. 20 Assuming that we come to a decision today 21 on this application, we do make a motion and in 22 whatever direction it is, you mentioned that 23 Amanda Hand's letter is more for if there was 24 further steps taken beyond us today; it's not so 25 much for us and our consideration of the</p>
<p style="text-align: right;">Page 11</p> <p>1 are complied with:" And then you have the 2 criteria set forth in that section going through 3 item 10. 4 So the applicant in this case is going to 5 have the burden of showing to you that those 6 criteria have been met, and the applicant -- the 7 burden of anyone opposed is to show that those 8 criteria have not be met, and that's how you will 9 base your decision, but I request that, whatever 10 action you take, you make findings in regard to 11 it. 12 I think that pretty well lays out the case. 13 If you have any questions, I'd be happy to answer 14 them. 15 CHAIRMAN VILA: I have several 16 commissioners. 17 Mr. Zukov. 18 MR. ZUKOV: Yeah, I have a question. I 19 don't know if it relates to what you were talking 20 about, but to me -- I'm a tennis player -- to me 21 it seems like this is going to be a private 22 academy, tennis academy. 23 MR. RANDOLPH: That doesn't relate to what 24 I'm talking about. And that question should be 25 asked of the applicant or anyone else that's</p>	<p style="text-align: right;">Page 13</p> <p>1 application. My concern is, given that some of 2 our commission members said they have not received 3 it and haven't had a chance to review it, if we 4 make a decision today, is that any ground for 5 appeal that affects -- 6 MR. RANDOLPH: That they haven't read it? 7 MR. IVES: That we haven't read it. 8 MR. RANDOLPH: No, because she is here to 9 make whatever presentations she -- 10 MR. IVES: So we're fine to go ahead 11 without having -- some of us not having seen that, 12 and that doesn't open us up to any appeal that 13 would have wasted our time today? 14 MR. RANDOLPH: Correct. 15 MR. IVES: Thank you. 16 MR. RANDOLPH: And, you know, the arguments 17 that are made, number one, have been made in this 18 March 12th, I believe it was -- 19 MR. HANLON: 19th. 20 MR. RANDOLPH: -- March 19th hearing, so 21 I'm just saying to you that those are not matters 22 that you would normally consider. They're for 23 someone else to consider, primarily the zoning 24 director who is here to testify, and you're here 25 just to hear the criteria.</p>

Page 14

1 MR. IVES: I just wanted it clear that we
2 didn't have any issue that we would end up having
3 wasted everyone's time on something because we
4 haven't taken that moment. So thank you for
5 clarifying.

6 CHAIRMAN: Thank you.

7 MS. GRACE: did you have a question?

8 MS. GRACE: Yes, one question.

9 Josh, I was wondering if any of the town
10 staff here -- my packet doesn't have a copy of
11 18.205 criteria for the building permit. I was
12 wondering if anybody had that handy. I would like
13 to have a copy, and then --

14 CHAIRMAN VILA: It's in your folder.

15 MS. GRACE: It's not in the folder.

16 MS. SHIVERICK: Here it is.

17 CHAIRMAN VILA: It's missing.

18 MS. GRACE: Yeah, if anyone has one, that
19 would be great. And then I was wondering, could
20 you just clarify for me what is the transcript
21 that you said that you're adding into the record?

22 MR. RANDOLPH: Amanda Hand will present the
23 transcript of the March 19th meeting at which they
24 -- 100 Emerald Beach Way appealed the decision of
25 the zoning administrator in which he indicated

Page 15

1 that no special exception was needed for the
2 tennis courts or for supplemental parking, and
3 there was also an argument at that meeting that a
4 variance was needed for the tennis courts, and
5 that was addressed at that meeting as well --

6 MS. GRACE: Okay, but we don't have to have
7 that read either --

8 MR. RANDOLPH: -- and those three items are
9 not something for you to consider today.

10 CHAIRMAN VILA: Right.

11 MS. GRACE: Okay, good. Thank you.

12 CHAIRMAN VILA: Mr. Garrison.

13 MR. GARRISON: Thank you, Mr. Randolph, you
14 clarified my question, so I just want to be clear.
15 Today we're supposed to make sure that we refer to
16 this 18-205 when we make our approval, but, all
17 the other approvals that we do on normal business,
18 we don't have to specifically say that it's
19 assumed that we do that; is that correct?

20 MR. RANDOLPH: I am comfortable in the
21 manner in which you've been acting in the past
22 when you make approvals without making findings
23 based upon the two cases I read to you.

24 MR. GARRISON: Thank you very much. I
25 approve that. Thank you.

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1 CHAIRMAN VILA: Mr. Floersheimer.

2 MR. FLOERSHEIMER: Yes, thank you,
3 Mr. Randolph. If I can try and summarize what you
4 read, should we be viewing this application as an
5 original application before a tennis court was
6 built, before the parking was built, so kind of
7 wipe the slate clean, forget about everything
8 that's happened and just look at this as a brand
9 new application for two tennis courts and
10 additional parking?

11 MR. RANDOLPH: Yes, it would be a rehearing
12 on your initial application, but you're going to
13 be presenting --

14 MR. FLOERSHEIMER: With all the zoning
15 rules and setbacks and everything that are in
16 place now?

17 MR. RANDOLPH: I'm sorry, I interrupted
18 you, and, therefore, didn't hear the last part of
19 your statement.

20 MR. FLOERSHEIMER: Yes, that it's a new
21 application with all the rules and zonings and
22 setbacks that exist today?

23 MR. RANDOLPH: It's not really new because
24 the court remanded it to you based upon the -- its
25 quashing your previous decision, and it remanded

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1 you back to you to make findings of fact in regard
2 to whatever you decide.

3 So, yes, in answer to the first part of
4 your question, you should consider it based upon
5 the presentation made to you today, not on the
6 basis of the tennis court having been built or a
7 permit having been granted because those went --
8 that construction of that tennis court went
9 forward at the owners' own risk during the appeal
10 before the matter was quashed by the court.

11 MR. FLOERSHEIMER: Thank you.

12 CHAIRMAN VILA: Is the decision or the
13 presentation -- Is there anything different from
14 the last time from Mr. Brazil's perspective from
15 building and zoning? Are we still --

16 MR. RANDOLPH: Mr. Castro's.

17 CHAIRMAN VILA: I mean, I'm sorry,
18 Mr. Castro. Are we still looking at the same
19 situation?

20 MR. RANDOLPH: Yes, I believe you're
21 looking at the -- although the court wants you to
22 rehear it, so it's being presented to you in that
23 format, and I don't know if you heard from
24 Mr. Castro the last time, but Mr. Castro's --
25 Mr. Castro's decision was that this would not be

<p style="text-align: right;">Page 18</p> <p>1 before you if he hadn't already reviewed these 2 matters and determined that they could be before 3 you, the zoning matters --</p> <p>4 CHAIRMAN VILA: Yeah.</p> <p>5 MR. RANDOLPH: -- relating specifically to 6 that 134 -- what was it -- 259, that I --</p> <p>7 CHAIRMAN VILA: 1759, 1759.</p> <p>8 MR. RANDOLPH: Yes, thank you.</p> <p>9 CHAIRMAN VILA: Okay, thank you.</p> <p>10 Sir.</p> <p>11 MR. HANLON: Thank you. For the record, M. 12 Timothy Hanlon on behalf of Mr. and Mrs. Thornton.</p> <p>13 Skip, thank you for an excellent job of 14 recapping where we have been and why we're here 15 today. I would just like to add a couple small 16 details from that.</p> <p>17 Not mentioned in Mrs. Hand's letter is that 18 the town council denied all three appeals that she 19 had made based on Mr. Castro's decisions that no 20 special exceptions were required for either the 21 tennis court or the parking area and that no 22 variance was required for the screening or the 23 fencing on the tennis court. That is very 24 important and really renders moot six of the eight 25 pages of her memo.</p>	<p style="text-align: right;">Page 20</p> <p>1 CHAIRMAN VILA: Is there a separate path to 2 the beach that is public?</p> <p>3 MR. HANLON: There is not. There's a beach 4 access easement per the plat that only applies to 5 the owners within the plat, which are these three 6 owners. So it's not public access whatsoever.</p> <p>7 The only right of -- and I'll call the 100 owner 8 the Jacobs because they're principal of the LLC 9 that owns the entity. The Jacobs' only rights to 10 this paved easement is a right of ingress and 11 egress, so to drive in and out from South Ocean 12 Boulevard; that's it.</p> <p>13 CHAIRMAN VILA: They can't park on it?</p> <p>14 MR. HANLON: They're not allowed to park on 15 it. They're not allowed to determine what can be 16 built on or around it, and they can't dictate with 17 the Thorntons can do with their property as long 18 as the Thorntons give them access, as required by 19 the plat, very important.</p> <p>20 I think this is also a very, very important 21 picture, an aerial view of the subject property. 22 So this is from the Palm Beach County Property 23 Appraiser site. The red line outlines the 24 boundaries of the property. As you can tell, this 25 is one unified parcel. Mrs. Hand attempted at</p>
<p style="text-align: right;">Page 19</p> <p>1 Also very important on the variance issue, 2 town council also ruled that the law applying, on 3 the original -- the date of the original 4 application, which is May of 2017, applies to this 5 application because it's a resubmittal. The court 6 -- The appeals court remanded it for further 7 findings, so that date still applies, and the laws 8 existing at that date still apply. That's what 9 the town council found a week ago yesterday.</p> <p>10 So we are here today to re-present the 11 application submitted back in May of 2017. The 12 substance of the application is identical. A 13 couple details were added to the plans based on 14 some of the language in the court ruling.</p> <p>15 Very important, I want to show just a 16 couple details which are unique to this site. So 17 this road, this pathway, which is really an 18 easement, is Emerald Beach Way, and it's not a 19 road, very important. It's a paved easement. So, 20 from this property line all the way to this 21 property line, this easement is owned 100 percent 22 by the Thorntons. Extremely important. The only 23 rights -- The public has no rights to that road 24 whatsoever -- or, to that pathway.</p> <p>25 The only rights that the Jacobs --</p>	<p style="text-align: right;">Page 21</p> <p>1 town council and I'm sure she'll try to attempt 2 today to make the argument these are separate 3 parcels. These are not separate parcels.</p> <p>4 So this empty parcel here showing -- part 5 of the parcel here that's showing is where the 6 tennis courts are proposed and the parking area. 7 As you can see, it's very, very close to the main 8 residence, and there's complete access from the 9 residence to the tennis courts. There may be a 10 separate easement and access point from the courts 11 and the parking area to South Ocean Boulevard, but 12 they're completely one parcel. And we have 13 submitted the unity of title as part of our 14 presentation materials to confirm that. So 15 legally they are one and the same parcel. Very 16 important.</p> <p>17 So Skip already confirmed that Paul Castro 18 made a determination that no special exceptions 19 were required and no variances were required. 20 Town council affirmed his decisions and denied the 21 appeals last week. At this point, I -- I'm sorry.</p> <p>22 MR. RANDOLPH: That should be clarified 23 because I believe the decision of the town council 24 in regard to the matter of whether a special 25 exception was needed for the tennis courts and</p>

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1 whether or not a special exception was needed for
 2 the supplemental parking was denied on the basis
 3 that the appeal was filed -- appeal from
 4 Mr. Castro's decision was filed untimely, and
 5 Mr. Castro can clarify that, but I just wanted to
 6 make sure the record is clear in that regard, that
 7 they didn't deny the appeal in regard to the
 8 substance of those two matters. They denied it on
 9 the basis that the appeal was untimely, and
 10 Mr. Castro can clarify that.

11 MR. HANLON: But does his decision stand?
 12 MR. RANDOLPH: His decisions stand --
 13 MR. HANLON: Okay.
 14 MR. RANDOLPH: -- because -- That's why
 15 this matter is before you --
 16 MR. HANLON: Right.
 17 MR. RANDOLPH: -- in that regard.
 18 MR. HANLON: So I just wanted to confirm
 19 that before moving forward.
 20 So, at this point, I'd like to submit -- I
 21 believe they're already part of the record -- Our
 22 entire presentation materials, I wanted to submit
 23 it into evidence. I'm just going to give this to
 24 the clerk, and then I'll turn it over to Dustin to
 25 make his architectural presentation, and, when

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1 he's done, I'm going to walk through the criteria
 2 very briefly in an effort to try to show how our
 3 application does provide substantial competent
 4 evidence to meet those criteria.

5 CHAIRMAN VILA: Okay.
 6 MR. HANLON: Thank you.
 7 MR. MIZELL: Good morning. Dustin Mizell
 8 with Environment Design Group for the record.
 9 Just continuing here with where Mr. Hanlon left
 10 off, L-1, the sheet you have in front of you,
 11 again, just a little bit of the context. This is
 12 a six-acre estate property. We have 63 percent of
 13 landscaped open space. Only 55 percent is
 14 required. The building coverage, we're allowed up
 15 to a maximum of 25 percent. We only have 5.5. So
 16 you can see from our figures and you can see from
 17 the graphic, you can appreciate the amount of
 18 garden space and open space that our clients have
 19 preserved in their ultimate development of this
 20 six-acre estate.

21 Looking at our site plan here, I just want
 22 to kind of lay out the particulars in red their
 23 hatches, kind of their limits of work if you want
 24 to call it here. Go to this one here.
 25 We do see that we do have a hard court

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1 area, which is on the east side of the property.
 2 It's inspired by very famous tennis courts in
 3 California, Indian Wells. If you're a tennis
 4 players, you're familiar with that. So that's
 5 where our color scheme came from, the inspiration
 6 of it.

7 On the west side, we're proposing a grass
 8 court. I believe, as far as my knowledge, it's
 9 the only residential grass court in Palm Beach.
 10 The courts meet all the setbacks. We have a
 11 10-foot setback on the east property line, 10-foot
 12 setback on the west property line.

13 The hard court, the closest it comes to the
 14 edge of the pavement there at the cul-de-sac is
 15 35 feet, but, if you take that dimension up to our
 16 north property line, the court is really set back
 17 100 feet from our north property line.

18 There is no lighting. A part of this
 19 application, there's no lighting of the tennis
 20 court. It will not be used at night. We're
 21 proposing a 10-foot high fence as required by code
 22 around the courts. And, also, what is in addition
 23 to the fencing, a 10-foot high minimum vegetation,
 24 which we are proposing as well.
 25 In addition to the minimal landscape

Page 25

1 requirements, relative to tennis court screening,
 2 we have enhanced landscaping for sure. Along the
 3 west property line, there's a site wall. We've
 4 added 200 linear feet of espalier vine up against
 5 the wall. We've added additional areca palms
 6 along the east side of the parking area in
 7 addition to screening the tennis court. We've
 8 added some nice, mature, screw pine trees, about
 9 16, 18 feet tall.

10 We filled in the gaps previously in one of
 11 our earlier presentations where there was
 12 pedestrian access from the bulbous there of the
 13 cul-de-sac. We filled that in with a hedge as
 14 well, so there is no more vista peeking through
 15 there.

16 The parking area, we're proposing a
 17 Chattahoochee set in epoxy driveway. It matches
 18 the driveways of the existing residence. That was
 19 one of the suggestions when we had walked -- early
 20 in the process, prior to our first submittal, one
 21 of ARCOM members, Ms. Vanneck, had suggested that,
 22 and we took that to heart.

23 Also, to -- just real quick to what Mr.
 24 Zukov said, a quick question to Mr. Randolph, this
 25 is not a tennis facility in any way. The

<p style="text-align: right;">Page 26</p> <p>1 Thorntons' son is a very talented tennis player up 2 and coming, and this is for their personal use, 3 and so this is not for any type of tennis facility 4 parking. In fact, the motor court parking area is 5 minimal when compared to if we had not done a 6 unity of title and a home had been built here and 7 a driveway for single-family residence had been 8 built, the driveway would be certainly larger than 9 the small motor court or parking area that we 10 reflect now.</p> <p>11 We did add -- or, excuse me -- we're 12 proposing to add a decorative gate. This is not a 13 unique inspiration. The Thorntons on South Ocean 14 have two other gates, and that was one of the 15 suggestions from our earlier walk-throughs with an 16 ARCOM member that we would make it have an estate 17 feel. So that's the inspiration for the proposed 18 gate.</p> <p>19 We are also proposing a shade structure for 20 the courts there. It's a powder-coated aluminum 21 and with a white canvas, Sunbrella fabric with a 22 loose gravel path to connect between the courts, 23 and that is consistent with the loose gavel paths 24 that we have under the parts of the property. 25 Moving on to the planting plan here, on the</p>	<p style="text-align: right;">Page 28</p> <p>1 additional buffer which we have enhanced 2 landscaping there as well. So we really have two 3 buffers here on our north property line.</p> <p>4 Continuing here on the sheet L-5, on our 5 east property line, we have areca palms. We have 6 screw pines, Clusia and Calophyllum. And then, on 7 our west property line, we have a site wall, a 8 concrete site wall, areca palms and Calophyllum 9 trees.</p> <p>10 We've also added some sections here for 11 this presentation. If you look at Section A there 12 at the top, this would be viewing to the south. 13 You'll notice, to the property owner adjacent as 14 to the east, there's a grade change difference 15 there, and so, from their grade change, they've 16 got about an 18-foot-high existing buffer, and you 17 add that into our buffer. And, if you look at the 18 scale figure, it's certainly -- certainly more 19 than well screened and very, very private 20 conditions separating the two properties. Also, 21 too, on Section B viewing east, you'll see our 22 buffer there in addition to the property owners to 23 the east. So we have our buffer and then another 24 18 to 20 feet of landscaping. That concludes our 25 landscape presentation.</p>
<p style="text-align: right;">Page 27</p> <p>1 north property line, which is on the north side of 2 Emerald Beach Way, there's an existing 12- to 3 14-foot-high hedge. On the south property line -- 4 and I call it south property line because it's 5 really not as south as even farther to the south, 6 but let's call it our intermediate little of 7 section here. We have a 24-foot-high areca palm 8 hedge massing. On the east and west property 9 lines, we have 10- to 12-foot high areca palms. A 10 few shade trees, we've introduced as well. As I 11 mentioned earlier, there's Clusia, Calophyllum, 12 arecas, screw pines, green island and some 13 Confederate jasmine as well.</p> <p>14 Moving on to our elevations, first of all, 15 the north property line elevation, this would be 16 on the north side where you see the number A in 17 the diagram, this here is our existing hedge, 18 which is 14-foot on average. It kind of meanders 19 a little bit, but the average of it is 14-foot 20 height. In some areas, it gets higher as well.</p> <p>21 In elevation B there, you see that's on the 22 south side of Emerald Beach Road, so this is a 23 secondary buffer. It's a double buffer. We have 24 a buffer on our property line, and then, on the 25 south side of the access agreement, we have an</p>	<p style="text-align: right;">Page 29</p> <p>1 CHAIRMAN VILA: Thank you very much.</p> <p>2 MR. HANLON: I think very briefly I'd like 3 to bring up Mrs. Thornton to address Mr. Zukov's 4 question or statement because I think it's a neat 5 story of why they're proposing this project. I 6 think it's important, and I think it would be good 7 for you to hear.</p> <p>8 MRS. THORNTON: Thank you. I'm Margaret 9 Thornton. We're a family of tennis players. My 10 husband and I both played. We're nationally 11 ranked players, and we have four children, three 12 of whom play tennis. We only have one who now 13 lives at home. The rest have grown up.</p> <p>14 We decided to build courts on our property 15 for a couple of reasons. One, our older boys all 16 played at the Phipps hard courts by the railroad 17 tracks or they played on the clay courts at the 18 Phipps public park. And there were a couple of 19 incidences on the hard court by the railroad track 20 where one of the boys my son was playing with or 21 next door to him had his tennis bag stolen, and it 22 was just not -- we decided it was probably not the 23 safest place for him to play, so we decided to 24 build a court.</p> <p>25 He primarily plays on clay or hard court.</p>

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1 And my husband and I, you know, hoped to play on a
 2 grass court, because, if you've played tennis your
 3 whole life, it's hard to play on a hard court now.
 4 I just want to address why you might think
 5 it was an academy, and that's quite frankly based
 6 on false statements made in the Jacobs' attorney's
 7 document, and she said the tennis courts -- the
 8 tennis courts are used daily for several hours.
 9 That's absolutely false. The only person who
 10 plays on the hard tennis court is our 15-year-old
 11 son. It's not used at all commercially, only our
 12 son. It's only for family use.
 13 He goes to school -- He's in high school --
 14 out of state. So he hasn't been there for much of
 15 the autumn. He hasn't been there for most of
 16 February, and he's only played maybe four or five
 17 times in March because he's on spring break. So
 18 he's going to be home for spring break for two to
 19 three weeks.
 20 MR. ZUKOV: Excuse me. If you're doing all
 21 this for me, don't. I'm nobody.
 22 MRS. THORNTON: Well, no, no, no, but I
 23 think it's a fair point because there's a lot of
 24 misstatements --
 25 MR. ZUKOV: You don't have to explain that

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1 to me.
 2 MRS. THORNTON: I want to because --
 3 CHAIRMAN VILA: We need the background.
 4 Please proceed.
 5 MRS. THORNTON: I just -- I have a hard
 6 time when false statements are made because it
 7 gives an impression that isn't correct, and I'm
 8 here to address the facts. So I appreciate that,
 9 but I want everyone to understand this.
 10 They say that there's tennis played daily.
 11 That's absolutely false. And I would like to see
 12 your proof of where it is played daily because, as
 13 I said in March, my son has been home and has
 14 played on that court maybe five times. When he is
 15 home for spring break, let's say it's for two or
 16 three weeks, he'll play maybe four days a week on
 17 the court, and he's off playing tournaments or he
 18 has a couple of days off.
 19 Furthermore, if he's practicing for a clay
 20 court tournament, he's playing at the public
 21 courts at Phipps down -- two miles down the road.
 22 So there'll be long stretches where he doesn't
 23 play on hard courts.
 24 So I just -- you know, and the bit about
 25 the noise, there was a moment in January where we

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1 had some blowers who were very quiet on the back
 2 of the court to get rid of the dew. They're not
 3 on the court. They're not used. I'd also like to
 4 say there are no tennis balls being hit over the
 5 fence. There's -- They're a six feet wall with
 6 12-foot ficus -- ficus hedge. And, you know,
 7 these statements about, you know, how they're
 8 being -- their life is being, you know, hurt by
 9 this is just not correct.
 10 CHAIRMAN VILA: Okay, thank you,
 11 Mrs. Thornton.
 12 MR. HANLON: Thank you. I also want to
 13 emphasize one other point that, due to the appeal,
 14 the Thorntons voluntarily and immediately stopped
 15 construction of the project once the appeals court
 16 ruling came down. So the pictures that were in
 17 Mrs. Hand's letter are misleading. It seems to
 18 indicate that the project was completed and not
 19 completed properly, and, therefore, views are
 20 compromised and other misstatements. Remember,
 21 additional landscaping still has to be added and
 22 the project completed if approved, which will
 23 certainly address all those issues as shown in the
 24 plans.
 25 So, before concluding, I wanted to attach

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1 -- or, address the criteria as briefly as
 2 possible, but consistent with what the appeals
 3 court asked for. The tennis courts and the
 4 parking area conform with good taste and designing
 5 generally contribute to the image of the town as a
 6 place of beauty, spaciousness, balance, fitness,
 7 charm and high quality. That's shown by the
 8 aerial of this property and the surrounding
 9 properties how these are large, R-AA properties
 10 with plenty of landscaping. That's 101LMK. And
 11 the garden plan, the planning plan and the
 12 elevations that Mr. Mizell showed you, those are
 13 also on Exhibits 101, A through G.
 14 These results also stem from the much less
 15 intense use of two tennis courts and the small
 16 parking area, instead of a large single-family
 17 home and accessory structures, which could legally
 18 and properly be built there and actually have been
 19 approved their in the past.
 20 CHAIRMAN VILA: If they subdivided.
 21 MR. HANLON: Correct, if it went back --
 22 It's a fully compliant lot on its own --
 23 CHAIRMAN VILA: Okay, thank you.
 24 MR. HANLON: -- if we terminated the unity
 25 of title; that's correct.

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1 CHAIRMAN VILA: Before we listen to Ms.
2 Hand, Ms. Grace, did you have a question of
3 Mr. Hanlon?
4 MS. GRACE: Yes, I had a couple questions.
5 Are we going to discuss it now?
6 CHAIRMAN VILA: Yeah, might as well ask
7 those questions of him now.
8 MS. GRACE: Okay. I just wanted to
9 clarify, so right now there's an existing hard
10 court on the east side of the site, right?
11 MR. HANLON: That's correct.
12 MS. GRACE: And that's already been
13 approved?
14 MR. HANLON: Well, remember, the entire
15 project was approved in June of 2017. The initial
16 appeal was denied by town council, upholding the
17 approval, but then the appeals court quashed the
18 denial of the appeal and sent us back here. So
19 we're back to you for the entire project to be
20 approved.
21 MS. GRACE: Okay, thank you.
22 CHAIRMAN VILA: And Mr. Corey.
23 MR. COREY: Yeah, I'm ready for the
24 architectural comment, so I'll wait until we hear,
25 or can I go now?

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1 CHAIRMAN VILA: No. We need to hear from
2 Ms. Hand.
3 MR. RANDOLPH: He hadn't finished. He's
4 going through the criteria.
5 CHAIRMAN VILA: Oh, he hasn't finished.
6 Thank you, Skip.
7 MR. HANLON: Right. As shown by the plans
8 and the aerial photographs, the landscaping is
9 designed to fit well into an already
10 well-landscaped home and produce a beautiful,
11 spacious, charming, tasteful, balanced and
12 high-quality result, fitting well with the
13 surrounding area.
14 I do want to show you one aerial that's
15 important. So this is the subject property. This
16 is the property immediately to the north owned by
17 Mr. Greene, 1200 South Ocean Boulevard. This is a
18 large property also, but it's also half -- almost
19 roughly half of the size of the subject property.
20 I think it's important to note that, again,
21 Mrs. Hand argues about they're a separate and
22 distinct parcel, that they're not tied together,
23 but, if you look at the location of the tennis
24 court on the Greene parcel, all the way at the
25 west end, it looks like a guest house or some

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1 structure here, the very opposite end of the main
2 structure. So on these large AA properties, it's
3 not unusual to have accessory structures, such as
4 parking area and tennis courts on separate sides
5 of the parcel, in fact, it's pretty normal. They
6 have the living areas, maybe a swimming pool, you
7 know, all within close proximity. But you'll see
8 a very similar well-landscaped large parcel
9 sprayed out utilizing the full acreage that's
10 available.
11 Second criteria is that the evidence
12 submitted to you today, including the plan and
13 design for the courts and the parking area,
14 including excellent -- include excellent screening
15 through a 10-foot-high fence and multiple layers
16 of high-quality landscaping. Mr. Mizell showed
17 you that in the elevations, the planting plan and
18 the garden plan all submitted under Exhibit 101, A
19 through G.
20 The sites and plan reflect on the tennis
21 courts and parking areas are reasonably protected
22 against external and internal noises, ranges in
23 other factors which tend to make the environmental
24 -- environment less desirable.
25 Third criteria is that the Thorntons have

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1 submitted substantial competent evidence through
2 pictures of neighboring tennis courts and other
3 accessory structures, elevation and landscape
4 plans that show a beautiful design for the courts
5 and high quality landscaping to establish that the
6 proposed project is not, in its exterior design
7 and appearance, of such quality as to cause the
8 nature of the local environment to materially
9 depreciate in appearance and value. I would argue
10 quite the opposite.
11 Here you have a 6.3-acre parcel roughly
12 where, if owned separately, you could have two
13 large homes. At one point, a 14,000-square-foot
14 home was approved by the Architectural Commission
15 and town council for that separate parcel before
16 they were unified. So I would argue that the
17 addition of two very well-landscaped and
18 high-quality tennis courts and a small service
19 parking area actually improve and increase the
20 value of the surrounding properties, and you see
21 that the letter from Mr. Mayoly (phonetic) and
22 Mr. McCourt agree with that proposition. I also
23 spoke with Mr. Greene, he did not have the time to
24 write a letter, but he indicated his support for
25 the project.

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1 Fourth criteria is that the Thorntons, the
 2 applicants, have submitted substantial competent
 3 evidence, including aerial photographs and land
 4 calculations, per neighboring properties
 5 containing tennis courts, to establish that the
 6 proposed project is in harmony with the existing
 7 and proposed developments on the land in the
 8 general area.

9 I'm not sure if you can see this, but, very
 10 important, the highlighted ones are the abutting
 11 neighbors. So the neighbor to the north, which is
 12 the Greene property, as I mentioned to you, has a
 13 land-to-court ratio of 3.6 acres to 1 court. The
 14 neighbor to the south has a land-to-court ratio of
 15 1.4 to 1. With the Thorntons, based on their 6.3,
 16 approximately, acres, it's 3.1 or 3.2 to 1, which
 17 is right in between those two numbers. So not
 18 only is it in harmony with the other surrounding
 19 properties, but it's not too similar and it's not
 20 too dissimilar. I think Mrs. Hand will argue that
 21 two tennis courts is outrageous, but, on a
 22 6.3-acre parcel all this open space, we believe
 23 it's a very fitting and very good solution as
 24 opposed to a 14,000-square-foot house with other
 25 accessory structures.

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1 Sixth -- Sixth criteria is dissimilar --
 2 dissimilarity to property within 200 feet. I just
 3 made the argument and showed you the calculations,
 4 I think which establish and prove with substantial
 5 competent evidence that the tennis courts are not
 6 too dissimilar at all. So I would reference those
 7 same exhibits in support of that position.

8 The landscape plan and elevations also
 9 establish that the courts and parking area will be
 10 screened from all appearances of mass from the
 11 paved easement, which is Emerald Beach Way, and
 12 the -- and the size and massing of the courts and
 13 parking area are very consistent with the
 14 surrounding areas in the neighborhood.

15 The applicants have further submitted
 16 substantial competent evidence via aerial
 17 photographs and the site plan, garden plan and
 18 planting plan that the two tennis courts and
 19 discreet, well-screened parking area are
 20 subservient to the massing of the main home. I
 21 think this is very clear going back to the
 22 original plan. I think that aerial will show you
 23 too that the parking area on that open green
 24 space --

25 MR. ZUKOV: Can I make a motion?

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1 CHAIRMAN VILA: I'm sorry --
 2 MR. HANLON: I'm almost done. I'm sorry.
 3 CHAIRMAN VILA: -- you can't.
 4 MR. HANLON: The home is approximately
 5 32,000 square feet, which clearly takes priority
 6 over the proposed project. As we said, a home
 7 containing approximately 14,000 thousand square
 8 feet was previously approved. And, also, the
 9 proposed parking spaces really --

10 CHAIRMAN VILA: What criteria are you on
 11 now?
 12 MR. HANLON: Finishing up 7.
 13 CHAIRMAN VILA: Subservient, I think we all
 14 understand that.

15 MR. HANLON: Okay. Moving to number 8, the
 16 applicants have submitted substantial competent
 17 evidence to the site plan and aerial photos to
 18 establish that the proposed tennis courts and
 19 discrete parking area are appropriate due to
 20 established character of the other structures in
 21 the immediate area.

22 I will show you some other aerials. You'll
 23 see, on the Greene parcel, there is parking areas
 24 here, parking areas here, parking areas all the
 25 way up through here, parking areas here. So the

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1 one additional parking area certainly is discreet
 2 and in the same character.

3 I think this is important too, showing the
 4 parking ratios and how we fit in both on a
 5 similarity and not too dissimilarity basis.

6 Excuse me while I turn it toward myself.
 7 My eyes aren't good enough to see those little
 8 numbers.

9 What this is is the parking area per acre
 10 for the subject property, the Thornton property,
 11 for the Jacobs' property to the east and the
 12 Mayoly property to the west. If you see the
 13 parking per acre on the Thornton property is 1152
 14 parking per acre; Jacobs, 2468; and Mayoly, 4750.
 15 So there's less parking per acre on the proposed
 16 project as opposed to both surrounding acres.

17 Very important also. I think Mrs. Hand tries to
 18 characterize parking as a massive parking area,
 19 but, on a 6.3-acre site, Mr. Castro did testify to
 20 this at town council, that it is not unusual in
 21 R-AA areas to have a separate parking area for
 22 staff away from the main residence. So that is
 23 part of the transcript.

24 Oh, before I forget, on the transcript, we
 25 did not have a chance to review that. So, Skip,

<p style="text-align: right;">Page 42</p> <p>1 I'd like to reserve the right to review that 2 before it's submitted. Almost done.</p> <p>3 So the project is appropriate to the 4 established character of the other structures in 5 the immediate area regarding the architectural 6 design as viewed from Emerald Beach Way even 7 though it's not a road and it's not viewable from 8 South Ocean Boulevard, so it does not apply.</p> <p>9 The evidence has shown that surrounding 10 properties are large and well landscaped just as 11 this is. Project is consistent and appropriate 12 with the surrounding properties.</p> <p>13 Number 9, Thorntons have submitted 14 substantial competent evidence in the form of 15 plans, elevations, of a home previously approved 16 for the same location and details of a proposed 17 landscaping and fencing materials to establish 18 that the location and appearance of the proposed 19 project are in conformity with the standards of 20 the code and applicable town ordinances. Again, 21 all the evidence we previously submitted apply to 22 this criteria.</p> <p>23 The applicants have further submitted -- 24 This is the last criteria -- further submitted 25 substantial competent evidence, through the site</p>	<p style="text-align: right;">Page 44</p> <p>1 questions. But thank you for your patience.</p> <p>2 CHAIRMAN VILA: Thank you very much. This 3 committee has been in meeting for almost three 4 hours, and I would like to declare a 10-minute 5 break.</p> <p>6 (A recess was taken from 10:51 a.m. to 7 11:04 a.m.)</p> <p>8 CHAIRMAN VILA: Okay, the meeting is back, 9 and Mr. Randolph is going to make some 10 clarifications.</p> <p>11 MR. RANDOLPH: If I might, first of all, I 12 wanted to make sure that the court's ruling on the 13 petition for writ of cert is part of the record, 14 as well as the mandamus, and I've -- the two cases 15 that I cited as well. But I want to clarify 16 something that I said that could have been 17 misinterpreted.</p> <p>18 When you look at criteria number 9, it says 19 that the proposed development is in conformity 20 with the standards of this code and other 21 applicable ordinances insofar as the location and 22 appearance of the buildings and structures are 23 involved.</p> <p>24 I advised you, when I first got up here to 25 lay out this case, that that was not for you to</p>
<p style="text-align: right;">Page 43</p> <p>1 plan and aerial photographs, that there are no 2 unique site characteristics such as those related 3 to scenic views, rock outcroppings, natural 4 vistas, waterways or similar features. This is 5 shown on the survey, which is Exhibit 108, site 6 plan 101A and B, and the aerial photographs.</p> <p>7 Nothing unique here that would force us to change 8 the project.</p> <p>9 Mrs. Hand made one further comment in the 10 letter, which is a new comment we hadn't heard 11 before, that there's a proposed refuse area and 12 catch basin that are in the Emerald Beach Way 13 right-of-way, which is not true. As I explained 14 to you from the very first point, the paved 15 easement is 100 percent owned by the Thorntons.</p> <p>16 These items are on the Thornton property 17 100 percent. They don't block any access. They 18 don't prevent the Jacobs from ingress or egress, 19 and they're actually off of the paved road.</p> <p>20 Last but not least, as confirmed by 21 Mr. Castro and Mr. Randolph, this application 22 fully complies with both the town building and 23 zoning code. And I'd like to reserve a bit of 24 time just to rebut anything Mrs. Hand states, and 25 will certainly remain available to answer any</p>	<p style="text-align: right;">Page 45</p> <p>1 decide; that was for the zoning director to 2 decide. It is a criteria that's set forth in this 3 code, so you're going to have to consider, when 4 you consider this -- when you finally consider it, 5 whether it meets those -- that particular 6 criteria, and so Mr. Castro will be here to 7 testify in regard to that.</p> <p>8 My statement to you, when I said that you 9 don't usually do that, it's because you don't 10 usually look at that. You rely upon what your 11 zoning director says in that regard, but, 12 nevertheless, that's a finding that you have to 13 make. So I want to clarify that because I think I 14 might be misunderstood, particularly in regard to 15 the court's decision when it said you did not 16 consider that criteria. So I want to make sure 17 that it's clear that you are considering all these 18 criteria today.</p> <p>19 MR. HANLON: Skip, the reference of "this 20 code," doesn't that reference the building code, 21 which is Section 18?</p> <p>22 MR. RANDOLPH: "...with the standards of 23 this code and other applicable ordinances insofar 24 as the location and appearance of the building and 25 structures are involved." So it's this code and</p>

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1 other applicable ordinances as far as the -- It's
 2 going to be in the zoning code as it relates to
 3 the -- I don't think there's any other ordinances
 4 other than this. I mean, Tim, I guess it could
 5 mean that it's in conformity with this particular
 6 Architectural Commission code.

7 MR. HANLON: Right, that's the way I read
 8 it.

9 MR. RANDOLPH: And that may be a correct
 10 reading, but it could be argued that it means that
 11 it has to be in conformity with the standards of
 12 this code because -- Well, you're right, this code
 13 is Chapter 18 --

14 MR. HANLON: 18, not 134.

15 MR. RANDOLPH: -- insofar as the location
 16 and other applicable ordinances insofar as the
 17 location and appearance. So the zoning ordinance
 18 may be part of that as well.

19 MR. HANLON: I guess it doesn't say to me
 20 "other codes." So it would be ordinances
 21 consistent with the building code.

22 MR. RANDOLPH: That's right.

23 MR. HANLON: Yeah, and not the zoning code.

24 MR. RANDOLPH: And that's what Mr. Castro
 25 will testify to.

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1 CHAIRMAN VILA: Good, anybody have any
 2 confusion at this point or any questions of
 3 Mr. Randolph? No? Okay.

4 Fine, if we could call up Ms. Hand.

5 MR. SMALL: Well, a moment. Has the
 6 applicant concluded their primary presentation?

7 MR. HANLON: Yes, we have.

8 MR. SMALL: I have one question.

9 MR. HANLON: Sure.

10 CHAIRMAN VILA: Mr. Small.

11 MR. SMALL: Yes, the applicant has
 12 requested a dedicated, recorded utility easement
 13 or enter into agreement ensuring said easement if
 14 necessary to facility utility underground in the
 15 area. Does the applicant agree to that?

16 MR. HANLON: Yes.

17 MR. SMALL: Thank you.

18 MR. HANLON: Mr. Randolph and I had a quick
 19 conversation, also there was discussion at the
 20 Town Council meeting as to the parking area, and
 21 there is one compromise that the Thorntons are
 22 willing to offer which could moot a potential
 23 appeals argument, and that was, if we reduce the
 24 number of total parking spaces on the site to meet
 25 the required number of parking spaces on the code,

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1 then clearly, under any interpretation of the
 2 definition of supplemental parking, we would not
 3 need it, and the Thorntons are billing to do that.

4 CHAIRMAN VILA: What are the numbers?

5 MR. HANLON: I believe, with the proposed
 6 parking area, which is six by code, we would be
 7 two over, and we would be willing to remove two
 8 from either that parking area or another of the
 9 property.

10 CHAIRMAN VILA: All right, good idea.

11 MR. HANLON: Okay, thank you.

12 CHAIRMAN VILA: Thank you.

13 Your name for the record, please.

14 MS. QUIRKE-HAND: Good morning, Amanda
 15 Hand, offices as 1111 Brickell, on behalf of the
 16 abutting neighbor, 100 Emerald Beach Way.

17 I did send a copy of letter with exhibits.
 18 I have hard copies if you want to follow along
 19 with the pictures that I have submitted for the
 20 record.

21 We are here correct -- Mr. Randolph is
 22 correct, the circuit court has sent this
 23 application back. However, Section 18-203 of your
 24 code says, "If a building permit is void or
 25 expires, you have to treat this review as a new

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1 project." And what does that mean? It means
 2 you're looking at this project according to the
 3 code that is in place today.

4 We assert that -- and agree with
 5 Mr. Randolph. He stated in his initial
 6 presentation that you would not be hearing whether
 7 this application requires a special exception or a
 8 variance. However, Section 18-205(a) (9)
 9 specifically requires that this board find that
 10 the application is conformity with the standards
 11 of this code and other applicable ordinances
 12 insofar as the location and appearance of the
 13 buildings and structures are involved.

14 It is our position that this board lacks
 15 jurisdiction to hear the application today because
 16 the tennis court requires a special exception, the
 17 supplemental parking lot requires a special
 18 exception, and the location of the tennis courts
 19 within the side setback of 30 feet requires a
 20 variance.

21 We had an appeal last week, March 19th,
 22 before the town council. Mr. Randolph is correct,
 23 there has been no finding by the town council or
 24 the circuit court on the merits of whether a
 25 special exception is required for the tennis court

<p style="text-align: right;">Page 50</p> <p>1 and the parking lot. In fact, there is -- there 2 are emails that I attached to my letter yesterday 3 that indicate that the zoning department, Mr. John 4 Lindgren, Mr. Logan Elliott, Mr. Paul Castro, 5 after consultation with Mr. Skip Randolph, all 6 determined that a special exception should be 7 required for this tennis court. That 8 determination was made in November of 2018, and it 9 was after the circuit court mandate in this case.</p> <p>10 In fact, there's an email in those exhibits 11 from Tim Hanlon where he says, "We did file the 12 application, the special exception application, in 13 an abundance, after Bob Critton discussed the 14 matter with Skip after the appeal ruling was 15 handed down, but I think that we need to look more 16 closely at the issue and determine the correct and 17 required course of action."</p> <p>18 It is our position that the initial 19 determination by the zoning department that a 20 special exception is required for the tennis court 21 was correct. Section 134-1759 says that a -- 22 requires a special exception for the tennis court. 23 In addition, a special exception should be 24 required for the supplemental parking lot. 25 Mr. Castro stated on the record, at the</p>	<p style="text-align: right;">Page 52</p> <p>1 go.</p> <p>2 MS. QUIRKE-HAND: This is a picture of what 3 the parking lot looks like today. We're in an 4 R-AA zoning district, and we've got a 10-car 5 parking lot that is visible from the street, 6 visible from 100 Emerald Beach Way. We would 7 submit that that is not in conformance with 8 18-205(a) for several reasons which I will go 9 through.</p> <p>10 In addition, to address Mr. Zukov's comment 11 that this is -- that this looks like a tennis 12 academy, this is a picture of the clay tennis 13 court that is constructed and was -- This picture 14 is taken from 100 Emerald Beach Way property. 15 Here's the lounge tennis canopy area. This is the 16 tennis court, and this illustrates the point of 17 why the application is inappropriate for the area.</p> <p>18 CHAIRMAN VILA: How was this photograph 19 taken?</p> <p>20 MS. QUIRKE-HAND: It was taken from 100 21 Emerald Beach Way.</p> <p>22 CHAIRMAN VILA: How? Was it up on a 23 20-foot ladder?</p> <p>24 MS. QUIRKE-HAND: Well, that is -- that is 25 one of the points we will address today. There is</p>
<p style="text-align: right;">Page 51</p> <p>1 March 19th town council meeting, that 100 Emerald 2 Beach Way has a good argument that a special 3 exception is required for the supplemental parking 4 lot. Section 134-2171 and the subsequent section 5 have very detailed requirements of offsite 6 parking. It states how many parking spaces are 7 required, the dimensions, how you're going to 8 stripe them, what the access is going to look 9 like.</p> <p>10 There is no competent substantial evidence 11 in any of these plans about how many spaces are in 12 that proposed parking lot, where the cars are 13 supposed to park or access. 134-2171 has those 14 very specific requirements, and that information 15 is not included in the competent substantial 16 evidence that's the subject of this application.</p> <p>17 134-790(7) unambiguously states a special 18 exception is required for all supplemental 19 parking. Section 134-2 states supplemental 20 parking is defined as parking in addition to the 21 required parking. Therefore, special exception is 22 also required for the supplemental parking lot.</p> <p>23 And, to give you some perspective -- Can I 24 have the microphone?</p> <p>25 MR. LINDGREN: I'll turn it on. Here you</p>	<p style="text-align: right;">Page 53</p> <p>1 a significant elevation difference between 100 2 Emerald Beach Way --</p> <p>3 CHAIRMAN VILA: Two feet, we believe.</p> <p>4 MS. QUIRKE-HAND: No. It's about eight 5 feet.</p> <p>6 CHAIRMAN VILA: Eight feet?</p> <p>7 MS. QUIRKE-HAND: Eight feet. So this 8 landscaping is at the -- is at the basically grade 9 elevation of 100 Emerald Beach Way. There is a 10 significant elevation difference, and that's why 11 the tennis courts are not screened with the 12 landscaping and the fence.</p> <p>13 MS. GRACE: I was just wondering, could you 14 explain how you took the photograph? Because, 15 when I was there, all I could see was, like, an 16 enormous hedge, so I couldn't see the neighbor's 17 house. How do you actually take the photograph?</p> <p>18 MS. QUIRKE-HAND: The property manager took 19 the photograph, and he can speak to that.</p> <p>20 CHAIRMAN VILA: Have you been sworn in?</p> <p>21 MR. ALEKUSIEJUK: Yes.</p> <p>22 CHAIRMAN VILA: Your name for the record.</p> <p>23 MR. ALEKUSIEJUK: My name is Lukas 24 Aleksiejuk.</p> <p>25 CHAIRMAN VILA: Speak into the mic.</p>

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1 MR. ALEKSIEJUK: Yes. My name's Lukas
2 Aleksiejuk.
3 THE COURT: And you are...?
4 MR. ALEKSIEJUK: I am property manager at
5 100 Emerald Beach Way.
6 MR. VILA: Okay, how was this photograph
7 taken?
8 MR. ALEKSIEJUK: It was taken by me by hand
9 with a phone where I'm standing.
10 CHAIRMAN VILA: Could you be a little more
11 candid? I know you're a tall man, but, if there's
12 -- if there's an existing hedge there, did you
13 climb on a ladder in order to take the photograph?
14 MR. ALEKSIEJUK: No, no, no. The hedge is
15 not --
16 CHAIRMAN VILA: Did you have a camera
17 through the hedge?
18 MR. ALEKSIEJUK: No. The hedge is not
19 constant through the property.
20 CHAIRMAN VILA: So you're standing at 100
21 --
22 MR. ALEKSIEJUK: Yes.
23 CHAIRMAN VILA: -- and this is your sight
24 line?
25 MR. ALEKSIEJUK: That's my view.

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1 CHAIRMAN VILA: That's your view.
2 MR. ALEKSIEJUK: Uh-huh.
3 MR. FLOERSHEIMER: Mr. Chairman. Mr.
4 Chairman, I've been to that property, and I had
5 that same view.
6 CHAIRMAN VILA: Okay.
7 MR. FLOERSHEIMER: Just standing to the
8 left of the of the front door, you have this
9 view --
10 CHAIRMAN VILA: Thank you.
11 MR. FLOERSHEIMER: -- without standing on
12 anything.
13 CHAIRMAN VILA: Okay, as long as we're
14 talking, Mr. Zukov, did you have another comment?
15 MR. ZUKOV: No.
16 CHAIRMAN VILA: Turn off your light,
17 please.
18 MR. ZUKOV: Not unless it's over.
19 CHAIRMAN VILA: Not till it's over, okay.
20 Now, please proceed, Ms. Hand.
21 MS. QUIRKE-HAND: I will let Mr. Lukas
22 speak for the record on behalf of 100 Emerald
23 Beach Way. He is the property manager and is
24 there on a daily basis.
25 MR. ALEKSIEJUK: Yes, so I'm the property

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1 manager at the property located at 100 Emerald
2 Beach Way in Palm Beach, Florida. That contains a
3 single-family residential home. 100 -- 100
4 Emerald Beach Way's neighbors is vacant parcel
5 owned by the Thorntons.
6 The Thorntons constructed a large tennis
7 complex on the entirety of the lot made up of one
8 fully constructed tennis court, including a
9 referee chair, a grass area intended for a second
10 tennis court, but now housing a temporary soccer
11 goal post, and the commercial parking lot for
12 commercial trucks and other vehicles.
13 The tennis complex and the commercial
14 parking lot is fully viewable from the home on 100
15 Emerald Beach Way, as well as from Emerald Beach
16 Way street through which we access the home. Like
17 we mentioned before, due to elevation difference,
18 the hedges around the tennis court reach only to
19 the bottom elevation of 100 Emerald Beach Way.
20 Therefore, it did not screen anything.
21 As a result of tennis complex, the noise is
22 loud at 100 Emerald Beach Way from players
23 grunting nonstop while playing tennis, the
24 constant cracking of tennis balls and the various
25 trucks and cars going in and out of the parking

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1 lot. Furthermore, I observe movable commercial
2 grade blowers at the tennis complex.
3 When matches are taking place at the tennis
4 court, they last hours, and the commercial parking
5 lot is used every day, every single day, so the
6 impacts are daily. Even yesterday, the matches
7 were taking place almost through the whole day,
8 once in the morning with a professional coach with
9 videotaping, and then second time afternoon.
10 Furthermore, the supplemental parking lot
11 is full of commercial trucks and other vehicles
12 who are servicing the main house located at 1236
13 South Ocean Boulevard and the grounds every day.
14 There are always at least eight to 10 trucks and
15 cars in the supplemental parking lot and many
16 vehicles coming and going through the day. None
17 of them are used for tennis.
18 One of the service trucks that this is in
19 supplemental parking lot every day is old and
20 noisy pickup truck which the Thorntons are using
21 to transport vegetation debris from the main house
22 located at 1236 South Ocean Boulevard to dump on
23 Emerald Beach Way, very often not on days
24 permitted by town, like Friday afternoon.
25 I am familiar with neighborhoods where the

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1 100 Emerald Beach property is because I drive
 2 around the neighborhood often in connection with
 3 my duties as a property manager. I have not seen
 4 any other lots that are used entirely for what is
 5 essentially commercial tennis complex. In
 6 addition, I have never seen a tennis complex this
 7 large that is viewable basically from the streets
 8 or right-of-ways.

9 CHAIRMAN VILA: Excuse me, is there one
 10 court?

11 MR. ALEKSIEJUK: One tennis court right
 12 now, and --

13 CHAIRMAN VILA: So I don't understand how
 14 you're calling this a tennis complex if it's one
 15 tennis court.

16 MS. QUIRKE-HAND: Its proposed application
 17 is for a clay court and a grass court.

18 CHAIRMAN VILA: That's for two courts.

19 MR. ALEKSIEJUK: There is nothing else,
 20 just tennis there.

21 CHAIRMAN VILA: Okay, I just take issue
 22 with you the term "complex." The Bath and Tennis
 23 Club has 12 courts, and that would qualify. But
 24 please continue.

25 MR. ALEKSIEJUK: Notably, instead of being

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1 enclosed within a residential estate, the tennis
 2 complex is accessible from separate entrance on
 3 separate street, which is Emerald Beach Way. This
 4 gives the tennis complex the appearance of
 5 enormous and independent --

6 CHAIRMAN VILA: Okay, thank you very much.
 7 We're not -- We're not a court here. We're the
 8 ARCOM and -- Sorry, but I take issue with the
 9 misrepresentation. I'm looking at one tennis
 10 court, and I don't call that a complex.

11 But, Ms. Hand, please continue.

12 MR. RANDOLPH: Is he -- Have you finished?

13 MS. QUIRKE-HAND: No.

14 MR. RANDOLPH: He needs to be able to
 15 finish.

16 CHAIRMAN VILA: Have you finished, sir?

17 MR. ALEKSIEJUK: Yes.

18 MR. GARRISON: What's his criteria?

19 CHAIRMAN VILA: I don't know what his
 20 criteria is.

21 MR. IVES: Sounds like we're in a code
 22 meeting.

23 MR. GARRISON: What is your expertise in --

24 CHAIRMAN VILA: The caretaker.

25 MR. GARRISON: I know you're the caretaker,

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1 but you're telling us your opinion of other
 2 properties, and I want to know what background you
 3 have that qualifies you to tell us all this other
 4 properties don't meet something.

5 MS. QUIRKE-HAND: He's saying what he has
 6 personally observed, and he's the property manager
 7 on the property.

8 MR. GARRISON: Only about this piece of
 9 property. I don't care what's going on on the
 10 rest.

11 And this picture that you have up there,
 12 that you put up there enlarged, is this the same
 13 picture that you gave us? Because that is a
 14 misrepresentation of what this picture shows.

15 MS. QUIRKE-HAND: What do you mean, sir?

16 MR. GARRISON: You handed me this picture.

17 MS. QUIRKE-HAND: Yes.

18 MR. GARRISON: That picture you had up
 19 there is not the same. You omitted most of this
 20 on the side that --

21 MS. QUIRKE-HAND: They're just taken from
 22 different angles.

23 MR. GARRISON: No, no, no, this is the
 24 view. This is part of the record.

25 MS. QUIRKE-HAND: That's right. There are

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1 multiple photos.

2 MR. GARRISON: Yes, but not the one that
 3 you put up there.

4 MS. QUIRKE-HAND: Okay, this is a -- this
 5 is one photo, and there's another photo in the
 6 record.

7 MR. GARRISON: Why didn't you give us both
 8 then?

9 MS. QUIRKE-HAND: Why didn't I give you...

10 MR. GARRISON: Yes, why didn't you give us
 11 that one? You gave us --

12 MS. QUIRKE-HAND: I'm sorry, I selected --
 13 I selected certain photos for exhibits.

14 MR. GARRISON: You want us to judge you on
 15 the facts, and it represents something different
 16 than you gave us.

17 MR. RANDOLPH: Because that's part of her
 18 presentation. She has the ability to do that.

19 And, in regard to this gentleman --

20 MR. GARRISON: Excuse me, she gave us
 21 something that then she tries to represent
 22 something else there. With all this stuff, why
 23 don't we get what's there also?

24 MR. RANDOLPH: You have it. You have it
 25 because --

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1 MR. GARRISON: Excuse me. We do not. We
2 do not have this picture; is that correct?
3 MS. QUIRKE-HAND: That picture is part of
4 the record, as is this picture. They're all --
5 MR. GARRISON: You just made my point.
6 MS. QUIRKE-HAND: All of the pictures are
7 part of the record.
8 MR. GARRISON: But you just made my point.
9 You did not give us that picture. You gave us a
10 different one; is that correct? Yes, or no? It's
11 a simple question.
12 MS. QUIRKE-HAND: I gave you all the
13 pictures. You have pictures in your packet, and
14 you have pictures that are part of the
15 presentation, all of which were taken from 100
16 Emerald Beach Way.
17 MR. GARRISON: They're two different
18 pictures, yes or no?
19 MS. QUIRKE-HAND: They are taken from
20 different vantage points.
21 MR. GARRISON: Thank you.
22 MR. RANDOLPH: And her presentation is part
23 of the record, just as pictures that she's handed
24 you before.
25 In regard to this gentleman's testimony, I

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1 understand he, from his -- from his own personal
2 knowledge, is here to testify relating to the
3 criteria that are set forth in your code. Just
4 the way Mr. Tim Hanlon was making presentation
5 relating to meeting the criteria, I believe this
6 gentleman's presentation relates to his feeling
7 that the criteria are not being met. He has the
8 right to do that, and you should give him the
9 ability to do -- to finish his presentation.
10 Whether you think it's relevant or not, is
11 something for you to consider --
12 CHAIRMAN VILA: I have to do that. I'm
13 just taking issue with the term "complex." The
14 Bath and Tennis Club is a complex. This is one
15 tennis court trying to be two.
16 Please continue.
17 MS. QUIRKE-HAND: Well, the application is
18 for two tennis courts.
19 MR. GARRISON: Keep going. We'll be here
20 all day.
21 MR. ALEKSIEJUK: I'm done.
22 MR. RANDOLPH: Are you finished?
23 MR. ALEKSIEJUK: I am.
24 CHAIRMAN VILA: You're finished. Thank you
25 very much.

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1 Ms. Hand, please proceed.
2 MS. QUIRKE-HAND: Okay. Regarding the
3 criteria in Section 18-205(a), "The plan for the
4 building -- the plan for the proposed building or
5 structure is conformity with good taste and design
6 and, in general, contributes to the image of the
7 town as a place of beauty, spaciousness, balance,
8 taste, fitness, charm and high quality."
9 We would submit to you that the proposed
10 parking lot in a R-AA building district, that
11 parking lot is access from a separate street. You
12 cannot drive from the parking lot to the main
13 house without going out onto Emerald Beach Way,
14 onto South Ocean Boulevard and back into the
15 house. It's a separate parking lot. We submit
16 that that would not be in conformity with good
17 taste and design, and it's not part of the
18 principal residence.
19 Number 2, "The plan for proposed building
20 or structure indicates the manner in which" --
21 CHAIRMAN VILA: I'm sorry. I'm sorry. I
22 didn't understand how it's not part of the
23 principal structure. It's one lot. We're looking
24 at this on a screen right now.
25 MS. QUIRKE-HAND: That's correct.

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1 CHAIRMAN VILA: And you're saying that
2 parking area -- What's the point you're trying to
3 make about the parking area?
4 MS. QUIRKE-HAND: The parking area is
5 separate and independent from the main principal
6 residence. You would have to drive out onto
7 Emerald Beach Way, onto South Ocean Boulevard and
8 then turn back into the main house in order to get
9 your car from the supplemental parking lot --
10 CHAIRMAN VILA: What does that have to do
11 with anything?
12 MS. QUIRKE-HAND: Because it is proposed as
13 an accessory structure, Section 134-1756 says, "An
14 accessory shall be clearly supplementary and
15 incidental, and shall not be separated from the
16 principal use of the lot."
17 CHAIRMAN VILA: Mr. Martin.
18 MR. MARTIN: Just a point of clarification.
19 I've never heard of a design review board serve as
20 a zoning board.
21 CHAIRMAN VILA: Yes.
22 MR. MARTIN: So I would like clarification.
23 If this application was approved and submitted to
24 our office and we deemed that it had standing to
25 come before this design review board, then, in

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1 fact, the zoning issues are resolved as a part of
 2 this application; is that correct?

3 MR. RANDOLPH: Yes, but that's separate and
 4 apart from what she's testifying now. Josh, she's
 5 testifying to the criteria as to -- I think she's
 6 in criteria 1, that this is not in conformity with
 7 the neighborhood. She has the right and ability
 8 to do that.

9 We're going to have -- Mr. Castro will
 10 testify in regard to criteria 9 relating to the
 11 zoning and other -- and other things, but don't
 12 stop her from testifying as to the criteria.

13 MR. MARTIN: Let me ask a question. She's
 14 on 134, and 134 is the zoning section of this
 15 ordinance, correct?

16 MR. RANDOLPH: No. She's in --

17 MR. MARTIN: She's in 134.

18 MS. QUIRKE-HAND: Yes, 134 --

19 MR. MARTIN: And earlier we were in 134,
 20 and so my question is, if you're addressing
 21 Section 18-205, that is, I think, the purview of
 22 this board. I do not think Chapter 134 is the
 23 purview of this board, and I think that, if you --
 24 in order to be here today, you would have already
 25 met your zoning to be in front of this board; is

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1 that --

2 MR. RANDOLPH: That's correct, but you have
 3 to look at criteria 9 relating to them having to
 4 make a finding that it meets the criteria -- that
 5 it meets the ordinances. So Mr. Castro is going
 6 to testify as to that.

7 You know, I don't know that you've got a
 8 lot to stay about 134.

9 MS. QUIRKE-HAND: I only -- only that 134
 10 relates to the criteria in 18-205.

11 MR. MARTIN: And it should not be before
 12 this board if --

13 CHAIRMAN VILA: It should not be before
 14 this board.

15 MR. GARRISON: Can we get this on, please?

16 CHAIRMAN VILA: Ms. Hand, please proceed.

17 MS. QUIRKE-HAND: Thank you.

18 Criteria 18-205(a)(2), "The plan for the
 19 proposed building or structure indicates the
 20 manner in which the structures are reasonably
 21 protected against external and internal noise,
 22 vibrations and other factors that may tend to make
 23 the environment less desirable."

24 As you -- As you have heard, there is noise
 25 from the tennis court that is heard at 100 Emerald

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1 Beach Way. The point has been made by Mr. Hanlon
 2 that you could have a principal residence here,
 3 and we know that, but that principal
 4 residence would respect the 30-foot side setback,
 5 and it would be a principal residence.

6 Right now we have a proposed two tennis
 7 courts, one clay, one grass, with a tennis canopy
 8 and a parking lot. We submit that that is
 9 consistent with Mr. Zukov's comment, which is this
 10 is a private tennis academy.

11 "The proposed building or structure" --
 12 This is criteria No. 3. "The proposed building or
 13 structure is not, in its exterior design and
 14 appearances, of inferior quality." Again, as to
 15 the parking lot, we would object to a parking lot
 16 being located in the R-AA zoning district. We
 17 recognize that it can be a principal residence,
 18 but it would not be a separate parking lot. That
 19 parking lot is not -- does not show the number of
 20 spaces, how the -- how the spaces are striped.
 21 And, again, it's not accessible from the main
 22 residence.

23 "The proposed" -- No. 4, "The proposed
 24 building or structure is in harmony with the
 25 proposed developments on land in the general

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1 area, with the comprehensive plan for the town,
 2 and with any precise plans adopted pursuant to the
 3 comprehensive plan." This property is platted and
 4 zoned for a single-family estate. There -- This
 5 is proposed for the two tennis courts, and, in the
 6 exhibit that was submitted by Mr. Hanlon, he shows
 7 there's no other principal residence in Palm Beach
 8 that has two tennis courts. You can see that
 9 those two tennis courts are sandwiched in between
 10 two single-family estates, one of which is 100
 11 Emerald Beach Way.

12 Okay. This is the -- This is the plan
 13 showing the site, and you can see, if you look at
 14 this plan, it really highlights the issue with the
 15 application. This site proposed by the two tennis
 16 courts almost looks like it's accessory to the 100
 17 Emerald Beach Way residence. It is screened. It
 18 is separated from this main residence at 1236
 19 South Ocean Boulevard. You can see the thick
 20 landscaping and, you know, no vehicular access.
 21 You can walk from a gravel path from 1236 South
 22 Ocean Boulevard to the tennis site, but, if you're
 23 looking at this site plan, it almost seems that
 24 proposed site would be accessory to 100 Emerald
 25 Beach Way.

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1 MR. GARRISON: But it's not.

2 MR. RANDOLPH: Wait a minute, just --

3 CHAIRMAN VILA: That's you're --

4 MR. RANDOLPH: If you have a question, ask

5 question. Just don't argue.

6 MS. QUIRKE-HAND: In fact, here's -- here's

7 an example, if you look at the property to the

8 north of 1236 South Ocean Boulevard, you can see

9 there's a tennis court right here. This is an

10 example of an accessory tennis court. That's a

11 tennis court that is landscaped and screened and

12 is included as part of the principal residence.

13 CHAIRMAN VILA: What is the grade -- the

14 great difference between 100 and the proposed

15 tennis courts?

16 MS. QUIRKE-HAND: Approximately eight feet.

17 MS. GRACE: Can you tell me, what is the

18 distance between the front door of the project

19 property, you know, and the tennis court?

20 MS. QUIRKE-HAND: I don't know that figure.

21 MS. GRACE: Because, when I was there, it

22 appeared to be a very short walk, maybe, you know,

23 two or three minutes. So I was just wondering do

24 you know the distance, because you're saying it's

25 really far away, which I was just wondering what

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1 is the distance between the front door of their

2 house and then when you get to their tennis court.

3 MS. QUIRKE-HAND: I don't know that.

4 CHAIRMAN VILA: And can the landscape

5 architect for the Thorntons confirm that there is

6 an eight-foot drop between -- between 100 and the

7 proposed tennis courts?

8 MR. MIZELL: It may be the ultimate

9 location, yes, but it's a slope. It starts on

10 Emerald Beach equal to our grade. It slopes up as

11 the driveway begins to turn up to a motor court,

12 so it varies.

13 CHAIRMAN VILA: It's not a precipice.

14 MR. MIZELL: No, no.

15 CHAIRMAN VILA: So it's not an eight-foot

16 drop from the property line at 100 to --

17 MR. MIZELL: No. There will be a location

18 where that eight foot does take place, but it's

19 not consistent. It ramps up from Emerald Beach up

20 to the motor court. It's a ramp-up. It

21 eventually does achieve an eight-foot -- seven- or

22 eight-foot --

23 MR. IVES: There's no downward right angle,

24 though?

25 MR. MIZELL: No.

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1 MR. FLOERSHEIMER: Ms. Hand, if I can

2 understand your point, it's that the tennis court

3 is sandwiched between the white house on South

4 County and the 100 Emerald Beach Way?

5 MS. QUIRKE-HAND: Exactly. So the impacts

6 are actually screened and separated from the 1236

7 South Ocean Boulevard, but the impacts are focused

8 on the 100 Emerald Beach Way property because of

9 the location, because it's -- because the tennis

10 courts are proposed within the required 30-foot

11 side setback and because it's separated from that

12 1236 South Ocean residence.

13 MS. GRACE: What is the difference in the

14 property size between your client's property and

15 then the property that we're talking about? Are

16 they roughly the same size?

17 MS. QUIRKE-HAND: I think Mr. Hanlon put it

18 in an exhibit. I don't recall the difference.

19 CHAIRMAN VILA: All you need to do is look

20 at the pictures up on the screen. The Thorntons'

21 property is six acres, and the property at 100 is

22 maybe two or two and a half, but --

23 MS. GRACE: So, actually, would it be

24 possible for you to -- you wouldn't be able to

25 have a tennis court on your property, right?

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1 CHAIRMAN VILA: No. They could be friendly

2 to the neighbors and maybe play with them.

3 But, anyway, please proceed with your

4 presentation.

5 MS. QUIRKE-HAND: Number -- Criteria number

6 6, The proposed building or structure is not

7 excessively dissimilar in relation to any other

8 structure existing or for which a permit has been

9 issued within a 200-foot radius. We would submit

10 that the tennis court is dissimilar to any

11 property within a 200-foot radius, and, in fact,

12 according to the exhibit submitted, there is no

13 other principal residence in Palm Beach that has

14 two tennis courts.

15 In addition, we are not aware of any

16 property in the immediate vicinity that does have

17 that supplemental parking lot that is separated

18 from the main principal residence. In other

19 words, you cannot drive from the front door of the

20 main principal residence to that supplemental

21 parking lot without going out onto South Ocean

22 Boulevard.

23 CHAIRMAN VILA: I'm looking at Mr. Greene's

24 property, and maybe we should put this back up on

25 the ELMO, but this is totally contrary to what

<p style="text-align: right;">Page 74</p> <p>1 you're just saying.</p> <p>2 Anyway, please proceed.</p> <p>3 MS. QUIRKE-HAND: Number -- Number 7 is the</p> <p>4 proposed addition or accessory structure is</p> <p>5 subservient and massing to the principal or main</p> <p>6 structure. This goes to the accessory use, and</p> <p>7 this is the code section that I was quoting.</p> <p>8 134-1756 tells you what an accessory use is. "A</p> <p>9 accessory use must be clearly supplementary and</p> <p>10 incidental and shall not be separated from the</p> <p>11 principal use at the site." We would submit that,</p> <p>12 having a separate entrance on Emerald Beach Way,</p> <p>13 that -- and the way that the tennis court is</p> <p>14 screened from 1236 South Ocean Boulevard, it does</p> <p>15 look like it is visibly separated from the main</p> <p>16 principal residence.</p> <p>17 Number 8, "The proposed building or</p> <p>18 structure is appropriate in relation to the</p> <p>19 established character of other structures..."</p> <p>20 You know, the arguments are similar that the fact</p> <p>21 that we have two tennis courts with the tennis</p> <p>22 lounge and the significant grade difference, it</p> <p>23 really is on top of Emerald Beach -- 100 Emerald</p> <p>24 Beach Way, and especially because it's located</p> <p>25 within that 30-foot setback, which brings me to</p>	<p style="text-align: right;">Page 76</p> <p>1 staff's example of when a special exception would</p> <p>2 be required for supplemental parking. In</p> <p>3 addition, Mr. Castro stated on the record that the</p> <p>4 argument that we have made regarding that</p> <p>5 supplemental parking lot is a good one in this</p> <p>6 case.</p> <p>7 A variance is required for this application</p> <p>8 for location of the tennis courts within the</p> <p>9 30-foot side setback. The -- Section 134 --</p> <p>10 134-1759(c) states, "Tennis courts shall include,</p> <p>11 as an integral part of the construction thereof,</p> <p>12 proper fence or wall enclosures contiguous to the</p> <p>13 court. Such fence or wall enclosures are to be at</p> <p>14 least 10 feet in height. Said fence or wall</p> <p>15 enclosure shall be out of the required principal</p> <p>16 structure setback if said enclosure exceeds the</p> <p>17 maximum height allowed in 134-1666 through to</p> <p>18 134-1670..."</p> <p>19 According to those code sections, you</p> <p>20 cannot have a wall or fence greater than seven</p> <p>21 feet within the side or rear yard. The required</p> <p>22 side yard is 30 feet in this case. We would</p> <p>23 submit that that -- that the location of the</p> <p>24 tennis court then is -- is not in conformity with</p> <p>25 Section 134-1759(c) and would otherwise require a</p>
<p style="text-align: right;">Page 75</p> <p>1 criteria number 9, "The proposed development is in</p> <p>2 conformity with the standards of this code and</p> <p>3 other applicable ordinances, insofar as the</p> <p>4 location and appearance of the buildings and</p> <p>5 structures involved."</p> <p>6 As I stated before, special exception is</p> <p>7 required for the tennis court. In fact, staff</p> <p>8 determined that a special exception should be</p> <p>9 required in November of 2018. That decision has</p> <p>10 -- They changed their mind and withdrew the</p> <p>11 special exception application, but we would submit</p> <p>12 that staff's initial unanimous determination,</p> <p>13 after consultation with the town attorney, was</p> <p>14 correct.</p> <p>15 Number 2, "Special exception is required</p> <p>16 for the supplemental parking." In the staff</p> <p>17 report that was submitted on March 19th, 2019,</p> <p>18 staff states that, "An example of a supplemental</p> <p>19 parking would be if a property owner bought a</p> <p>20 piece of property across the street from the main</p> <p>21 house and proceeded for approval to build only</p> <p>22 supplemental parking on that residential lot for</p> <p>23 the use of the main property."</p> <p>24 We would submit that this proposed</p> <p>25 supplemental parking lot is consistent with</p>	<p style="text-align: right;">Page 77</p> <p>1 variance.</p> <p>2 We have also made the argument that the</p> <p>3 refuse area and the landscaping on a portion of</p> <p>4 the driveway -- If you look at the survey that has</p> <p>5 been submitted with this application, the ingress</p> <p>6 and egress easement is greater than the paved</p> <p>7 width of the -- of the Emerald Beach Way.</p> <p>8 Therefore, if you look also at sheet L-2, it shows</p> <p>9 improvements all the way up to that paved path of</p> <p>10 Emerald Beach Way. Therefore, a portion of the</p> <p>11 landscaping and the refuse area that is designated</p> <p>12 as located within that platted ingress and egress</p> <p>13 easement, that -- that easement is part of the</p> <p>14 plat which I submitted as an exhibit to my</p> <p>15 letter --</p> <p>16 CHAIRMAN VILA: What rights do your clients</p> <p>17 have over that easement?</p> <p>18 MS. QUIRKE-HAND: Ingress and egress.</p> <p>19 CHAIRMAN VILA: Just going over it; that's</p> <p>20 it.</p> <p>21 MS. QUIRKE-HAND: That's correct. And it</p> <p>22 is -- it is platted as a street for ingress and</p> <p>23 egress that is shown on the plat that I have</p> <p>24 submitted into the record.</p> <p>25 We would also submit and request that this</p>

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1 board consider not approving a refuse area that is
2 outside the gate on Emerald Beach Way. I included
3 a picture in the packet. The landscaping debris
4 is deposited on that refuse area not in
5 conformance with Section 102-45 of the code, which
6 says you can put out your debris one day before
7 the trash pickup. It is being used to deposit the
8 landscape debris every day until it is picked up
9 later. So we would object to the designation of a
10 refuse area that is right there on Emerald Beach
11 Way and is also abutting the catch basin.
12 In sum, we would respectfully request that,
13 at a minimum, you request deferral of this
14 application to require the applicant to modify its
15 plans and conform with the code. The proposed
16 tennis courts -- The proposed tennis courts are
17 located within the required side setback. It
18 includes a referee chair, a lounge area, two
19 tennis courts. It looks like a private tennis
20 academy.
21 There is a 10-car parking lot that is not
22 -- that there are no dimensions or number of
23 spaces that are shown on the parking lot. There's
24 no parking calculations as to what's been required
25 and what's provided. So we would submit that

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1 there is no competent substantial evidence in the
2 record that that does not require a special
3 exception.
4 And, in sum, as I stated before, the -- the
5 proposed tennis court complex is -- the impacts
6 are focused on 100 Emerald Beach Way because it is
7 very effectively screened from 1236 South Ocean
8 Boulevard. Thank you.
9 CHAIRMAN VILA: Have there been any
10 objections from any of the other abutters? John?
11 I haven't seen any, right? Mr. -- Mr. Greene
12 hasn't?
13 MR. LINDGREN: We haven't received any.
14 CHAIRMAN VILA: Ms. Hand, would you remain
15 with us for a minute. There are several of my
16 colleagues that would like to ask a question.
17 Ms. Catlin.
18 MS. CATLIN: Yeah, I have several
19 questions, and they kind of go to both parties.
20 So, if I understand you correctly, in theory --
21 and I'm not suggesting this be done or not done --
22 but, in theory, if there were a driveway that was
23 added that came through the main gate to the
24 tennis courts, one of the objections would then,
25 in essence, disappear because then it would be

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1 connected? Am I hearing you right?
2 MS. QUIRKE-HAND: If the parking lot was
3 not located on Emerald Beach Way, then that
4 objection would be --
5 MS. CATLIN: No, no, no. In theory -- and,
6 like I said, I'm just trying to understand what
7 the objection is. In theory, if you accessed that
8 parking area from the main residence, then it
9 would no longer be what you describe as
10 disconnected?
11 MS. QUIRKE-HAND: I don't know if it would
12 be possible, but we would -- we would have to look
13 at the plans. I don't know if it would be
14 possible.
15 MS. CATLIN: But, if I'm hearing you
16 correctly, you keep saying that the fact that you
17 need to go out onto Emerald -- out onto South
18 Ocean and back into the property is causing it to
19 be disconnected. So, if that no longer had to
20 happen -- maybe it's an alternative; maybe it
21 doesn't exist at all -- but, once you don't have
22 to do that, you're no longer disconnected,
23 correct?
24 MS. QUIRKE-HAND: You would still need a
25 special exception.

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1 MS. CATLIN: I'm not --
2 CHAIRMAN VILA: These are zoning questions.
3 These are not ARCOM questions. We are not zoning.
4 MS. CATLIN: All right, but some of the
5 other issues that you bring up are also, with
6 regards to, you know, your interpretation and
7 bringing it back on to us, you're asking us to
8 talk about things that are clearly code
9 enforcement and not a matter of design.
10 I mean, if that refuse is out longer than
11 it should be, that's not us. That's code
12 enforcement.
13 MS. QUIRKE-HAND: But designation of the
14 refuse area on the plans is a matter for this
15 board.
16 MR. IVES: Not the use.
17 CHAIRMAN VILA: I'm sorry, no, that is not
18 correct. And this is one property. We keep
19 forgetting. This is 1236 South Ocean Boulevard,
20 which happens to have, on the northern property
21 line, a driveway that this property at 100 has an
22 easement on, just the right to drive over it, not
23 the right to say how I use it --
24 MS. CATLIN: Correct.
25 CHAIRMAN VILA: -- or how the owners use

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1 it.

2 MS. CATLIN: Yes. And I take -- I take

3 exception to this being referred to as a private

4 tennis academy because a private academy, even if

5 it's private, would have applications out there

6 for other students to be able to use it, and

7 probably employ a full-time employee, and this

8 clearly is not that. And I really think that that

9 is a gross misrepresentation of what we're talking

10 about.

11 I also have a question for the landscape

12 architect, the photo versus the rendering. The

13 photo here, when I'm looking at Elevation A and B

14 on page L-4, it shows a figure standing near a

15 hedge that, you know, I would have to -- I

16 literally would have to climb a ladder to look

17 over the hedge to see. So my question is, is all

18 the landscaping in place, or are we taking

19 pictures without all the landscaping in place?

20 MR. MIZELL: Right, and I appreciate that.

21 I was very surprised by that, by seeing that

22 photograph, and my first response was almost

23 similar to Mr. Vila's, you know, was that taken

24 with zoom lens or taken with a 20-foot ladder,

25 because I had been on the Jacobs' property about

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1 six months ago, and I did not see that view. And,

2 if anybody's been on the Thorntons' property -- I

3 don't know if you've seen the view. I know

4 Ms. Grace was there. I don't know if you saw the

5 view that way. So I don't know if that was taken

6 -- If you go through -- and it can be answered too

7 possibly, but, if you go back to this plan, I just

8 want to come in here real quick -- I'm sorry --

9 see where this 40-foot dimension is? The main

10 door of the Jacobs is back here. This 40-foot

11 dimension is a garage area, so this is all

12 service. So that photograph might have been taken

13 somewhere in the service area, but I've never

14 observed that. I've never seen that. But I don't

15 want to speak too much for Ms. Thornton, but I

16 would say, if that is visible, I don't think we

17 would have any problem on our side enhancing that,

18 because, especially now that we have people taking

19 photos and videos of us, our privacy is of utmost

20 importance.

21 So, I mean, that's a small area somewhere.

22 I mean, I haven't seen that. I mean, we would

23 hide that tomorrow. So, I mean, don't let that be

24 an issue, please. And the project's not complete.

25 I mean, our permits have been put on hold. We

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1 haven't finished landscaping.

2 MS. CATLIN: That is part and parcel to my

3 question. Is that in fact complete, or --

4 MR. MIZELL: It's not complete, and now

5 that I've seen that, I mean, I don't even know

6 where that was taken from. I'll certainly go back

7 and look at that. We will fix that immediately,

8 especially, you know, since we know our privacy is

9 compromised.

10 CHAIRMAN VILA: Thank you.

11 Were you finished?

12 MS. CATLIN: I'm done.

13 CHAIRMAN VILA: Thank you, Ms. Catlin.

14 Mr. Ives.

15 MR. IVES: Thank you. I appreciate the

16 arguments of both counsels for the applicants and

17 for the abutter, but, you know, I'll give you --

18 Here's the thing today: This morning a bunch of

19 us were sworn in for reappointments. I was sworn

20 in for mine. I think now at this point,

21 consecutive years, I'm the longest person on this

22 board right now since 2011. I know others have

23 come on and off, yourself, Mr. Vila, and others.

24 But, during that time, I mean, the arguments I'm

25 hearing here, just to quickly knock most of them

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1 out of the way, we don't approve variances. We

2 don't approve special exceptions, and we do not

3 rewrite the zoning code, and code issues of sounds

4 and noise and smell and all this other stuff are

5 just totally out of our purview here, thank God,

6 because we'd be here for four days if that was the

7 case.

8 And so, you know, to this application and

9 just, the -- the references to our ARCOM

10 ordinance, I think, were dealt with very well by

11 the applicants' attorney going through all of

12 them, but I will say to the one end specifically

13 of the dissimilar, not only is there a tennis

14 court clearly right across from this, this site

15 here, but I'd add that, as for similar and

16 dissimilar, I don't take that to mean just a

17 tennis court.

18 I mean, you have open recreation spaces of

19 pools all over the place. You also have plenty of

20 other people in town who have taken an open area

21 next to them, built a -- a new structure there

22 that is basically a dining hall and kitchen for

23 them to entertain people in, and I don't think

24 anyone makes a claim that that is some sort of

25 private restaurant that has been opened in town.

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1 So I just find an enormous amount of the
 2 argument we've been under today -- and that is my
 3 take as a member of the ARCOM commission -- to
 4 have nothing to do with what our ordinance is, and
 5 then, as for the ones that do deal with our
 6 ordinance, I think everything is perfectly fitting
 7 and fine with this application.

8 MR. RANDOLPH: Mr. Chairman, before you
 9 deliberate --

10 CHAIRMAN VILA: Yes, Mr. Randolph.

11 MR. RANDOLPH: I think it's a littler early
 12 to deliberate. First of all, Mr. Hanlon has the
 13 opportunity for rebuttal, and I also indicated
 14 that you should hear from Mr. Castro in regard to
 15 criteria 9, which says the proposed development is
 16 in conformity with the standards of this code and
 17 other applicable ordinances insofar as the
 18 location and appearance of the buildings and
 19 structures are involved.

20 Although you've heard testimony that this
 21 would not have come before you if the ordinances
 22 -- if he hadn't reviewed it as far as the
 23 ordinances are concerned, I think it's important
 24 that you hear from him his opinion as to whether
 25 or not criteria number 9 has been met.

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1 And, by the way, Mr. Ives, there is a
 2 criteria which relates to external and internal
 3 noise, vibrations and other factors that may make
 4 the environment less desirable. So it is
 5 something you consider on --

6 MR. IVES: Tennis balls?

7 MR. RANDOLPH: I'm just telling you that's
 8 what the criteria states.

9 CHAIRMAN VILA: Can we hear from
 10 Mr. Castro?

11 MR. CASTRO: Good morning, Paul Castro,
 12 Zoning Administrator. It's my pleasure to be here
 13 today.

14 We reviewed these plans in 2017, and we
 15 reviewed these plans again in 2018 as it relates
 16 to the town's lot, yard and bulk requirements and
 17 the zoning code Chapter 134.

18 Our decision in 2017 was that the tennis
 19 court and the supplemental parking, or the parking
 20 that's been provided, as well as the fence met
 21 Chapter 134 zoning as to location and placement,
 22 as well as screening of the tennis court and, in
 23 2018, ultimately determined that it met the zoning
 24 code as well, that no special exceptions were
 25 required. And, in fact, the neighbor's attorney

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1 appealed that administrative decision to the town
 2 council just this month and upheld staff's
 3 determination as it relates to that issue -- those
 4 three issues, two of them being untimely appeals,
 5 which were the supplemental parking and the tennis
 6 court itself, and the third determination was that
 7 the setback requirement would be based on the 2017
 8 zoning code because the code had changed between
 9 2017 and 2018 as it relates to the placement of
 10 the court and the side setback.

11 Now, as it relates to the tennis court
 12 fencing and the screening from the neighbors, it
 13 will be required to be completely screened from
 14 the neighbors as required by code with a
 15 10-foot-high hedge. It has not been completed to
 16 that effect, if it is permitted or approved, the
 17 inspection will result in additional landscaping
 18 being required if it does not screen it from the
 19 neighbors. And I'd be glad to answer any other
 20 questions.

21 CHAIRMAN VILA: Mr. Garrison.

22 MR. COREY: Yeah, Mr. Chairman, I'm
 23 prepared to make a motion.

24 MR. RANDOLPH: Well, wait a minute, please.

25 MR. GARRISON: Why can't I make a motion?

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1 We've heard two hours' worth --

2 MR. RANDOLPH: No, you haven't. You've not
 3 heard any rebuttal from Mr. Hanlon.

4 CHAIRMAN VILA: We've turned into a legal
 5 court here.

6 MR. GARRISON: Well, will you please tell
 7 me when I can make motion?

8 CHAIRMAN VILA: Let's hear Mr. Conlin's
 9 (sic) rebuttal.

10 MR. RANDOLPH: I hadn't finished.
 11 Mr. Castro --

12 CHAIRMAN VILA: Who has a question of
 13 Mr. Castro?

14 MR. SMALL: Mr. Randolph.

15 CHAIRMAN VILA: Please, Mr. Randolph.

16 MR. RANDOLPH: If I understood you
 17 properly, Mr. Castro, you were saying that there
 18 was no variance required for this tennis court?

19 MR. CASTRO: That's correct.

20 MR. RANDOLPH: And the reason being?

21 MR. CASTRO: At the time it was submitted,
 22 it was a determination made by staff they would
 23 come under the code as previously submitted. That
 24 was appealed to the town council, and the town
 25 council upheld staff's decision that it would be

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1 -- the setback requirement would be based upon
2 when it was originally submitted in 2017.
3 MR. RANDOLPH: So is it your testimony that
4 the criteria set forth in Section 9 of -- of
5 Section 18-205 have been met?
6 MR. CASTRO: That is correct.
7 MR. RANDOLPH: And have you heard the
8 presentation by Ms. Hand arguing that it has not
9 been met?
10 MR. CASTRO: Yeah, and I'm confused by that
11 because --
12 MR. RANDOLPH: Do you agree with her
13 presentation?
14 MR. CASTRO: No.
15 MR. RANDOLPH: Okay. Thank you.
16 CHAIRMAN VILA: Mr. Conlin.
17 MR. HANLON: Thank you. Very briefly,
18 you've already rebutted several of the arguments
19 that I'd make, so I won't waste my time repeating
20 them.
21 CHAIRMAN VILA: All right. Our time.
22 MR. HANLON: Exactly, your time.
23 Mrs. Thornton is prepared to testify to
24 rebut the property manager's testimony today that
25 there are people using it for hours, or the noise.

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1 I don't believe those are issues. There were no
2 complaints filed with code enforcement, which is
3 the prior venue. If you want to hear from her,
4 she is prepared to testify. Otherwise, we have
5 prepared and submitted to Mr. Randolph a proposed
6 findings of fact and approval, if you are so
7 inclined, trying to address the appeals court
8 decision and incorporating the substantial
9 competent evidence addressing each criteria. If
10 you're so inclined, I think he can address that
11 issue. I'm prepared to hand it out if you want to
12 take a look at that.
13 CHAIRMAN VILA: We have some questions.
14 Ms. Grace.
15 MS. GRACE: I wanted to ask a question of
16 the neighbors' attorney. I just -- I was
17 confused. I wanted to make sure -- I didn't know
18 if I remembered what you said right. I think that
19 you said something about the parking lot not being
20 striped?
21 MS. QUIRKE-HAND: That's correct. There
22 are no parking calculations, and there's no
23 dimensions or stripes or anything. It's just
24 Chattahoochee slab basically.
25 MS. GRACE: I just wanted to clarify that

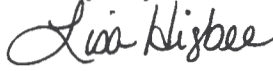
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1 because --
2 CHAIRMAN VILA: And it is private property.
3 MS. GRACE: Yeah, I mean, I think it's --
4 CHAIRMAN VILA: I don't think there are any
5 requirements to stripe my driveway or my parking
6 area in my private residence.
7 MS. GRACE: Can I finish? I was just
8 saying -- because, I mean, personally, when I
9 visited the site, I don't think striping would be
10 attractive to add, and so I was just wondering if
11 there was some requirement with respect to that.
12 MS. QUIRKE-HAND: Well, 134-2171 has
13 detailed requirements for off-street parking, and
14 we would submit that the application does not
15 comply with those requirements.
16 MS. GRACE: Okay, so that's off-street
17 parking. So is Emerald Beach Way, is that a
18 public street?
19 MS. QUIRKE-HAND: It is not. It is a
20 private street for ingress and egress.
21 MS. GRACE: So do you -- do all the
22 residents own that?
23 MR. RANDOLPH: No.
24 MS. QUIRKE-HAND: No. The dirt, the real
25 estate portion is owned by 1236 -- well, 200

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1 Emerald Beach Way. Our clients have the ingress
2 and egress easement.
3 MS. GRACE: So how would these current
4 owners, the tennis court owners, how would they
5 use this -- if you're saying it's a subsidiary
6 thing, why would they have an ownership interest
7 in it?
8 CHAIRMAN VILA: They own the entire
9 property. This is -- This is very confusing.
10 MS. QUIRKE-HAND: When the property was
11 originally platted, that street was included on
12 the square that is 200 Emerald Beach Way.
13 MS. GRACE: So they would have to go around
14 the street is that -- I mean, it wouldn't serve
15 any purpose. I'm just trying to understand how --
16 how it works.
17 And then the other thing is, I went by the
18 property yesterday and, also, another day, and I
19 noted the refuse area, and I thought that I saw,
20 you know, some palm fronds and stuff like that.
21 It looked like a refuse area outside your client's
22 house. So I was wondering do they also have a
23 designated refuse area outside that house?
24 MS. QUIRKE-HAND: No.
25 MS. GRACE: So those are just put there

<p style="text-align: right;">Page 94</p> <p>1 randomly?</p> <p>2 MS. QUIRKE-HAND: I guess.</p> <p>3 MS. GRACE: Okay, thank you.</p> <p>4 CHAIRMAN VILA: Mr. Floersheimer, did you</p> <p>5 have --</p> <p>6 MR. HANLON: Those are actually on the</p> <p>7 Thornton property, too, those palm fronds from the</p> <p>8 Jacobs.</p> <p>9 MR. FLOERSHEIMER: I do. I want to refer</p> <p>10 back to Mr. Ives' comments about what our purview</p> <p>11 is here, and it harkens back to making Palm Beach</p> <p>12 beautiful and attractive and preserving it for all</p> <p>13 residents, and I think the issue really comes down</p> <p>14 to that the residents of 100 Beach -- 100 Emerald</p> <p>15 Beach Way, in using their right-of-way, have to go</p> <p>16 by a pile of debris that is --</p> <p>17 CHAIRMAN VILA: That's irrelevant. This is</p> <p>18 code enforcement. This is not our purview. A</p> <p>19 pile of debris is a code enforcement issue, and</p> <p>20 it's on their property. We have already --</p> <p>21 MR. GARRISON: Mr. Chairman --</p> <p>22 MR. RANDOLPH: Unless it's set forth on</p> <p>23 their plans as a debris area, and, if it is and</p> <p>24 it's not legal, then they shouldn't have --</p> <p>25 CHAIRMAN VILA: It's neither here nor</p>	<p style="text-align: right;">Page 96</p> <p>1 CHAIRMAN VILA: And did you note that it's</p> <p>2 private property that you were driving on?</p> <p>3 MR. FLOERSHEIMER: Yes, I noticed that.</p> <p>4 CHAIRMAN VILA: It's private property.</p> <p>5 Thank you.</p> <p>6 Mr. Corey, did have you a question?</p> <p>7 MR. COREY: Yes, I do. Thank you very</p> <p>8 much.</p> <p>9 I appreciate, Dustin, your presentation.</p> <p>10 Thank you, sir. I have a few questions on it if</p> <p>11 you don't mind.</p> <p>12 MR. MIZELL: Yes.</p> <p>13 MR. COREY: Your choice of hedging, I</p> <p>14 thought, was appropriate, the Clusia and the --</p> <p>15 CHAIRMAN VILA: John, has it changed --</p> <p>16 MR. COREY: I'd like to make a comment on</p> <p>17 it.</p> <p>18 CHAIRMAN VILA: Has it changed from 2017?</p> <p>19 MR. COREY: I think it's our prerogative to</p> <p>20 make sure that the plans meet the aspect of our</p> <p>21 ordinance, and I do have some questions as well.</p> <p>22 So I do like the screw pines and the native</p> <p>23 -- Question for you: You have a fence labeled on</p> <p>24 the plan, but I don't see a detail of that. Do</p> <p>25 you have the detail of the fence?</p>
<p style="text-align: right;">Page 95</p> <p>1 there.</p> <p>2 MR. MIZELL: Excuse me, it's actually part</p> <p>3 of the application. It is on our plans. It's</p> <p>4 called out.</p> <p>5 CHAIRMAN VILA: Okay, I'm sorry.</p> <p>6 MR. FLOERSHEIMER: If I could just continue</p> <p>7 with a couple of points.</p> <p>8 CHAIRMAN VILA: Yes.</p> <p>9 MR. FLOERSHEIMER: The gate that is our</p> <p>10 purview is a very fine gate. It matches the front</p> <p>11 gate of the Thornton property, but, for people who</p> <p>12 are going through Emerald Beach Way, it does not</p> <p>13 sufficiently, in my opinion, hide the vehicles</p> <p>14 that are in the parking area. Whether the parking</p> <p>15 area is legal or not is probably not our purview,</p> <p>16 but our purview is the aesthetics of the gate, and</p> <p>17 the gate doesn't block the -- you're seeing 10</p> <p>18 cars parked in that area.</p> <p>19 CHAIRMAN VILA: Okay, trying to move this</p> <p>20 along here.</p> <p>21 MR. FLOERSHEIMER: One more thing, when I</p> <p>22 drove onto Emerald Beach Way yesterday, I noticed</p> <p>23 20 signs that say no parking. And that, I think,</p> <p>24 also is excessive and doesn't add to the beauty of</p> <p>25 Palm Beach.</p>	<p style="text-align: right;">Page 97</p> <p>1 MR. MIZELL: You know, the fence was</p> <p>2 existing chain-link. It's a black chain-link.</p> <p>3 It's buried in the hedge, and it's always been</p> <p>4 existing.</p> <p>5 MR. COREY: Do you have any plans to change</p> <p>6 the fence?</p> <p>7 MR. MIZELL: No.</p> <p>8 CHAIRMAN VILA: It's existing.</p> <p>9 MR. MIZELL: I mean, it's not visible.</p> <p>10 It's buried in the hedge as well.</p> <p>11 MR. COREY: Okay. I mean, I would argue</p> <p>12 that changing the fence would be appropriate here.</p> <p>13 The tennis structure, is that a temporary</p> <p>14 structure, or how does that work?</p> <p>15 MR. MIZELL: No. That's permanent.</p> <p>16 MR. COREY: Permanent. And it's just a</p> <p>17 canvas top?</p> <p>18 MR. MIZELL: Yes. It's powder-coated</p> <p>19 aluminum, white paint with a Sunbrella white</p> <p>20 fabric canvas.</p> <p>21 MR. COREY: Okay, in my -- in our charge of</p> <p>22 keeping of a place of beauty, it could be</p> <p>23 enhanced, the tennis structure, but, generally, I</p> <p>24 think the property is screened well. I think it</p> <p>25 ties in, but I do think that the tennis structure</p>

<p style="text-align: right;">Page 98</p> <p>1 could be upgraded and certainly the chain-link 2 fence.</p> <p>3 CHAIRMAN VILA: Mr. Small.</p> <p>4 MR. SMALL: Yes. Has all the evidence been 5 concluded? Everything that you want us to 6 consider, that's already been offered?</p> <p>7 CHAIRMAN VILA: Yes.</p> <p>8 MR. SMALL: I'm prepared to try a motion, 9 and, if you want to, we can go from there.</p> <p>10 CHAIRMAN VILA: Sure.</p> <p>11 MR. SMALL: Motion to approve the project 12 as proposed. Having considered and determined 13 that the project as proposed complies with the 14 criteria in Section 18-205(a)(b) and (c), Town of 15 Palm Beach Ordinances, and subject to applicants' 16 willingness and agreement to dedicate and record 17 the requested utility easement.</p> <p>18 MR. IVES: Second.</p> <p>19 CHAIRMAN VILA: We have a motion, and it's 20 been seconded. All in favor?</p> <p>21 MR. SMALL: Aye.</p> <p>22 MR. GARRISON: Aye.</p> <p>23 MR. IVES: Aye.</p> <p>24 MR. ZUKOV: Aye.</p> <p>25 MR. VILA: Aye.</p>	<p style="text-align: right;">Page 100</p> <p style="text-align: center;">CERTIFICATE</p> <p>1</p> <p>2</p> <p>3 STATE OF FLORIDA</p> <p>4 COUNTY OF PALM BEACH</p> <p>5</p> <p>6</p> <p>7 I, Lisa Higbee, Court Reporter, certify</p> <p>8 that I was authorized to and did stenographically</p> <p>9 report the foregoing proceedings and that the</p> <p>10 transcript is a true and complete record of my</p> <p>11 stenographic notes.</p> <p>12</p> <p>13 Dated this 5th day of April, 2019.</p> <p>14 </p> <p>15</p> <p>16</p> <p>17 Lisa Higbee, RPR, RMR</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 99</p> <p>1 MS. GRACE: Aye.</p> <p>2 MS. SHIVERICK: Aye.</p> <p>3 CHAIRMAN VILA: Opposed?</p> <p>4 MR. COREY: Opposed.</p> <p>5 CHAIRMAN VILA: Corey opposed.</p> <p>6 MR. COREY: I'm opposed. I'll tell you my 7 reasons --</p> <p>8 CHAIRMAN VILA: That's okay.</p> <p>9 MR. COREY: No, excuse me, I'd like to say 10 for the record, I oppose for the chain-link fence, 11 and I think that the --</p> <p>12 CHAIRMAN VILA: It's an existing --</p> <p>13 MR. COREY: -- the tennis structure should 14 be better suited to the architecture of the 15 house --</p> <p>16 CHAIRMAN VILA: Thank you. For record, the 17 motion has passed. The project is approved.</p> <p>18 MR. HANLON: Thank you.</p> <p>19 (The proceedings adjourned at 11:59 a.m.)</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	

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TOWN OF PALM BEACH
PLANNING, ZONING & BUILDING DEPARTMENT
TOWN COUNCIL MEETING DEVELOPMENT REVIEW

Town Hall
Council Chambers-Second Floor
360 South County Road
Palm Beach, Florida 33480

March 19, 2019

7:01 p.m. - 9:06 p.m.

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Stenographically reported by:
Lisa Higbee, RPR, RMR

<p style="text-align: right;">Page 2</p> <p>1 - - - - -</p> <p>2 PRESIDENT MOORE: Next on the agenda is the</p> <p>3 administrative appeal regarding the tennis courts.</p> <p>4 I'm going to ask staff to begin. Is that what you</p> <p>5 want, Paul?</p> <p>6 MR. CASTRO: Actually, the appellant should</p> <p>7 go first, and we'll follow.</p> <p>8 PRESIDENT MOORE: Okay. And then I think</p> <p>9 -- I think there are -- there are three sides to</p> <p>10 the story. I think 15 minutes per side would be</p> <p>11 -- considering the hour, would be appropriate.</p> <p>12 There is some flexibility in that.</p> <p>13 So please proceed. Thank you.</p> <p>14 MR. CASTRO: It's the globe down at the</p> <p>15 bottom tool bar to the right. Gray. Right there.</p> <p>16 MS. QUIRKE-HAND: Good evening.</p> <p>17 PRESIDENT MOORE: Could you push the</p> <p>18 button, please.</p> <p>19 MS. QUIRKE-HAND: Good evening. Amanda</p> <p>20 Hand, offices at 1111 Brickell Avenue, on behalf</p> <p>21 of the appellant in this case, 100 Emerald Beach</p> <p>22 Way. For your review, we have an aerial of the</p> <p>23 proposed site so that you can reference what we're</p> <p>24 talking about here.</p> <p>25 With me here today is Lukas Aleksiejuk, who</p>	<p style="text-align: right;">Page 4</p> <p>1 denied that appeal on August 9th of 2017. 100</p> <p>2 Emerald Beach Way then filed a petition for writ</p> <p>3 of certiorari to the circuit court on</p> <p>4 September 15th, 2017. In spite of the fact that</p> <p>5 there was a pending appeal in the circuit court,</p> <p>6 the applicant went forward and obtained a building</p> <p>7 permit for the tennis court complex and partially</p> <p>8 constructed it.</p> <p>9 So, for your visual, the proposed site plan</p> <p>10 is the board that is posted right now. You can</p> <p>11 see a clay court, a grass court and a parking lot.</p> <p>12 MR. HANLON: Can you back that up so we can</p> <p>13 see it?</p> <p>14 MS. QUIRKE-HAND: Microphone.</p> <p>15 PRESIDENT MOORE: You're going to need the</p> <p>16 mic.</p> <p>17 MS. QUIRKE-HAND: Is it on?</p> <p>18 MR. CASTRO: The bottom. Speak closely to</p> <p>19 it.</p> <p>20 MS. QUIRKE-HAND: Hello. Here we have a</p> <p>21 proposed parking lot, the clay court and the grass</p> <p>22 court on the site that we have marked on the</p> <p>23 overhead.</p> <p>24 As I just stated, despite the fact that 100</p> <p>25 Emerald Beach Way filed a timely petition for --</p>
<p style="text-align: right;">Page 3</p> <p>1 is the corporate representative of the appellant,</p> <p>2 and my co-counsel, Jezabel Lima.</p> <p>3 This is an appeal with regard to proposed</p> <p>4 tennis court complex at 200 Emerald Beach Way.</p> <p>5 It's a clay court, a grass court with a tennis</p> <p>6 canopy structure and a 10-car parking lot. So the</p> <p>7 site that we're talking about is located here</p> <p>8 (indicating).</p> <p>9 Today, we're not asking you to grant or</p> <p>10 deny any permits or even review the substance of</p> <p>11 the application. All we're asking you to do is</p> <p>12 require the applicant to follow the process that's</p> <p>13 set forth in the town code. The request is very</p> <p>14 simple. We are requesting that you grant the</p> <p>15 appeal to require the applicant to obtain special</p> <p>16 exception approval for the tennis courts and the</p> <p>17 parking lot and a variance for the location of the</p> <p>18 tennis courts within the required site setback.</p> <p>19 If you read the staff memorandum, you might</p> <p>20 be confused about why we're here because it</p> <p>21 repeatedly refers to the tennis court complex as</p> <p>22 approved, but that's not correct. ARCOM did</p> <p>23 approve an application for a tennis court complex</p> <p>24 on June 28th, 2017. 100 Emerald Beach Way</p> <p>25 appealed to the town council. The town council</p>	<p style="text-align: right;">Page 5</p> <p>1 a timely petition for a writ of certiorari, the</p> <p>2 applicant did obtain a building permit, and they</p> <p>3 partially constructed the complex. So what you're</p> <p>4 looking at is the clay court and this tennis</p> <p>5 canopy complex. This picture is taken from the</p> <p>6 property located at 100 Emerald Beach Way.</p> <p>7 Unfortunately now, those building permits</p> <p>8 are void. The reason is, is the circuit court</p> <p>9 granted the petition for certiorari, quashed the</p> <p>10 approval, and, therefore, the building permits</p> <p>11 that were issued are void. There is no dispute in</p> <p>12 this case that ARCOM approval is required for the</p> <p>13 tennis court complex. Because 100 Emerald Beach</p> <p>14 Way was successful in its petition for writ of</p> <p>15 certiorari, that ARCOM approval was quashed. So</p> <p>16 any building permits that were issued pursuant to</p> <p>17 that ARCOM approval are void.</p> <p>18 So, in other words, we are here tonight</p> <p>19 because there are, in fact, no permits for that</p> <p>20 tennis court. There is no ARCOM approval. There</p> <p>21 are no building permits. There's no special</p> <p>22 exception. There's no variances. There are just</p> <p>23 no permits. The circuit court ruled in favor of</p> <p>24 100 Emerald Beach Way on August 30th, 2018.</p> <p>25 Pursuant to the town code, Section 18-203,</p>

<p style="text-align: right;">Page 6</p> <p>1 it specifically states, "If a building permit 2 expires or is voided, an application for approval 3 shall be required in the same form and manner as 4 if submitted as a new project." And that's why 5 we're here today.</p> <p>6 It is our position that a special exception 7 is required for the tennis courts, for the parking 8 lot -- That parking lot is not just an extra 9 parking area that's attached to the main 10 residence. It parks about 8 to 10 cars, and it's 11 accessed by a completely separate street other 12 than the main residence.</p> <p>13 When you look at this aerial, it might be 14 confusing. The tennis court is being proposed as 15 an accessory structure, but, when you look at this 16 aerial, it's not clear to which principal 17 residence is that tennis court accessory to. If 18 you're just looking at the aerial, it looks like 19 it is, in fact, accessory to this house. That's 20 not true. That is our client's property, 100 21 Emerald Beach Way. In fact, the tennis court 22 complex is being proposed as an accessory use to 23 this house over here.</p> <p>24 The tennis court complex and the parking 25 lot are accessed by Emerald Beach Way, which is a</p>	<p style="text-align: right;">Page 8</p> <p>1 the record.</p> <p>2 November 8th, 2018, 9:46 a.m., John 3 Lindgren tells Dustin Mizell, who is the 4 applicant's representative, "Dustin, you would 5 have had to have gotten a special exception for 6 the tennis courts because the code requires it, 7 see below, Section 134-1715 -- 1759(e)."</p> <p>8 November 8, 10:44, a.m., Logan Elliott -- 9 that's just an hour later -- he also advised 10 Dustin Mizell that a special exception is required 11 for the tennis courts. Later that evening, 12 6:45 p.m., Paul Castro responds to an inquiry from 13 Mr. Josh Martin. Mr. Josh Martin asked whether 14 Paul and Logan resolved this issue with Skip 15 today. Paul replied, "Yes, they will need a 16 special exception as well. I can brief you 17 tomorrow."</p> <p>18 So, in November 2018, after the circuit 19 court mandate and after consultation amongst the 20 staff, there was a unanimous concurrence, even 21 after the consultation with the town attorney, a 22 special exception is required. So a special 23 exception application was, in fact, filed. That 24 application was actually scheduled for public 25 hearing January 9th of this year, and we were</p>
<p style="text-align: right;">Page 7</p> <p>1 completely separate street. It's this street 2 right here. So, if you were to want to drive -- 3 Oh, sorry. If you were to want to drive from the 4 main residence to this proposed parking lot, you 5 would have to drive out of the main residence, out 6 onto South Ocean Boulevard, take a right down 7 Emerald Beach Way and over into the proposed 8 parking lot.</p> <p>9 As we stated, it is our position that a 10 special exception is required for the tennis 11 courts and the parking lot. But that's not just 12 my position. That's actually the position of your 13 professional staff in November of this year. 14 After the circuit court issued the mandate, there 15 was extensive discussion and concurrence amongst 16 your professional staff that a special exception 17 was, in fact, required.</p> <p>18 Section 134-1759(e) of your town code says, 19 "The construction of any tennis court, 20 shuffleboard court or similar use upon any 21 structure in the town shall be subject to an 22 application for special exception." After the 23 court issued its mandate and quashed the ARCOM 24 approval, professional staff engaged in some email 25 correspondence, which I have submitted as part of</p>	<p style="text-align: right;">Page 9</p> <p>1 prepared to attend and be part of the public 2 process on that application. However, on 3 December 13th, 2018, the application was 4 withdrawn. Paul Castro had changed his mind and 5 said, "I guess a special exception is not going to 6 be required." The special exception application 7 was withdrawn, and the application was scheduled 8 to move to ARCOM in January. So we were preparing 9 to participate in the public process in January on 10 this special exception application that was 11 determined to be required, and, unfortunately, we 12 were unable to because that application was 13 withdrawn.</p> <p>14 This application is a perfect example of 15 why a special exception is required. It's two 16 tennis courts, a tennis canopy lounge in the 17 middle and a parking lot which are accessed via a 18 totally separate entrance on a separate street 19 from the main house.</p> <p>20 Two tennis courts. I have not located 21 another residence in Palm Beach that has two 22 tennis courts. An example of a tennis court that 23 is accessory to the main residence is actually 24 right next door, here. You can see the tennis 25 court is enveloped within the plan of the main</p>

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1 principal residence, and it is accessed from the
2 principal residence. The parking and everything
3 for the tennis court is part of the principal
4 residence. It's not accessed via a separate
5 street and removed totally from the principal
6 residence. In fact, by constructing the tennis
7 court -- by constructing two tennis courts and a
8 parking lot on that lot, it places all the impacts
9 on 100 Emerald Beach Way instead of the impacts
10 being with the principal residence.

11 We're not asking you, though, to rule on
12 the merits of the application. All we're asking
13 is that you require them to follow the process.

14 The parking lot. Section 134-790(7)
15 requires a special exception for supplemental
16 parking in the R-AA Zoning District. 134-2
17 defines supplemental parking as any parking in
18 addition to the required parking. The special
19 exception application that's part of the record
20 tonight shows that that parking lot -- that
21 parking lot is not proposed to meet any required
22 parking for the principal residence, for the
23 tennis courts or anything else. It is a
24 supplemental parking lot, and it is a parking lot.
25 It is a parking lot that is accessible from a

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1 separate street.

2 Staff has taken the position that a special
3 exception in the R-AA Zoning District would only
4 be required if the parking lot was a principal
5 use. That just doesn't make sense. First of all,
6 it's contrary to the unambiguous language in the
7 R-AA Zoning District which says supplemental
8 parking requires a special exception.

9 Second, nobody buys an R-AA zoning lot for
10 a parking lot as a principal use. Third,
11 Section 134-2177 addresses supplemental parking
12 and states that supplemental parking may be on the
13 same lot or on an adjoining lot as a permitted or
14 special exception use. There's just no language
15 that says that supplemental parking only requires
16 a special exception if it's a principal use.

17 Supplemental parking is any parking that's
18 over and above the required parking, and, in this
19 case, we're looking at a parking lot for 8 to 10
20 cars. So it is our position that a special
21 exception is required. In fact, we believe this
22 is also consistent with staff's interpretation and
23 in staff memorandum. Staff sets out an example
24 that states, "An example of supplemental parking
25 would be if a property owner bought a piece of

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1 property across the street from the main house and
2 pursued approval to build only supplemental
3 parking on that residential lot for the use of the
4 main property." That's what this is. It is a
5 parking lot that is accessible by Emerald Beach
6 Way, completely separate from the main house, and,
7 therefore, we believe it's also consistent with
8 staff's example. For that reason, we would
9 respectfully request that you would require a
10 special exception in that case, and, in fact, that
11 parking lot was part of the special exception
12 application that was originally filed in this
13 case.

14 The issue on the fence.
15 Section 134-1759(c) requires a 10-foot high fence
16 around the tennis court, which fence must be
17 outside the principal setback if the fence exceeds
18 the maximum height allowed in sections 134 to 160
19 -- 1669 to 1670. Section 134-1669 requires a
20 10-foot fence outside the principal setback. The
21 height of the wall or a fence in a side or rear
22 yard shall not exceed seven feet in height.
23 However, Section 134-793(a) requires a 30-foot
24 side setback in R-AA because 134-1759(c) says, if
25 the fence -- if a 10-foot fence cannot be located

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1 within the setback, it has to be located outside
2 the principal setback. Therefore, the tennis
3 court, with its required 10-foot fence, has to be
4 -- has to be located outside the principal
5 setback.

6 Staff states that the code requirements
7 changed and that there are now new setback
8 requirements, but this is inconsistent with the
9 staff analysis on the code amendments that were
10 set forth in ordinance 04-2018. When the item was
11 presented to the Planning and Zoning Commission,
12 it was presented as a clarification of the
13 language. And I have an excerpt:

14 "MR. LOGAN ELLIOTT: Good morning. I'll be
15 presenting agenda item 6(c) and 6(d) which regard
16 the tennis courts. So apparently the code has
17 three paragraphs styled Regulations For Tennis
18 Courts, and what staff has found is that, when
19 people read through these three paragraphs, they
20 walk away saying, 'I have no idea what's required
21 for tennis courts.' So what we've done is broken
22 it down into kind of a checklist-style,
23 bullet-point-style list of the regulations for the
24 code. The only real decisionmaking that was done
25 in this process was there were some conflicting

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1 code requirements in these three paragraphs. One
2 required that fences that are required to be
3 contiguous to the tennis court be 10 to 12 feet,
4 and another provision required them to be a 10-
5 foot minimum. What we've included today is just
6 the 10-foot minimum."

7 He goes on to say, "And the other decision
8 was there was a provision that said night lighting
9 is prohibited, and, in another paragraph, it was
10 included that night lighting could be approved by
11 the town council as a special exception. We -- So
12 we clarified that night lighting could be approved
13 as a special exception. So basically we're just
14 breaking down the paragraphs and the checklists,
15 and we made those two slight modifications."

16 The caselaw is clear, Tsavaras vs Lelekis,
17 246 So.2d 789, in that case, during the -- during
18 an appeal, a town council amended an ordinance.
19 The district court of appeal in that case found
20 that the amendatory ordinance adopted while on
21 appeal did not change the zoning ordinance but
22 merely confirmed and ratified. They applied the
23 law prevailing at the time of the disposition of
24 the appeal. The Second DCA in that case reversed
25 and held the lower court erred in not applying the

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1 amendatory ordinance to present controversy. The
2 same result was in City of Pompano Beach vs.
3 Haggerty, 530 So.2d 789.

4 So, even if -- even if you are convinced
5 that the code requirements are changed, which it's
6 inconsistent with the staff analysis on those
7 amendments, the caselaw is clear, you can apply
8 the new ordinance. This is a new application.
9 18-03 (sic) in your town code is clear. If that
10 -- If a building permit expires or is void, you
11 have to treat this as a new project. And today
12 that ordinance requires that the tennis court be
13 located outside the principal setback.

14 Although the argument has been made that
15 the application shall relate back to 2017, that's
16 really based on a vested rights/estoppel position
17 which does not apply in this case for several
18 reasons. First of all, an application for a
19 permit does not create a vested right. Boynton
20 Beach vs. Carroll, 272 So.2d 171.

21 Second, very importantly, there can be no
22 estoppel where the applicant proceeded at their
23 own risk. The applicant did not obtain a building
24 permit in this case until after an appeal was
25 filed. They knew, going forward, obtaining a

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1 building permit and doing a partial construction
2 of the project, that it was subject to appeal and
3 a possible adverse determination by the circuit
4 court, which is what happened in this case. Where
5 they did not prevail on appeal, the approval was
6 quashed, and you have to start over.

7 There is a very famous land-use case, and I
8 have to quote from it because it is so applicable
9 in this case. It's Pinecrest Lakes vs. Shidel,
10 and it's specifically -- in that case, a developer
11 proceeded to construct about 40 residential units
12 during the pendency of an appeal. The developer
13 was unsuccessful on appeal, but then claimed that,
14 "Well, I've already constructed the 40 units, so I
15 can't really comply. I've already sold some of
16 them. Some of them are occupied."

17 The court in that case was unconvinced and
18 actually ordered them -- issued an order requiring
19 the demolition of the 40 units. The court said,
20 "The developer acts at its own peril in doing
21 precisely what this lawsuit sought to prevent and
22 now is subject to the power of the court to compel
23 restoration of the status quo prior to
24 construction."

25 "Moreover, it is an argument that would

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1 allow those with financial resources to buy their
2 way out of compliance with the code. In all cases
3 where the proposed use is for multiple acres and
4 multiple buildings, the expenditures will be
5 great. The greater the cost and so will be a
6 resulting loss from an after-the-fact demolition
7 order."

8 "The more costly and more elaborate the
9 project, the greater will be the imbalance in the
10 equities. The more a developer is able to gild an
11 inconsistency with the -- We claim to be a society
12 of laws, not of individual eccentricities in
13 attempting to evade the rule of law. A society of
14 law must respect law, not its evasion. If the
15 rule of law requires land uses to meet specific
16 standards, then allowing those who develop land to
17 escape its requirements by spending a project out
18 of compliance would make the standards of growth
19 management of little or real consequence. It
20 would allow developers to build in defiance of the
21 limits and then escape compliance by making the
22 cost of correction too high."

23 The good news is I'm not asking you today
24 to order demolition or rule on the merits of the
25 application. The only thing we're asking today is

<p style="text-align: right;">Page 18</p> <p>1 to require the applicant to go through the 2 process, the process which was actually started in 3 November.</p> <p>4 (Alarm sounds.)</p> <p>5 I have one concluding statement.</p> <p>6 Respectfully, we request that you grant the 7 appeal, require a special exception for the 8 parking lot, require a special exception for the 9 tennis court. That application was originally 10 scheduled before you for January 9th. We 11 respectfully request that that application be 12 renewed and brought before you so that you can 13 rule on the merits of the application.</p> <p>14 Furthermore, we -- we would request that 15 you require a variance application to locate the 16 tennis court within the principal setback which is 17 required by the unambiguous language of the code.</p> <p>18 Thank you.</p> <p>19 PRESIDENT MOORE: Staff.</p> <p>20 MR. CASTRO: Good evening. This case is 21 really complicated, and it's probably one of the 22 most complicated cases that I've ever had to make 23 a decision on. As stated, they're appealing three 24 decisions. And, actually, I think most of the 25 decisions were made back in 2017 when they filed</p>	<p style="text-align: right;">Page 20</p> <p>1 court was on a structure, like what's happening at 2 Bath and Tennis Club where it's on a parking 3 garage. Two, it's lighted. The applicant 4 proposes to light the tennis court, or, three, 5 it's on a rebound board or there's a rebound board 6 on the tennis court so people can hit up against 7 it, which it makes noise.</p> <p>8 So, at that time, they proceeded forward 9 directly to ARCOM in 2017 without any council 10 approvals, and it got approval from ARCOM. It got 11 appealed in 2017 by the appellant to the town 12 council in August of 2017. The town council 13 upheld the ARCOM's decision, and, shortly after 14 that, in August, they applied for the building 15 permit for the tennis court and the drainage. And 16 that was in August.</p> <p>17 The appellant didn't file the appeal until 18 September. So the permit was in the process. It 19 did get issued on October -- on October 2nd of 20 2017, and the applicant did move forward with the 21 tennis court and drainage. And then, shortly 22 thereafter, in the first month, I believe, of 23 January, they applied for the supplemental parking 24 permit, which was issued. While the court case 25 was going on, there was no decision. They were</p>
<p style="text-align: right;">Page 19</p> <p>1 for ARCOM. It had to do with the tennis court, 2 not requiring them to obtain a special exception 3 for a tennis court. The perimeter fence issue 4 wasn't even an issue at that time, and the 5 supplemental parking or parking that's related on 6 the same lot as the house. There was a unity of 7 title that unified this property with the main 8 property itself.</p> <p>9 We believe that the tennis court and the 10 supplemental parking appeal is untimely. It's not 11 timely in that, back in 2017, when they came in 12 and met with staff, we had determined that, in 13 fact, the tennis court at that time was allowed to 14 be within 10 feet of the property line because the 15 code read at that time that tennis courts -- 16 unenclosed tennis courts were considered -- 17 interpreted to be unenclosed accessory structures, 18 had to be out of the front and street setbacks but 19 could be within 10 feet of the property line like 20 any other unenclosed accessory structure.</p> <p>21 And, in fact, going back in the records and 22 going back in time, we found that tennis courts 23 were treated that way. They weren't required to 24 get special exception approval unless three things 25 happened. Those things were: One, the tennis</p>	<p style="text-align: right;">Page 21</p> <p>1 moving at their own risk.</p> <p>2 And then what happened was the case got in 3 front of the courts. The courts favored with the 4 appellant and quashed town council's decision and 5 then, in November of 2018, mandated that the town 6 council and ARCOM go back and look at the evidence 7 or make another determination based upon 8 re-submittal of evidence and going through the 9 whole process all over again.</p> <p>10 In the meantime, the tennis court was 11 partially built. The supplemental parking was 12 built, and they came in to staff in November/ 13 December of 2018, and at that time Logan Elliott 14 made a decision that they needed a special 15 exception. He came to me. I erred in saying, 16 "Yes, it looks like the new language requires it." 17 But then, going back and specifically looking at 18 the previous language that -- By the way, while 19 all this was going on, there was a code amendment 20 where Logan was attempting to simply clarify in 21 clear language how the code read, but it did more 22 than that. It added a provision that said that 23 the tennis court had to meet the same setbacks as 24 the principal structure if they had a fence over 25 seven feet in height, which was never the case</p>

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1 prior to 2018, going back in time. So it made a
2 change -- erroneous change that we never intended
3 to make. It was just a clarification point, but,
4 in fact, what it did is required then that a
5 tennis court, even though the language says that
6 it can be within a required yard, because the
7 fence has to be more than seven feet in height,
8 the catch-22 is it has to have a 30-foot setback.
9 So here we are. And they came in to us. I
10 determined at that time, listen, they already came
11 to us. We told them they didn't need the
12 variance. I didn't even realize that code change
13 had happened. So we made a determination that
14 they didn't need a variance and a special
15 exception, the language reads the same as it did
16 before as it relates to tennis courts and not
17 needing the special exception only if they're on a
18 structure, lighted or a rebound ball.
19 The third part of that supplemental
20 parking, the appellant does have a good argument
21 as it relates to, you know, supplemental parking
22 being a special exception. I can tell you in the
23 past, going back prior to me, Dave Zimmerman and
24 Bob Moore had always made a determination that the
25 supplemental parking, as an accessory to a

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1 single-family home, was not a special exception,
2 even though the code reads somewhat differently, I
3 agree.
4 We've never required, since 1978 -- and, by
5 the way, in 1978 is when the R-AA estate, large
6 estate district was created as part of the zoning
7 approval of other districts within the town over a
8 period of two years. There has not been one
9 special exception for supplemental parking or
10 additional parking on a large estate like this for
11 even one additional parking space over what the
12 code required.
13 Now, in talking to Mr. Hanlon previously,
14 he's advised me that he doesn't think the
15 parking's supplemental, and he'll speak to that
16 here in a minute. But, from the standpoint of the
17 appeal itself, I think the appeal on the tennis
18 court and the supplemental parking should have
19 been done in 2017. And, in fact, in 2017, when
20 they appealed to the council ARCOM's decision,
21 they brought those two arguments in front of the
22 council, and I at that time explained -- and I
23 believe it was August 8, 2017 -- our position on
24 the supplemental parking and on the tennis court
25 itself not needing a special exception on the

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1 public record, and they never appealed that
2 administrative decision to the town council. They
3 only appealed ARCOM's decision.
4 So, from that standpoint, we believe that,
5 from the standpoint of the code and what is really
6 fair and equitable as it relates to going through
7 the process, being stopped and going to court, is
8 that they be allowed to proceed forward as in 2017
9 the way the code read, as well as from the
10 standpoint of the determinations we made back to
11 almost two years ago. And those are my comments.
12 PRESIDENT MOORE: Mr. Randolph, is it
13 appropriate that Mr. Hanlon speak now?
14 MR. RANDOLPH: Yes, if both Mr. Castro and
15 the appellant finished their case.
16 MS. QUIRKE-HAND: Can I reserve time for
17 rebuttal, just one minute?
18 PRESIDENT MOORE: Yes, you may.
19 Mr. Hanlon.
20 MR. HANLON: Thank you very much. M.
21 Timothy Hanlon on behalf of Mr. and Mrs. Thornton,
22 the owners of 1236 South Ocean Boulevard. The
23 reason obviously that we're an interested party is
24 that we own the property and we're the applicant
25 of the matter that was appealed to the court.

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1 I want to clear up a couple what I would
2 call misconceptions in the original presentation.
3 I think it's important to know that, first of all,
4 the parking area contains six spaces, not 10, or
5 10 plus as was referenced in the appeal, and
6 that's based on the size as dictated by code. I
7 think Mr. Castro will confirm that.
8 More importantly, the appeals court did not
9 render a decision that denied the ARCOM
10 application. It just quashed the decision
11 approving it and sent it back for further
12 findings. That is really the key issue here
13 because the project and the application were not
14 denied in any way. As a result, we resubmitted
15 and -- the exact same application. We've
16 supplemented the plans somewhat, but the substance
17 of the application is identical. The case number
18 is identical. So why is that important? For many
19 reasons. First and foremost, the code that
20 applied at that time still applies. I think that
21 directly contradicts most of the arguments made by
22 the appellant because the code sections at that
23 time were slightly different on all three of these
24 issues.
25 I did also want to address the confusion in

<p style="text-align: right;">Page 26</p> <p>1 the procedural aspect after the appeal. I think a 2 lot of the people involved were very confused by 3 the appellate decision because it -- it 4 specifically said that -- that the Architectural 5 Commission failed to make a determination as to -- 6 as to specific zoning code section.</p> <p>7 Well, under your building code, which 8 dictates the authority of the Architectural 9 Commission, it says they are tasked only with the 10 criteria in that Section 18-205. They are not 11 tasked with any of the zoning code provisions. 12 It's not their determination. So we're all 13 greatly confused by that reference in the 14 appellate decision, and I think -- I don't think 15 so. One of the litigation attorneys for the 16 Thorntons had some discussions with the attorneys 17 for the town, and they discussed just filing a 18 special exception application to be safe, and, 19 because we knew that, given the history of the 20 Jacobs -- The Jacobs are the principals of the 21 neighbors, the 100 Emerald -- they would appeal. 22 It didn't matter what we filed; they will appeal. 23 And they'll appeal this if we win, and they'll 24 appeal ARCOM if we win. The history is -- will 25 repeat itself.</p>	<p style="text-align: right;">Page 28</p> <p>1 was made.</p> <p>2 So I'll just repeat briefly, because I'm 3 several hours late of taking my family on spring 4 break and the doctor's not happy with me, but I'll 5 address the specific issues. Section 1759 -- 259 6 is clear -- Section 1759 is clear that no special 7 exception is required for tennis courts unless the 8 courts have lighting, include a hitting backboard 9 or built on a structure. No such features exist. 10 No special exception is required for the parking 11 area, Section 134-2177, the section on the 12 supplemental parking, and the town's consistently 13 and historically applied this concept.</p> <p>14 Now, the Thorntons, in the spirit of 15 compromise and reasonableness, have sat down with 16 Mr. Castro. We've looked at the number of parking 17 spaces. So, if we adopted the appellant's 18 argument that supplemental parking, the new 19 definition applied, it would only apply if the 20 number of spaces on the total site exceeded the 21 required number of parking. The number of 22 required parking spaces is tied directly to square 23 footage of the home.</p> <p>24 Based on the square footage of the home, 25 our calculation said that there are 12 required</p>
<p style="text-align: right;">Page 27</p> <p>1 But, to be safe, that's what the attorneys 2 had discussed. So we went forward. We filed a 3 special exception application, but, when I did 4 that, as the filing person, I knew that was 5 incorrect. And I researched it further, and I 6 immediately contacted Paul. We all sat down. We 7 looked at the code very closely, and we all 8 determined that, based on the code sections, the 9 tennis court contains no lighting, no back ball -- 10 backboard for hitting, and it's not built on a 11 structure. So there's no special exception 12 required for that.</p> <p>13 The parking area, as Paul has testified, 14 has been a very constant interpretation of the 15 town for over 25 years, and Mr. Martin put that in 16 a staff memo. It's -- Supplemental parking is 17 only offsite parking in a residential district. 18 For those reasons, no special exception 19 application was required. Paul made the correct 20 determination.</p> <p>21 So that's the procedural aspect, and I 22 think that's very important. There was no mistake 23 made. There were a bunch of people trying to do 24 their due diligence in a very confusing situation. 25 It was done the right way, and the correct answer</p>	<p style="text-align: right;">Page 29</p> <p>1 parking spaces. It's approximately a 33,000- 2 square-foot home. So there are 12 required spaces 3 for this property. Counting the six in the 4 parking area, the site would have 14. If it's 5 your decision to go against the historic 6 interpretation of supplemental parking and say 7 that it would be needed if we exceed the number of 8 required spaces, the Thorntons here will commit on 9 the record to reduce the number of spaces by two. 10 So, in any event, there would be no violation -- 11 or, no definition of supplemental parking involved 12 in this case. So we think that renders that issue 13 completely moot.</p> <p>14 The last appeal issue is the variance as it 15 applies to the screening or the fencing around -- 16 surrounding the tennis courts. Based on the 17 specific language and expressed language in the 18 appeal, based on the re-filing of the existing 19 ARCOM application with the same case number, we 20 believe that the existing -- the ordinance 21 existing at the time of the original submittal in 22 May of 2018 applies. And that is very clear that 23 the setback for a tennis court fence is 10 feet, 24 which this -- which this -- we are in compliance 25 with that -- that distance.</p>

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1 Lastly, and most importantly, Mr. Castro
2 referenced that he had made a specific decision on
3 this variance issue back in 2017 and actually
4 testified to you at the first appeal hearing
5 before town council. He made that decision and no
6 appeal was filed at that time. So the appellants
7 have waived and lost their right to file that
8 appeal today.

9 I just want to check my notes real quickly.
10 I think it's important to know that Emerald
11 Beach Way -- I may have mentioned this to you
12 during the appeal -- is a part of the property
13 that's involved here. It's owned by the
14 Thorntons, that piece of the road right there.
15 The Jacobs' only right to use that is by plat for
16 ingress and egress only. The entire dispute
17 between these parties started when the Jacobs
18 demanded that they had the right to park staff
19 vehicles there, and that's reflected in the
20 litigation documents that are public record. So
21 that's a matter of record.

22 It's also very important to note, I think,
23 myself, given all the arguments that the appellant
24 made, that during the Jacobs' ownership of 100
25 Emerald Beach Way, there was a 14,000-square-foot

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1 home approved for this single lot that had been
2 unified with the larger property, and they had no
3 objection to that. Ask yourself, why would they
4 object to two tennis courts when they didn't
5 object to a 14,000-square-foot home? It's because
6 they want to park the staff on the road that they
7 have no rights to use.

8 So that concludes my presentation. I'd
9 like to reserve some -- some time to rebut, and
10 certainly we'll make ourselves available to answer
11 any questions. Thank you.

12 PRESIDENT MOORE: Amanda.

13 MS. ARASKOG: Do we allow rebuttal on both
14 sides? We don't.

15 MR. RANDOLPH: Normally the appellant
16 reserves time for rebuttal.

17 MS. ARASKOG: Exactly.

18 MR. RANDOLPH: Otherwise, we're just going
19 to keep going back and forth with rebuttals.

20 MS. ARASKOG: Yep.

21 MR. RANDOLPH: But you can allow what
22 you --

23 MS. ARASKOG: Donnie.

24 PRESIDENT MOORE: Well, I mean, Amanda has
25 opportunity for rebuttal at the moment, and then

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1 -- and then council will ask their questions.

2 MS. ARASKOG: Perfect.

3 MS. QUIRKE-HAND: Very briefly, as to the
4 main issues that were raised, the timing, whether
5 the appeals were timely, recall that we were
6 planning to come before you on January 9th of this
7 year. The determination that a special exception
8 was required was made in November and was not
9 reversed, and the application was not withdrawn
10 until December 13th. We filed this appeal on
11 December 28th, and, therefore, the appeal is
12 timely. We were planning on coming before you on
13 the special exception. So a notion that there was
14 a determination in 2017 that a special exception
15 was not required and, therefore, we waived is not
16 correct in this case.

17 The -- As Mr. Castro notes, the
18 supplemental parking is a good argument. I'm not
19 aware of any other residential estate in Palm
20 Beach that has a parking lot that is not
21 accessible from the main residence. This parking
22 lot is -- you cannot drive from that parking lot
23 into the driveway of the main residence without
24 going out onto South Ocean Boulevard, which is
25 consistent with the example that was given by

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1 staff in which a special exception would be
2 required.

3 Further, when the circuit court --
4 Mr. Hanlon stated that they did not deny the
5 applications. They quashed the application, and
6 the caselaw is clear, Broward County vs. GBV
7 International, when the court quashes an approval,
8 it's like the thing never happened.

9 I think a good -- I think Mr. Hanlon made a
10 really good point. He said there was a lot of
11 confusion after the circuit court mandate was
12 issued, and we had to sort it out. So, in an
13 abundance of caution and to be safe, we decided to
14 file the special exception application. That is
15 what the safe bet here, and that's the safe bet
16 for this council tonight, is to require the
17 special exception, require them to go through the
18 process and require them to comply with the code
19 and seek the variance.

20 The corporate representative of the -- of
21 100 Emerald Beach Way would like to make a very,
22 very brief statement in response to the comment
23 about, well, why would we object to a tennis court
24 instead of a residence.

25 MS. ARASKOG: It's rebuttal?

<p style="text-align: right;">Page 34</p> <p>1 MR. HANLON: I don't believe that's 2 rebuttal. I don't believe that they're allowed to 3 bring somebody else. I think only attorneys are 4 allowed to make a legal rebuttal. There's no new 5 evidence. 6 PRESIDENT MOORE: Mr. Randolph. 7 MS. QUIRKE-HAND: He's the corporate 8 representative of the appellant. I believe he can 9 speak on the record. 10 MR. RANDOLPH: Well, is he making the 11 argument, or is he -- 12 MS. QUIRKE-HAND: No, no, no. Facts. 13 Facts only. 14 MR. RANDOLPH: Well, this is a legal 15 argument in regard to the -- I mean, this isn't a 16 factual determination. It's a -- We're acting on 17 your appeal. 18 MS. QUIRKE-HAND: The corporate 19 representative of the appellant for purposes of 20 standing if this matter is appealed cannot 21 testify? 22 MR. RANDOLPH: It's not a fact-finding 23 determination. It's an appeal. So, if you were 24 to go before the Fourth District Court of Appeal 25 with a witness, what do you think the Fourth</p>	<p style="text-align: right;">Page 36</p> <p>1 exception use is not involved in the conduct of a 2 business." So, from my standpoint, parking, 3 whether it's supplemental or required, is an 4 accessory to a single-family home. 5 So, in looking at the code -- and I can't 6 speak for what happened in 1978. All I can tell 7 you is that, prior to 1978, when the R-A district 8 existed, special exceptions were required for the 9 supplemental parking in that district, and then, 10 when they created the R-AA district, the same 11 special exception was required. The same language 12 prevails in the code going back to 1978 about 13 accessory uses -- or, excuse me, supplemental 14 parking related to on the same lot as the 15 principal structure on another lot. So the 16 language there is kind of inconsistent with 17 accessory uses that are customarily incidental to 18 a single-family home, and I can tell you -- and, 19 unfortunately, Bob Moore could not be here -- 20 would not be able to be here to testify, but he'd 21 always advise me that, listen, this is when you 22 have a situation where somebody has so much money 23 that they can buy a vacant lot across the street 24 from them and want to build parking because they 25 don't want to have it on their lot, they can come</p>
<p style="text-align: right;">Page 35</p> <p>1 District Court of Appeal would tell you? 2 MS. QUIRKE-HAND: If we have to go to the 3 circuit court on appeal of this matter, we have to 4 establish standing, correct? 5 MR. RANDOLPH: Well, is anybody arguing 6 that you have standing? 7 MS. QUIRKE-HAND: I don't know. 8 MR. HANLON: We'll concede standing, Skip. 9 MS. QUIRKE-HAND: Okay. Thank you, sir. 10 PRESIDENT MOORE: All right. So here we 11 are. Questions? 12 Julie, your light's on the board. 13 MS. ARASKOG: Okay, would you explain to 14 me, Paul, when you said that the code -- Hold on 15 one sec -- that the code said one thing, but the 16 town -- Here it is. You said supplemental parking 17 is a special exception. You talked about 18 accessory to a home, but you said we interpret one 19 way, but the code reads differently. Could you 20 explain that to me? 21 MR. CASTRO: So, in terms of the code 22 provisions relative to accessory uses, okay, so 23 I'm looking at Section 134-788. It says, under 24 Accessory Uses, "Other accessory uses customarily 25 incident to permitted or approved special</p>	<p style="text-align: right;">Page 37</p> <p>1 to the town council and ask for a special 2 exception to just build supplemental parking on 3 that lot but requires notices, requires a 4 quasi-judicial hearing, 300-foot notice so the 5 neighbors had an opportunity to speak on it. 6 But I can tell you that, going back in 7 time, even before me, I've not found a situation 8 where supplemental parking to the R-A or R-AA 9 district required council approval of even one 10 supplemental parking space, much less six in this 11 case. So that's the reasoning behind what we had 12 originally determined. 13 There is an argument, and she has a pretty 14 strong argument as it relates to, you know, 15 supplemental parking of any kind requires special 16 exception. I just don't understand why it would 17 be a special exception. 18 MS. ARASKOG: So you think she has a strong 19 argument, but -- 20 MR. CASTRO: I think she has an argument 21 based upon the section she cited back in the 22 parking section of the code and as it relates to 23 special exception for supplemental parking in the 24 R-AA district. I don't think she has a strong 25 argument on the tennis court. And there's also</p>

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1 another argument as it relates to the fence
 2 because originally, when the fence came in in
 3 2017, it was considered an unenclosed accessory
 4 structure. It could be within a side yard. It
 5 just couldn't be within front yards. And,
 6 unfortunately, when Logan and I worked together
 7 and he explained it to the council and to P&Z, he
 8 was simply just trying to clarify the existing
 9 language in the code but inadvertently added that,
 10 if it was going to exceed the maximum height of
 11 fences and walls in the side yards or any yard, it
 12 had to meet the same setback as the principal
 13 structure.

14 MS. ARASKOG: I'm just going to ask two
 15 more, and then I'll let everybody else, and then
 16 I'll go back.

17 Is there any other property -- Have you --
 18 Have you ruled that -- Have you had a parking lot
 19 and have you had something like this where it's
 20 between two homes and not -- I'm just thinking
 21 about supplemental parking, where it's away from
 22 the house that far with no road joining it?

23 MR. CASTRO: Well, I mean, we have houses
 24 on -- I think Nelson Peltz's house, he has a house
 25 on the other side of the road where he provides

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1 staff parking and parking for people to go to his
 2 house for charitable events or other functions he
 3 has --

4 MS. ARASKOG: And it has a house with it?

5 MR. CASTRO: That's correct.

6 MS. ARASKOG: But you can't think of like a
 7 tennis court or --

8 MR. CASTRO: But we have all kinds of other
 9 properties where they have service entrance coming
 10 in from other side lots. I think on Chateau
 11 Drive, up in that area where you have to come
 12 through, El Mirasol, in that area --

13 MS. ARASKOG: But they reach the house,
 14 correct?

15 MR. CASTRO: Where you come through another
 16 lot. One comes to mind on Indian Road, I believe.

17 MS. ARASKOG: Okay.

18 MR. CASTRO: Ocean Way, there's a big, long
 19 lot there where they have an access onto East
 20 Inlet Road.

21 MS. ARASKOG: Right.

22 MR. CASTRO: And then they have access onto
 23 Arabian as well, I believe. So they bring their
 24 service people in through East Inlet, and then the
 25 main entrance is, I believe, Arabian there. So we

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1 do have situations.

2 MS. ARASKOG: And they can still get to the
 3 main house, or they --

4 MR. CASTRO: Oh, yes. It's on the same
 5 lot. This is on the same lot even though they
 6 combined properties --

7 MR. ARASKOG: I think maybe I'm not --
 8 maybe I'm not being clear. Can the road reach the
 9 house? Do you have any situation -- because this,
 10 you have to go out and around to get to the main
 11 house. I think that was one of her arguments was
 12 that it's not --

13 MR. CASTRO: I don't know a situation like
 14 that, no, but it's all part of the same lot. It's
 15 all tied together by unity of title. It's all one
 16 large estate that we consider one lot.

17 MS. ARASKOG: Thank you. Okay, I'll stop
 18 for now.

19 PRESIDENT MOORE: Mr. Crampton.

20 MR. CRAMPTON: Yeah, I think geography has
 21 a lot to do with this, and I just have some
 22 questions to ask while I conjure this. And so I
 23 go back to this drawing that's up on the wall
 24 here. Which home is the Thornton home, and which
 25 is the Jacobs home?

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1 MAYOR CONIGLIO: This is Thornton.

2 MR. CRAMPTON: This is Thornton.

3 MS. QUIRKE-HAND: This is the Thornton
 4 home, and this is 100 Emerald Beach Way LC.

5 MR. CRAMPTON: Got it. And is the tennis
 6 court shown there -- has that already been built?

7 MS. QUIRKE-HAND: Yes.

8 MR. CRAMPTON: So it's sitting there. And
 9 where is that? That's in this vacant space here?

10 MS. QUIRKE-HAND: That is right here where
 11 that -- where I have the hand.

12 MR. CRAMPTON: Okay, great. Thank you.

13 And who owns the road? Which house owns
 14 the road?

15 MS. QUIRKE-HAND: That street is owned by
 16 this piece of property where the hand is.

17 MR. CRAMPTON: Which one?

18 MS. QUIRKE-HAND: The street is part of
 19 that piece, the tennis court site.

20 MR. CRAMPTON: Is that the red roof house?

21 MR. HANLON: It's part of the Thornton
 22 property.

23 MR. CRAMPTON: Thornton property. And
 24 you're Thornton, and you're...?

25 MS. QUIRKE-HAND: 100 Emerald Beach Way.

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1 MR. CRAMPTON: I'm just trying to get
 2 this --
 3 MR. CASTRO: But the portion that's in
 4 front of the other house on Emerald Beach Way is
 5 owned that by property owner as well.
 6 MS. QUIRKE-HAND: That's right.
 7 MR. CRAMPTON: So there's a -- there's a
 8 kind of a -- You can park on it, but basically
 9 it's owned by the Thorntons?
 10 MR. HANLON: No, they can't park on it.
 11 They can only use it for ingress and egress.
 12 MR. CRAMPTON: There's no --
 13 MR. CASTRO: That's another issue.
 14 MR. CRAMPTON: To what, the house, or to
 15 the tennis court?
 16 MS. ARASKOG: To the house.
 17 MR. CRAMPTON: To the house.
 18 PRESIDENT MOORE: The red-roofed house uses
 19 that road to get in and out.
 20 MR. HANLON: The red roof house uses that
 21 to get in and out from North Ocean, but --
 22 MR. CRAMPTON: Great. But the gray roof
 23 house -- gray roof house owns the road?
 24 MS. ARASKOG: No. This one.
 25 MR. CASTRO: No. Yeah, this one right

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1 here.
 2 MR. CRAMPTON: Yeah, that's the gray roof
 3 house.
 4 MR. CASTRO: That's correct.
 5 MR. CRAMPTON: And, Paul, what effect did
 6 the Logan/Castro -- I'll call it a
 7 miscommunication -- have on this situation? Did
 8 it create this problem? Is it the root cause of
 9 the conflict, or not?
 10 MR. CASTRO: No. It created the issue of
 11 the variance for this side yard. So, in 2017, the
 12 language -- the language was not in there that
 13 said that the tennis court and its fence had to
 14 meet the same setback as the principal structure
 15 if the fence or wall was higher than what the code
 16 allowed.
 17 MR. CRAMPTON: Okay.
 18 MR. CASTRO: That was put in in 2018.
 19 MR. CRAMPTON: All right.
 20 MR. RANDOLPH: Are you talking about the
 21 mix-up in regard to the special exception, or the
 22 member of staff --
 23 MR. CRAMPTON: I'm just trying to figure
 24 out is that why we're here today's or one of the
 25 reasons we're here today?

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1 MR. RANDOLPH: Yes.
 2 MR. CASTRO: So what happened with the
 3 special exception the second time around, the way
 4 it was explained to me by Logan is the code had
 5 changed to now require it to be a special
 6 exception, so I opined on that. Then I got
 7 contacted by Tim Hanlon and as well as Skip. So I
 8 went back and looked at the code, the way it read
 9 prior to the change and the way it read after the
 10 change, and I went back and looked at permits, and
 11 going back in time and, based upon all of that
 12 review, it made a determination that, in fact,
 13 they did not need -- we erred, they did not need
 14 the special exception, and I advised Tim as a
 15 courtesy to notice the neighbors even though it
 16 wasn't required because they could have showed up
 17 to the meeting. It would have been withdrawn at
 18 the meeting, that just to let them know as a
 19 courtesy it's been withdrawn based upon the fact
 20 it was determined that it was in error, they, in
 21 fact, do not need the special exception.
 22 MR. CRAMPTON: Okay, I got that.
 23 MR. CASTRO: For the tennis courts. They
 24 never filed for the supplemental parking.
 25 MR. CRAMPTON: Let me think about it.

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1 Because I've got red house and gray house and the
 2 courts and this and that. I mean, it's really
 3 confused.
 4 MAYOR CONIGLIO: I guess, Paul, my
 5 confusion is the timeline where you say at this
 6 point that the timeline has already passed for an
 7 appeal.
 8 MR. CASTRO: So, from -- from it being
 9 timely, back in 2017, when I met with the property
 10 owner -- and I even met with her prior to that
 11 with Maura Ziska, I believe, maybe two years
 12 before that, I believe, Mrs. Thornton, but --
 13 WOMAN IN AUDIENCE: It was never with Maura
 14 Ziska.
 15 MR. CASTRO: Okay. Oh, I'm sorry. So I'm
 16 getting old.
 17 But, anyway, so I met with Tim Hanlon, and
 18 I believe I met with Dustin Mizell. At that time
 19 in 2017, I said, no, the tennis courts, when
 20 looking at the code, there are only three times
 21 you need it as I stated in the report and on the
 22 record here. They didn't meet any three of those
 23 thresholds to require special exception. At that
 24 time also, tennis courts had to be out of the
 25 front setback, which is 35 feet, but they also had

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1 to be -- they could be within a yard, but they had
2 to be 10 feet from the side property line.

3 As it relates to the supplemental parking,
4 I felt that it was accessory to the main house as
5 a customarily accessory structure, and, based upon
6 the determinations made by previous staff relative
7 to not -- no need for the special exception, made
8 that determination.

9 At that time -- that was 2017 -- they filed
10 for ARCOM. They went to ARCOM, I believe, in June
11 of 2017. They got approved. Then it was appealed
12 to council, and it got on the August council
13 agenda, and the council found for the property
14 owner and against the appellant, and at that time,
15 I don't believe it was these attorneys, but
16 whoever -- I think it was Greenberg Traurig filed
17 the appeal. They brought up the fact that they
18 felt, which was not even related to the appeal,
19 that they needed a special exception for the, I
20 believe, the tennis court and the supplemental
21 parking. At which time, I explained my position
22 on those issues. That's when they should have
23 appealed that.

24 Instead, they filed the appeal after that
25 loss to circuit court and brought up that

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1 argument, which isn't even related to ARCOM, in
2 the courts. So, in the interim, before them
3 filing the appeal, they did file for the permit
4 shortly after -- in August, they filed for the
5 building permit.

6 Now, they filed the appeal in September,
7 but -- and the permit was issued in October just
8 for the tennis court and the drainage and,
9 subsequently, you know, the little tent/pavilion
10 thing. And then, in 2018, they filed for the
11 supplemental parking, but a decision had not yet
12 been made by the courts on their appeal.

13 MR. CRAMPTON: But they went ahead anyway.

14 MR. CASTRO: But they went ahead and moved
15 anyway at their own risk.

16 MAYOR CONIGLIO: But you're telling me that
17 the September court date --

18 MR. CASTRO: When they filed.

19 MAYOR CONIGLIO: Right. And the October
20 building permit was approved then, the building --
21 based on the fact that it had not gone to court?

22 MR. CASTRO: Well, and I'm not sure we knew
23 that there was an appeal at that time. So, you
24 know, they filed in court. I'm not sure that the
25 building division knew that there was an appeal

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1 that had been filed when the permit was issued.

2 PRESIDENT MOORE: Okay. I'll just -- I
3 have just one question.

4 MS. QUIRKE-HAND: The town was a defendant
5 in that appeal.

6 MR. CASTRO: The town may have been a
7 defendant, but the staff may not have known about
8 that appeal at that time. That was only like two
9 weeks later that the permit was issued, and it was
10 already in the hopper. It was moving.

11 PRESIDENT MOORE: So the original building
12 permit was filed in August with the town --

13 MR. CASTRO: Right. I can give you the
14 dates.

15 PRESIDENT MOORE: -- but not --

16 MR. CASTRO: So the permit was filed -- the
17 permit was filed in -- on August 18th of 2017, and
18 it was issued on October 2nd, and then their
19 appeal was -- I'm trying to look at the date.

20 MS. QUIRKE-HAND: September 15th, 2017.

21 MR. CASTRO: No. Their appeal was filed --
22 the original appeal, I believe, was filed in
23 September of 2017.

24 MS. QUIRKE-HAND: Right, September 15th,
25 2017. I have a copy of the petition. We can put

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1 it in the record.

2 MR. CASTRO: I thought I saw something from
3 September that Skip gave me.

4 MS. ARASKOG: That is September,
5 September 15th.

6 MS. QUIRKE-HAND: I'll submit this for the
7 record.

8 MS. ZEIDMAN: Two weeks.

9 PRESIDENT MOORE: Okay, so --

10 MR. CASTRO: So this was all kind of
11 happening at the same time.

12 PRESIDENT MOORE: Mr. Crampton.

13 MR. CRAMPTON: Yeah, this is like walking
14 back the cat in terms of going out for a walk with
15 a cat and trying to bring the cat back along the
16 same path. It's very confusing to me, and there's
17 a lot of legalese and a lot of -- a lot of things
18 that are contradictory.

19 I mean, have we asked our attorney, who is
20 supposed to figure out these legal-eagle kinds of
21 things, what his opinion is on the matter?

22 I mean, Skip, what do you -- what do you
23 say? Because there are legal issues involved and
24 there are conflicting interpretations of those
25 with respect to three particular issues: The

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1 parking, the tennis court and the fence. So where
 2 would you come down on this to advise us?

3 MR. RANDOLPH: Well, it's not where I would
 4 come down, but I'll -- because these two have the
 5 arguments to carry, but I think your first
 6 decision to be made is whether or not this appeal
 7 was filed timely.

8 Mr. Castro has argued that the -- he made a
 9 decision by referring this to ARCOM and by -- you
 10 said from a staff standpoint that the -- there was
 11 no special exception needed for the variance --
 12 for the tennis courts, and there was no special
 13 exception needed for the supplemental parking. If
 14 indeed that was his decision and that decision was
 15 announced to this appellant or to this property
 16 owner, that would have been the time for them to
 17 have appealed that decision.

18 MR. CRAMPTON: And that was in 2017
 19 something, right?

20 MR. RANDOLPH: August. That was in August
 21 of 2017.

22 MR. CRAMPTON: Thank you.

23 MS. QUIRKE-HAND: In November, they
 24 determined a special exception was required.

25 MR. RANDOLPH: That's right because that's

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1 when the confusion came. So what they're --
 2 They're filing their appeal on the basis that
 3 Logan Elliott had looked at this and made a
 4 determination that a special exception was
 5 required, and I guess, Paul, I don't know if you
 6 agreed with that at the time or not.

7 MR. CASTRO: At the time, I thought I did,
 8 but it was in a brief email, and then, when I went
 9 back and looked at it -- and I'll explain again, I
 10 looked at the previous code. The existing code
 11 has not changed as it relates to tennis court.
 12 And I went back and looked at previous approvals
 13 of tennis courts that have been built in this
 14 town, and they never required a special exception
 15 unless they were lighted or there was a backboard
 16 or they were on a building or structure.

17 MR. CRAMPTON: Correct, correct.

18 MS. QUIRKE-HAND: Staff agreed with our
 19 position until December of 2018. There was
 20 nothing for me to appeal.

21 MR. RANDOLPH: Subsequent to the initial
 22 decision by them that there was no special
 23 exception needed for either the parking or the
 24 tennis courts, and I think Mr. Castro's position
 25 is that they had 30 days within which to appeal

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1 that decision, and they did not. The appeal came
 2 only after a subsequent decision was made that
 3 they needed a special exception, which Paul
 4 retracted himself from later, and it's from that
 5 decision retracting himself from that that they're
 6 filing this appeal.

7 MS. ARASKOG: Can I ask a question related
 8 to that?

9 PRESIDENT MOORE: Let me just -- Let me
 10 just ask, because Bobbie's had her light on and
 11 hasn't spoken and neither has Maggie.

12 So Bobbie.

13 MAYOR CONIGLIO: You said three things.

14 MS. LINDSAY: Finish.

15 MAYOR CONIGLIO: Skip, you said timely
 16 appeal, parking lot, and what was the third one?

17 PRESIDENT MOORE: Fence.

18 MR. RANDOLPH: There was no decision made
 19 on the variance at that particular time because
 20 the law, as Paul looked at it at the time, did not
 21 require a variance. He wouldn't have sent this to
 22 ARCOM without having -- whether it needs a
 23 variance. You would have submitted it as a combo
 24 project.

25 MR. CASTRO: No, I would have looked at it

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1 and determined they would have filed it as either
 2 a combination or a variance. It was neither.

3 MR. RANDOLPH: Right. So, at the time that
 4 he made the decision that there was no special
 5 exception necessary, although he didn't, I guess,
 6 make a finding that there was no variance needed,
 7 his actions were based upon the fact that there
 8 was no variance needed because the code at the
 9 time did not require a variance.

10 So you've got the issue before you first as
 11 to whether or not this is a timely-filed appeal,
 12 and then the next issue is what is the law to be
 13 applied in regard to the action that comes before
 14 the town. And they have cited, interestingly, a
 15 provision 18-203, which says, "If a building
 16 permit expires or is voided, or if a building
 17 permit has not been issued within 12 months from
 18 the date of approval, the commission approval
 19 becomes void also." And that's -- that's true.

20 But then it says, "In the event such
 21 approval becomes void, an application for approval
 22 shall be required in the same form and manner as
 23 if submitted as a new project." And what happened
 24 in the -- although the appellate division of the
 25 circuit court quashed the decision of ARCOM, it

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1 quashed -- and the town, it quashed that decision
 2 by saying that there were no findings of fact. It
 3 states that, "The Town Architectural Committee did
 4 not make findings sufficient to ensure that
 5 Respondent Thorntons' proposed development would
 6 be in conformity with the standards of this code
 7 and other applicable ordinances insofar as the
 8 location and appearance of the buildings and
 9 structures involved. Specifically, there was no
 10 finding by the Town Architectural Committee or
 11 town council or evidence in the record to suggest
 12 that Respondent Thorntons' proposed development
 13 would comply with Section 134-1759. Because the
 14 town council's failure to rely on competent
 15 substantial evidence is sufficient cause to grant
 16 the petition, we issue no opinion regarding the
 17 remaining arguments on appeal. We grant the
 18 petition for writ of cert and quash the decision
 19 of the town council."
 20 And, by the way, the other arguments in
 21 that appeal related to the allegation that a
 22 special exception was needed for the supplemental
 23 parking and that a special exception was needed
 24 for the tennis courts. So they argue that in
 25 their appeal. The court did not rule on that. It

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1 only ruled that there was not sufficient competent
 2 substantial evidence.
 3 So the next action of the court, after
 4 having quashed the decision, was this cause having
 5 been brought to this court by appeal and after due
 6 consideration, the court having issued its
 7 opinion, you, town, are hereby commanded that such
 8 further proceedings be had in said cause in
 9 accordance with the opinion of this court and with
 10 the rules of procedure and laws of the state of
 11 Florida.
 12 Based upon that, it was my initial opinion
 13 that I advised the town staff that this should
 14 come back --
 15 MR. CRAMPTON: Right.
 16 MR. RANDOLPH: -- under the law as it
 17 applied at the time the court ruled --
 18 MR. CRAMPTON: I gotcha.
 19 MR. RANDOLPH: -- because they quashed the
 20 decision, but they said come back and make
 21 findings of fact to support your decision.
 22 MR. CRAMPTON: Got it.
 23 MR. RANDOLPH: There was no discussion at
 24 that time of there needing to be a special
 25 exception. So the way we were going to proceed

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1 was to bring this back under the same application
 2 number that existed at the time and to make
 3 findings of fact either for or against.
 4 That never happened because of the
 5 confusion relating to the need for a special
 6 exception that Paul ultimately ruled that there
 7 was no need for a special exception.
 8 MR. CRAMPTON: So the -- I'm sorry, go
 9 ahead.
 10 PRESIDENT MOORE: No, let's just -- It is
 11 Bobbie's turn.
 12 MS. LINDSAY: Okay, so I need one
 13 clarification from you. When they said you have
 14 to bring it back under the laws of when it
 15 occurred, you mean the laws of 2017?
 16 MR. RANDOLPH: Yes.
 17 MS LINDSAY: So --
 18 MR. RANDOLPH: That was my -- That was my
 19 position that I made clear to them.
 20 MS LINDSAY: Okay, so I'm leaning towards
 21 the fact that they should have -- They were
 22 noticed? Will you confirm that they were noticed
 23 of the permit and everything in 2017? They knew
 24 -- I mean, whatever we were --
 25 MR. CASTRO: No.

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1 MS. LINDSAY: We didn't have to notice them
 2 because no special --
 3 MR. CASTRO: They were noticed of ARCOM but
 4 not for a building permit, no.
 5 MS LINDSAY: Okay. And we didn't have to
 6 because no special exception was required for the
 7 tennis court or no special exception was required
 8 for the supplemental parking?
 9 MR. RANDOLPH: You made a statement on the
 10 public record?
 11 MR. CASTRO: Yes, I did at the August --
 12 MS. LINDSAY: -- 9th meeting.
 13 MR. CASTRO: At the August 9th council
 14 meeting, when they appealed ARCOM's decision, they
 15 brought up a new argument, not just an ARCOM
 16 appeal argument, but an argument that was not even
 17 an administrative appeal -- and I'm like why is
 18 this coming up -- that they needed a special
 19 exception for the tennis court, I believe, and the
 20 supplemental parking. That wasn't -- That was
 21 never -- Even though they brought up some of those
 22 arguments at ARCOM, it's not an ARCOM venue.
 23 MS. QUIRKE-HAND: And then we did appeal it
 24 as Skip noted because the court said, okay, we
 25 find that the record did not contain competent

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1 substantial evidence, but we're not going to rule
 2 on the special exception issues at this time
 3 because we already said that the ARCOM approval is
 4 quashed because there was no competent substantial
 5 evidence. So we don't even need to get to those
 6 other issues. We did appeal those issues in 2017.
 7 MS. LINDSAY: Okay, so -- so I hear you,
 8 but let me just ask one more question. I'm trying
 9 to follow this. So, in 2017, I was here for that
 10 appeal, and I remember it. After that, they --
 11 they didn't -- you didn't -- Logan didn't make
 12 this error of -- that you caught later, until
 13 2018, right?
 14 MR. CASTRO: Right.
 15 MS. LINDSAY: Where he misinterpreted the
 16 code.
 17 MR. CASTRO: Yes, and he came to me and
 18 said, "Unfortunately, it's changed," and I said,
 19 "Okay, well, then they need a special exception."
 20 But then, going back later, after getting a call
 21 and looking at the language, the language really,
 22 even though it was combined with racquetball
 23 courts and other type of court, the language
 24 really had not changed. All tennis courts upon a
 25 structure, you know, and, going back to the

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1 previous language, tennis courts upon a structure
 2 require to get special exception, but, if it's a
 3 tennis court by itself, no lights, no backboard,
 4 you can have it by rights so long as you meet the
 5 landscaped open space requirements and the setback
 6 requirements.
 7 MS. LINDSAY: Okay, so, if we were to do
 8 what was instructed when they went back, we would
 9 just look back at these laws in 2017 and say no
 10 special exception was required for the tennis
 11 court and no special exception was required for
 12 the parking; is that right? And that they should
 13 have appealed back then.
 14 MR. RANDOLPH: That law was the same now as
 15 it was then. There were no changes.
 16 MR. CASTRO: No changes.
 17 MR. RANDOLPH: No changes in that. So the
 18 only thing that changed in the interim was the
 19 need for a variance for this fence which would
 20 have been required under the new law to be set
 21 back further than the -- than under the old law.
 22 MS. LINDSAY: But we issued the permit
 23 under the old law, right? We issued the permit
 24 under the old law.
 25 MS. QUIRKE-HAND: That permit is void.

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1 MR. CASTRO: But the permit was issued at
 2 that time, and so, from that standpoint going
 3 back, our thought was, well, if you're going under
 4 the old code, it's not fair if somebody appeals
 5 and you had another code and there's an
 6 inadvertent change in the code that happened in
 7 the interim between, you know, the appeal and the
 8 decision by the courts that they should have to
 9 then, oh, get penalized and tear out a tennis
 10 court and move it.
 11 MS. LINDSAY: Right.
 12 PRESIDENT MOORE: Because they're
 13 grandfathered in.
 14 MS. LINDSAY: Right.
 15 MR. RANDOLPH: Let me tell you, that's a
 16 different decision because there is a lawsuit
 17 pending, a mandatory injunction to -- I mean,
 18 we're a defendant in it -- to have them remove the
 19 tennis court.
 20 MS. LINDSAY: Okay, so we can't discuss
 21 that right now. I'm just trying to determine,
 22 first thing first is was the -- it seems to me,
 23 was the -- was it timely, was their appeal timely.
 24 MR. RANDOLPH: That is the first thing for
 25 you to decide.

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1 MS. LINDSAY: Okay, and I'm not seeing that
 2 it was, so I'll now move to the --
 3 PRESIDENT MOORE: Maggie.
 4 MS. ZEIDMAN: Well, it doesn't sound like
 5 it was timely, and it also doesn't sound like the
 6 special exceptions were required.
 7 MS. LINDSAY: Right.
 8 MS. ZEIDMAN: And I want to ask the
 9 question, though, about -- because this looks like
 10 it may be kind of -- I'm using this term, maybe
 11 it's the wrong term, but on a technicality, and
 12 how long -- what period of time, Paul, when Logan
 13 made that judgment or statement that was a little
 14 bit not quite right, how long was that? I mean,
 15 what period of time would it have been?
 16 MR. CASTRO: A couple weeks maybe.
 17 MS. ZEIDMAN: A couple weeks?
 18 MS. QUIRKE-HAND: It November 8th, he said
 19 that, and then December 13th, the application was
 20 withdrawn. It was already scheduled for public
 21 hearing. It was about six weeks.
 22 MR. CASTRO: Well, I think it was -- I
 23 think we -- it was withdrawn maybe a little bit
 24 sooner than that, but the determination was made,
 25 hey, listen, you know, I made a mistake. I went

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1 back and looked, and I'm like, well, the language
 2 is the same. Looking back, there's no requirement
 3 for the special exception.
 4 MR. RANDOLPH: Well, Paul's letter was
 5 December 5th saying that they don't need a special
 6 exception.
 7 MS. ZEIDMAN: Right.
 8 MR. RANDOLPH: I don't know when Logan
 9 first --
 10 MS. QUIRKE-HAND: November 8th, he said
 11 there was a special exception required.
 12 December 5th --
 13 MS. ZEIDMAN: So it's one month basically.
 14 But the fact still remains that that was not
 15 correct, that there was no special exception
 16 required.
 17 MR. CASTRO: That's correct, there was not
 18 one.
 19 MS. QUIRKE-HAND: Well, that's the subject
 20 of the appeal today.
 21 MR. RANDOLPH: They claim that a special
 22 exception was --
 23 MS. ZEIDMAN: I understand.
 24 MR. CASTRO: That language has not
 25 changed from --

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1 MS. ZEIDMAN: So I just wanted to clarify
 2 that that's where we are.
 3 MR. CASTRO: -- in terms of the way it
 4 reads.
 5 MS. ZEIDMAN: I get it.
 6 MAYOR CONIGLIO: Julie, you're up.
 7 MS. ARASKOG: So here's where my confusion
 8 sits. So, once they ruled that it needed a
 9 special exception, then, to me, it started a new
 10 clock. So then they appealed the decision. So
 11 they said they needed one. Then they -- So let's
 12 look at the dates. November 8th, they say one's
 13 needed. December 5th, they say one isn't.
 14 December 13th, they appeal to say one is.
 15 MS. QUIRKE-HAND: December 28th, we
 16 appealed. December 13th, we received a Notice of
 17 Withdrawal.
 18 MS. ARASKOG: So that's within 30 days. So
 19 this is where I'm having some confusion about why
 20 it's not timely, because, if that had never
 21 happened, then to me there'd never be a timely
 22 appeal.
 23 MR. CASTRO: Well, they're making the same
 24 argument they made in 2017.
 25 MS. ARASKOG: Yes, but -- they may be

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1 making the same argument, but you had a new
 2 ruling, and your new ruling was they had to have a
 3 special exception. The application went in, and
 4 -- and we thought there was going to be a special
 5 exception, and then there was another ruling
 6 saying, actually, no. So then they appealed the
 7 second. So, to me, there are about five steps.
 8 There was the first time when you said one
 9 was not needed, it went through. Then there was
 10 another where you said, indeed, yes -- or, Logan
 11 said you need a special exception. So that
 12 started that notice and that whole thing going.
 13 Then you said no, and they appealed within
 14 30 days. That's why I'm having the confusion as
 15 to whether this is timely or not.
 16 MR. RANDOLPH: Paul's decision on
 17 December 5th was consistent -- his advice on
 18 December 5th was consistent with the advice he
 19 gave in 2017.
 20 MS. ARASKOG: Agreed, but that advice
 21 followed -- to me, there was one decision and --
 22 MR. CASTRO: And the only reason I made
 23 that erroneous --
 24 MS. ARASKOG: -- there was -- there was
 25 something in between. I don't know, Skip. It's

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1 very -- It's just -- They didn't appeal his
 2 original no special exception.
 3 MS. QUIRKE-HAND: We did. We did. In the
 4 circuit -- It was pleaded in the circuit court,
 5 and the circuit court said, "We issue no opinion
 6 regarding those remaining arguments on appeal."
 7 MR. CASTRO: So the question I have related
 8 to that is their appeal should have been the same
 9 appeal they're doing today. It shouldn't have
 10 been to circuit court. Their appeal -- They have
 11 30 days from --
 12 MS. QUIRKE-HAND: A written decision.
 13 MR. CASTRO: Not a written decision at that
 14 time. The code did not read that way. That
 15 language is added in 2018 by the way, I think
 16 probably in the same ordinance where it said they
 17 have to render a written determination, decision.
 18 Before that, it just said render any
 19 determination, decision, order, blah, blah, blah.
 20 The written part came in in 2018, after that.
 21 MS. ARASKOG: And then my second question
 22 comes based upon the -- the ruling by the court on
 23 the writ which states that the permit isn't --
 24 MS. QUIRKE-HAND: It's quashed.
 25 MS. ARASKOG: Is it null -- It's quashed,

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1 right?

2 MR. HANLON: No, no. They did not refer to

3 the permit.

4 MS. QUIRKE-HAND: It's quashed.

5 MS. ARASKOG: Whoa, whoa, just give me a

6 second. I'll ask Tim and you as well. I'm going,

7 actually, to our staff. So at least what has been

8 purported here today was that was null and void;

9 is that correct?

10 MR. RANDOLPH: They quashed -- They quashed

11 the decision of ARCOM. They didn't say the

12 petition is null and void because the petition

13 hadn't been issued yet.

14 MS. ARASKOG: But the building permit, the

15 building permit.

16 MR. RANDOLPH: What about the building

17 permit?

18 MS. ARASKOG: It's quashed then.

19 MR. CASTRO: We acknowledge that the

20 building permit's expired.

21 MS. ARASKOG: Well, somebody read a part of

22 the ordinance that said, if it is -- if it's not

23 built, if it's not this, if that's not that, then

24 it is considered --

25 MR. RANDOLPH: Amanda did and I did.

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1 MS. ARASKOG: Will you read that one more

2 time?

3 MR. RANDOLPH: If the building permit -- If

4 the building permit expires or is voided, or if a

5 building permit has not been issued within

6 12 months from the date of approval, the

7 commission -- the commission approval becomes void

8 also. In the event such approval becomes void, an

9 application for approval shall be required in the

10 same form and manner as if submitted as a new

11 project.

12 So there's -- You can interpret that as

13 meaning that this petition was void, and,

14 therefore, they're going to have to refile as if

15 it's a new petition --

16 MS. ARASKOG: And that's the problem I'm

17 having.

18 MR. RANDOLPH: -- or -- and I read you the

19 language relating to the mandate that was received

20 from the appellate court --

21 MS. ARASKOG: Okay.

22 MR. RANDOLPH: -- which states that, after

23 they -- after they're having quashed the decision

24 of ARCOM and town council, you are hereby

25 commanded that such further proceedings be had in

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1 said cause in accordance with the opinion of this

2 court. The opinion of this court being that there

3 were no findings made to substantiate the

4 decision.

5 MS. QUIRKE-HAND: And there's no competent

6 substantial evidence in the record.

7 MS. ARASKOG: Right.

8 MR. RANDOLPH: Right.

9 MS. ARASKOG: And, Skip, stay with me

10 because this is -- So was that permit, according

11 to our law, quashed?

12 MR. RANDOLPH: No. The permit was not

13 quashed. The permit may have been inadvertently

14 issued, but the -- and the work on the tennis

15 court may have -- was done --

16 MS. ARASKOG: Pending appeal.

17 MR. RANDOLPH: -- was done on their own --

18 MAYOR CONIGLIO: Risk.

19 MR. RANDOLPH: -- at their own risk.

20 MS. QUIRKE-HAND: The building permit is

21 void because ARCOM approval was quashed.

22 MR. HANLON: We don't agree.

23 MR. RANDOLPH: I think -- I think there's

24 two arguments you need to look at, and I've tried

25 to explain it. The argument that Amanda is making

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1 is, since it was quashed, the permit is void, and,

2 therefore, you've got to file as if it's a new

3 application.

4 MS. ARASKOG: Yes.

5 MR. RANDOLPH: That's what she's saying.

6 My opinion that I rendered to staff, after this

7 opinion was quashed and we received the mandate to

8 bring this back, was that it should come back

9 under the same case number, and the Architectural

10 Commission should follow the mandates of the court

11 and make findings of fact to support its decision,

12 whether that decision is for or against --

13 approved or against.

14 So the -- I took the position, at the

15 outset of this case, not subsequent to this

16 appeal, but at the outset, and it's on the record,

17 that this does not come as a new case; it comes

18 under the law that existed as of the time this was

19 first heard because there was a mandate that it be

20 returned to the Architectural Commission to make

21 findings.

22 MS. ARASKOG: And you do not believe that

23 permit was -- was null and void, whatever it is?

24 That's --

25 MR. RANDOLPH: The court didn't declare it

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1 null and void. Now --

2 MS. ARASKOG: Okay. Thank you.

3 MR. RANDOLPH: -- as to whether or not it

4 was properly issued is another thing.

5 MAYOR CONIGLIO: What I'm hearing is two

6 different things. You're saying the permit. What

7 you're telling me is the application.

8 MS. ARASKOG: No, I'm talking about the

9 permit, the building permit.

10 MAYOR CONIGLIO: The court said you've got

11 to go with the original application; is that

12 correct?

13 MR. RANDOLPH: The approval of the

14 Architectural Commission was -- was quashed. That

15 -- Their decision was quashed.

16 MS. ARASKOG: Right, but not the building

17 permit?

18 MR. RANDOLPH: The building permit wasn't

19 issued until after the court's decision, right?

20 MS. ARASKOG: No. Before.

21 MR. RANDOLPH: After the appeal was filed.

22 MS. QUIRKE-HAND: After the appeal was

23 filed, the building permit was issued on

24 October 2nd, but ARCOM approval is required for

25 this application in addition to the other things

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1 that we assert are required, but the thing is, you

2 cannot issue a building permit if you don't have

3 ARCOM approval. The court quashed that ARCOM

4 approval, so those building permits are void. You

5 cannot have a building permit without --

6 MR. HANLON: The permit was issued, and

7 it's subject to a pending ARCOM application. So

8 it's just a tolling; that's all it is. It's not

9 quashed.

10 MR. CASTRO: And a building permit was

11 issued at the owners' risk because no decision by

12 the court was made until almost a year after that.

13 MS. ARASKOG: And that's what concerns me.

14 So, anyway, I'll keep listening. It's just that,

15 to me, it comes down to that. It comes down to

16 whether or not it is considered null and void

17 because, if it was considered null and void, then

18 it would trigger something else. It also comes --

19 or, was it, as your interpretation, that it didn't

20 need to be a new -- that they didn't quash that;

21 they just quashed ARCOM's decision? So that's one

22 of them.

23 Timely appeal, for me, goes to this back

24 and forth, which decision is it that they had to

25 appeal? The very first one where no special

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1 exception was required, or the second where they

2 said there was one, and then said there wasn't

3 and they appealed.

4 MR. RANDOLPH: They didn't appeal the one

5 that said that there was a special exception

6 needed. They -- They are appealing Paul's

7 decision that a special exception is not needed --

8 MS. ARASKOG: I know.

9 MR. RANDOLPH: -- which is exactly what he

10 said in 2017.

11 MS. ARASKOG: I got that, but, between

12 there, he said one was needed, so there was an

13 application put in. So, to me, that changes the

14 -- it changes it a bit because you went from none

15 is needed. All of a sudden, there's an

16 application and one is needed. They say no, and

17 she appealed that within 30 days. So to me it

18 could -- I'm just saying these are the things I'm

19 looking at, Skip.

20 MR. CASTRO: But just -- But just the

21 tennis court, not the supplemental parking. I

22 never made a decision --

23 MS. QUIRKE-HAND: Parking was part of that

24 special exception application.

25 MR. CASTRO: No, it wasn't.

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1 MS. ARASKOG: It was. It's right here.

2 MS. QUIRKE-HAND: Yes, it's in the record.

3 It says for two tennis courts and supplemental

4 parking and service area.

5 MS. ARASKOG: I have it right here.

6 PRESIDENT MOORE: Okay, let's go back to

7 the board. Bobbie.

8 MS. LINDSAY: I'm getting confused.

9 MR. RANDOLPH: There are two issues here.

10 The issue is the timeliness of the filing of the

11 appeal and -- you know, correct me if I'm wrong --

12 and which law applies going forward.

13 MR. CRAMPTON: That's right.

14 MR. RANDOLPH: But, if the -- if this was

15 considered null and void, then -- then they have

16 to apply anew, and the law, as it exists at the

17 time they apply, would be -- which would mean they

18 need a variance because the new law required a

19 variance.

20 MS. ARASKOG: Right.

21 MR. RANDOLPH: The alternative argument to

22 that is that they're not going forward on a new

23 application. They're going on the old application

24 pursuant to the direction of the court to make

25 findings of fact to support whatever decision they

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1 made.

2 MR. HANLON: Also, there are no changes in

3 the special exception requirements. So I think

4 the merits of that decision, I think, also could

5 be even hypothetically take out the timeliness of

6 the appeal if you determine that Paul's decision

7 was correct that, under the code, there's no

8 special exception application required for either

9 the courts or the parking area. I think that's

10 another issue before you.

11 MR. CRAMPTON: I hope not.

12 PRESIDENT MOORE: Bobbie.

13 MS. LINDSAY: Well, okay, so -- so I still

14 -- I still think that, based on what I've heard

15 today, that -- which is -- well, there's two

16 issues, but that no special exception was required

17 when they went through this. Then there was a

18 later than -- As I go through the time frame here,

19 the permit was filed in August of 2017. It was

20 already ruled before that on the 9th at our

21 council meeting that there was no special

22 exception required for either one of those. Then

23 the permit was issued on -- I have it as 9/15, or

24 is that when you issued your appeal?

25 MS. QUIRKE-HAND: September 15th was a

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1 petition for --

2 MS. LINDSAY: -- your petition.

3 MS. QUIRKE-HAND: Filed.

4 MS. LINDSAY: That was when -- And the

5 permit was already filed, and it was in, and it

6 actually came out about two weeks later on the 2nd

7 of November.

8 MR. CRAMPTON: October.

9 MS. LINDSAY: Of October. I'm sorry. 2nd

10 of October. Then like a year went by. Okay, I

11 just want to make sure we all understand the

12 timeline.

13 A year went by. They built the tennis

14 court, started to, right, because they had a

15 permit?

16 MR. RANDOLPH: It's partially built.

17 MS. LINDSAY: Partially built.

18 MR. RANDOLPH: They were advised to stop

19 work because of this appeal.

20 MS. LINDSAY: And the judge, when he

21 quashed ARCOM's decision, he said -- but he did

22 not rule on the findings of whether or not there

23 was a special exception required, right?

24 MR. RANDOLPH: No, those were argued in the

25 petition for writ of certiorari, but he did not

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1 rule on anything other than the fact that ARCOM

2 should have made findings of fact to support their

3 decision.

4 MS. ARASKOG: And the town council.

5 MR. RANDOLPH: And all the town council

6 considered was whether or not to support the

7 Architectural Commission or not. And you -- And

8 then you sustained their decision. There was no

9 discussion there, I don't think, in regard to

10 special exception.

11 MS. QUIRKE-HAND: It can't be ignored, 100

12 Emerald Beach Way prevailed in the appeal. If you

13 don't respect the jurisdiction of the circuit

14 court and the ability of a citizen to appeal and

15 let -- you know, talk about, "Oh, well, the tennis

16 court's been built and we issued a building

17 permit," then citizens should forget about even

18 filing an appeal.

19 In other words, you have to respect the

20 fact that 100 Emerald Beach Way prevailed on the

21 appeal. So, when we're talking about fair,

22 equitable, estoppel, those don't -- they apply in

23 favor of our client.

24 MR. RANDOLPH: And I will agree that they

25 -- I do not believe that they should have gone

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1 forward with a building permit or the construction

2 of the tennis courts. They proceeded at their own

3 risk in that regard, but -- and they were told by

4 the town to stop construction because of the

5 appeal. So, in the event -- And I don't think the

6 town -- I don't know what they're going to do, but

7 I don't think it's ignoring the decision of the

8 court to quash the decision of ARCOM when the

9 mandate says return this to ARCOM directing that

10 they make findings of fact.

11 MR. HANLON: And we are respecting the

12 decision by reapplying to ARCOM, and why should

13 the Thorntons be penalized due to a procedural

14 error found by the appellate court to now have to

15 comply with the new law? They've done nothing

16 wrong. They've done everything right. Met with

17 staff, met with staff, applied, won approval. Won

18 the to appeal, went to appeal, brought it back,

19 reapplied, met with staff, met with staff. We did

20 everything right.

21 MS. ARASKOG: Tim, did they build -- keep

22 building even when the town told them --

23 MR. HANLON: No, we voluntarily stopped

24 working the day the appeal order came out.

25 MS. ARASKOG: Well, what about when they

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1 first filed the appeal? So you figured you'd just
 2 win, and you built it at your own risk?
 3 MR. HANLON: We acknowledged to Skip that
 4 we built it at our own risk.
 5 MR. RANDOLPH: They did build it at their
 6 own risk. In the event this goes back to ARCOM
 7 and it's not -- it's not approved, they're going
 8 to have to --
 9 MR. HANLON: We'll take it down, yeah.
 10 MR. RANDOLPH: -- tear it down, or, if they
 11 win the suit that's pending against us now and the
 12 Thorntons, they're going to have to tear it down.
 13 MS. ARASKOG: Right.
 14 MS. LINDSAY: So are you asking us to send
 15 this back to ARCOM?
 16 MS. ARASKOG: No, she's appealing the
 17 decision of Paul that this was -- three things:
 18 Special exception for the tennis courts. She's
 19 saying they needed one, and she's appealing his
 20 saying that, no, didn't need one. Second thing is
 21 the supplemental parking for the special
 22 exception, and the third, I just lost.
 23 MAYOR CONIGLIO: Variance.
 24 PRESIDENT MOORE: Variance for the fence.
 25 MS. ARASKOG: Which is the new law. So

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1 those are the three things, right?
 2 MR. RANDOLPH: No, they're not appealing
 3 the decision on the variance. The question in
 4 that regard is what law applies when they move
 5 forward. Is it the new law, which would require a
 6 variance, or is it the old law when they go back
 7 before ARCOM.
 8 MR. CRAMPTON: Right.
 9 MS. ARASKOG: And what would we do
 10 normally, Skip? I thought usually --
 11 MR. RANDOLPH: Nothing here is normal.
 12 MS. ARASKOG: Normal. But, for instance,
 13 when we talked about something else being done, we
 14 had to have people follow the current law. So my
 15 question to you is would you allow someone to
 16 follow an old law if they built something when
 17 they knew there was a lawsuit, or would you permit
 18 them to go under the law that they thought
 19 existed, which is understandable too, when they
 20 originally went to ARCOM?
 21 MR. RANDOLPH: This is why we call zoning
 22 in progress. If someone -- We announce zoning in
 23 progress when we're changing our zoning code so
 24 that people will be on notice that there's going
 25 to be a change. And, if they go forward, they're

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1 going at -- We would not allow them to -- to
 2 receive a building permit if they knew zoning was
 3 in progress.
 4 MS. ARASKOG: And we didn't do zoning in
 5 progress during this?
 6 PRESIDENT MOORE: No.
 7 MS. ARASKOG: This was an inadvertent
 8 mistake, correct, on Logan's part?
 9 MS. LINDSAY: I have one last question, and
 10 then --
 11 MS. ARASKOG: Well, wait. I just to hear
 12 the answer to this one. Sorry.
 13 MR. RANDOLPH: I can't speak for Logan.
 14 MS. ARASKOG: Oh. Paul, so this was a
 15 mistake -- The reason this was changed, it was not
 16 zoning in progress. It was a mistake -- a mistake
 17 in change of the code with consequences --
 18 MR. RANDOLPH: No, no. Zoning -- Logan
 19 only opined in regard to the special exception.
 20 MS. ARASKOG: Okay, so this law then, what
 21 we're talking about with the variance --
 22 MR. RANDOLPH: There's been no change in
 23 the law on special exception.
 24 MS. ARASKOG: There is on the variance?
 25 MR. RANDOLPH: The variance changed.

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1 MS. ARASKOG: And was it zoning in
 2 progress?
 3 MR. RANDOLPH: The opinion of the appellant
 4 is that, because this permit is null and void,
 5 that they should come back with a new application
 6 and apply the new law.
 7 MS. ARASKOG: Okay.
 8 PRESIDENT MOORE: Mayor.
 9 MAYOR CONIGLIO: Skip, it is really as
 10 clear as mud. It's clear as mud. However, it
 11 does seem to me that someone that gets approval
 12 for something, even if the court says ARCOM needs
 13 to look at it again, that to require them to go
 14 under a new code is unfair. Does that make sense
 15 to you?
 16 MR. RANDOLPH: Are you looking in your --
 17 MAYOR CONIGLIO: I'm looking at you.
 18 MS. ARASKOG: Looking at you, Skip.
 19 PRESIDENT MOORE: We're looking at
 20 everybody.
 21 MS. LINDSAY: She's looking through me.
 22 PRESIDENT MOORE: Okay.
 23 MS. ARASKOG: We're looking for advice.
 24 PRESIDENT MOORE: I agree.
 25 MS. ARASKOG: We're looking for advice.

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1 MR. CRAMPTON: I think Skip has sort of let
2 us know that it probably would be better to go
3 under the old law, under the 2017 set of
4 procedures. I think that's what Skip has said.
5 We got that.

6 MS. ARASKOG: Is that what you said, Skip?
7 I want to hear it from him, not --

8 MR. RANDOLPH: I told you what the two
9 arguments were, and I told you that my initial
10 impression, before somebody said a special
11 exception is needed, that the appellant -- the
12 property owner, the Thorntons were going to have
13 to proceed under the old application and go to
14 ARCOM and make findings of fact under the old
15 application because that's the application that
16 the court declared null and void. They quashed
17 it. And, after quashing it, they said -- and, in
18 their -- in their quashing it, they said that
19 they're ignoring the arguments in the petition for
20 writ of cert relating to a special exception being
21 needed for both of these things and said I'm just
22 ruling on the fact that they didn't make findings
23 to support their decision. So I'm sending it back
24 with a mandate that you give consideration to that
25 -- to the decision of the court in that regard.

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1 MS. ARASKOG: Okay.

2 MS. QUIRKE-HAND: As part of your
3 materials, there is correspondence in there that
4 indicates that staff consulted with the town
5 attorney: "Paul and Logan, did you guys resolve
6 this matter with Skip today?" Paul responds,
7 "Yes. They will need a special exception as
8 well."

9 There's also correspondence in there where
10 Tim Hanlon says, after -- after consultation
11 between Skip and Bob, counsel for the Thorntons,
12 that a special exception would be filed and would
13 be required, and that is why it was filed.

14 MR. RANDOLPH: Clearly, they, at one point,
15 agreed that they should go for special exception.

16 PRESIDENT MOORE: Maggie, your light's on.

17 MR. HANLON: I wouldn't say we agreed, but
18 we were told or advised.

19 MR. RANDOLPH: You were advised.

20 MR. HANLON: Yeah. There's a difference.

21 MR. RANDOLPH: Yes.

22 MS. ZEIDMAN: When was it decided that
23 there would need to be a variance for the fence?
24 What was that date?

25 MR. CASTRO: I think it was January.

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1 MS. ZEIDMAN: January what?

2 MS. LINDSAY: The new law?

3 MS. ZEIDMAN: The new law.

4 MS. QUIRKE-HAND: January 23rd, 2018, on
5 the ARCOM record, Mr. Paul Castro said that a
6 variance would not be required, and then we filed
7 an appeal on that matter as well when it was
8 stated on the record; although the decision was
9 not rendered in writing at that time.

10 PRESIDENT MOORE: Bobbie.

11 MR. HANLON: Although the ARCOM application
12 was accepted more than a month before that.

13 MS. LINDSAY: I still go back to the
14 applicant. You know, we're penalizing the
15 applicant for a staff error, and that bothers me,
16 that I don't -- I mean, I don't know -- I'm still
17 unsure about the legal position, but I don't feel
18 that it's appropriate for town council to penalize
19 an applicant who did everything that they were
20 supposed to do, and then a young staff member made
21 an error. For a short period of time, his boss
22 agreed with him and then realized it was wrong,
23 filed that correction, and now -- you know, now
24 the neighbor is using that situation to try to get
25 them to have to start over as far as I can tell.

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1 Is that right? Would that be a correct summary?

2 MS. QUIRKE-HAND: The neighbor is the
3 prevailing party on appeal.

4 MS. ARASKOG: Yeah, I would look at it
5 differently, Bobbie, because I think that -- I
6 mean, you can look at it both ways, and that's the
7 problem, but would you also blame the neighbor for
8 the fact that a mistake was made and that that --
9 at least -- I want to look at the law, and that's
10 where I'm unclear as to whether to use the 2017
11 decision or the later decision, which would put
12 that 30 days in effect. And just because staff
13 made a mistake doesn't mean that also the other
14 party legally would be penalized.

15 So it's was trying to look at the law, and
16 I don't really know. I'm still trying to get Skip
17 -- but I think you've sort of told me what your
18 opinion is.

19 MR. CRAMPTON: Yeah.

20 MS. ARASKOG: But there was a decision
21 made, and then that was changed, and there was an
22 appeal filed according to that decision, which has
23 to be within 30 days. I just am trying to figure
24 out, if this goes back to court, what the heck's
25 going to happen frankly.

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1 PRESIDENT MOORE: I don't know if it's
2 Mr. Randolph's light or Mr. Castro's light.
3 MR. CASTRO: Mine. First of all, I don't
4 think it was a mistake. I think it would have
5 been a mistake if it would have gone forward the
6 way it was filed.
7 From our standpoint, there was an error in
8 judgment as relates to the previous language and
9 the existing language the way it read, which got
10 clarified before it even got to the council. So,
11 from that standpoint, we corrected that, but, as
12 it relates to today, I still do not believe that
13 there's a special exception required for the
14 tennis court, and I still believe that they should
15 not be penalized because the code changed in 2018
16 when they came to ARCOM in 2017 and have to come
17 under the new code, which inadvertently changed
18 the setbacks for tennis courts by two-thirds, from
19 10 feet to 30 feet.
20 So, from the supplemental parking
21 standpoint, that's up for debate because, the way
22 the code reads, the language is quite clear as it
23 relates -- despite previous long-term
24 determinations related to, you know, previous
25 staff and staff today about supplemental parking,

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1 but the first -- the other two, especially the
2 tennis court itself, I still do not believe it
3 needs a special exception.
4 PRESIDENT MOORE: Maggie.
5 MS. ZEIDMAN: In the two years that this
6 has been -- that this has been going on, we have
7 three weeks where the special exception was
8 thought to have been required, and it just seems
9 that that --
10 MS. QUIRKE-HAND: The special exception
11 issue was argued in the circuit court, and the
12 court did not reach that issue. The court said,
13 because the town council's failure to rely on
14 competent substantial evidence is sufficient cause
15 to grant the petition, we issue no opinion
16 regarding the remaining arguments on appeal, which
17 was that a special exception was required. The
18 court didn't reject the argument. The arguments
19 were made. They will -- They may go back to the
20 circuit court because there has been no finding.
21 MR. CASTRO: But what I don't understand
22 is, in 2017, they did not appeal an administrative
23 decision. They appealed ARCOM's decision, which
24 their only jurisdiction is over the architecture
25 of the building, not the zoning code requirements,

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1 nor interpretation of the code. They should have,
2 just like they did this time, appealed staff's
3 determination in 2017, which they never did, and
4 now they're using this opportunity by filing the
5 appeal in circuit court and quashing the -- to
6 bring this issue up again, even despite the error
7 we made in accepting the special exception. And I
8 didn't even know the supplemental parking was part
9 of that because, when they filed the application,
10 they had the pre-application meetings, I was not
11 involved, and it didn't never go to DRC as well, I
12 don't believe. So we never really looked at it
13 from a staff standpoint. I never really saw the
14 application. The only issue I had was the tennis
15 court.
16 PRESIDENT MOORE: Well, I think we've
17 really -- I think we've exhausted this one. I
18 think there needs to be a motion from someone on
19 the desk to either uphold the appeal or deny the
20 appeal.
21 We do need to make a decision tonight; is
22 that correct, Mr. Randolph?
23 MR. RANDOLPH: You should.
24 MS. ARASKOG: Or uphold partial and not --
25 right? Can't we uphold part of the appeal and not

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1 another part?
2 MS. QUIRKE-HAND: Yes.
3 MS. ARASKOG: For instance, the
4 supplemental parking versus the -- I'm not saying
5 we have to. I'm just saying we have more than two
6 options, correct?
7 MR. RANDOLPH: Well, what she's asked for
8 is, for these reasons and the reasons set forth in
9 the lawsuit incorporated as part of this appeal,
10 "abutting neighbor appeals the town's
11 administrative decision that a special exception
12 is not required for two tennis courts and small
13 service parking area at 1236 South Ocean
14 Boulevard."
15 MS. QUIRKE-HAND: The variance appeal is
16 also noticed for today.
17 MR. RANDOLPH: Where is the --
18 MS. QUIRKE-HAND: It was separately filed.
19 MR. CASTRO: It is part of this.
20 MS. QUIRKE-HAND: It is part of it. So the
21 request is for a special exception to be required
22 for the tennis courts, special exception to be
23 required for the supplemental parking and a
24 variance be required for placement of the tennis
25 court within the principal setback, so three

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1 items.

2 MR. CRAMPTON: And that's what you're

3 advocating for to occur?

4 MS. QUIRKE-HAND: That is what I'm

5 advocating for.

6 MS. ARASKOG: You want to make a motion,

7 Lew?

8 MR. CRAMPTON: Well, no. I want to ask a

9 question -- I'm sorry -- because I'm not sure

10 which is -- So, Paul, so, with respect to the new

11 law, is a variance -- do they, or do they not need

12 a special exception for this project under the new

13 law?

14 MS. ARASKOG: Variance.

15 PRESIDENT MOORE: There's no new law.

16 MR. RANDOLPH: You're talking about a

17 variance.

18 MR. CRAMPTON: Current law.

19 MS. ARASKOG: You're talking about the

20 variance, not the special exception.

21 MR. RANDOLPH: No, no, special exception

22 has been the same all along. They're appealing

23 his decision that they don't need a special

24 exception, and they're appealing -- they're

25 appealing --

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1 MR. CRAMPTON: Under the old law, or the

2 new law, which requires the variance?

3 MR. RANDOLPH: They're appealing -- They're

4 saying that the new law requires a variance and

5 that that's the way this should proceed because

6 the decision of ARCOM was quashed --

7 MR. CRAMPTON: Yes.

8 MR. RANDOLPH: -- and the permit is null

9 and void, and, therefore, they should make a new

10 filing under the new -- and the new law should

11 apply.

12 MS. ARASKOG: And they built at their own

13 risk.

14 MR. CRAMPTON: And they built at their own

15 risk.

16 PRESIDENT MOORE: Well, I don't agree with

17 that.

18 MS. ARASKOG: I'm not saying we agree. I'm

19 just saying --

20 PRESIDENT MOORE: Yeah, no, no. Okay

21 Maggie, your light, and then Bobbie's light, and

22 then let's try and get a motion up here.

23 MS. ZEIDMAN: I think mine was already on

24 before. Yeah. Do you have a question?

25 MS. LINDSAY: Well, the only other question

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1 I have is you made a comment to get around the --

2 that they would drop two parking stalls --

3 MR. HANLON: Correct.

4 MS. LINDSAY: -- and that would be -- and

5 then there would never even be an issue on

6 supplemental parking, right? That issue just goes

7 away?

8 MR. HANLON: If we reduced the number of

9 total spaces on the site by two, then all the

10 spaces would qualify as required parking, and you

11 can confirm that with, Paul, and then there

12 certainly would be no supplemental parking as part

13 of our application.

14 MS. QUIRKE-HAND: That's not part of this

15 application, though. I don't know that you can

16 modify the application on this appeal.

17 MR. HANLON: Well, what you could do is you

18 could state for the record that the appeal in

19 connection with the special exception required for

20 supplemental parking is denied as long as the

21 applicant meets the definition of required -- does

22 not exceed the definition of required parking in

23 terms of number of parking spaces on the total

24 site. You could do that, correct, Skip? Do you

25 agree?

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1 MS. QUIRKE-HAND: I don't think you can

2 modify the application.

3 MR. RANDOLPH: You know, I don't think this

4 is the place or time for offering modifications or

5 compromises, and that sounds like what you're

6 doing, is you're offering some sort of a

7 compromise. I think they need to act on the

8 merits of the appeal here today.

9 MR. CASTRO: What could happen is you could

10 -- and this is a hypothetical -- if you found in

11 favor of the appellant that they needed a special

12 exception and they came back and showed us the

13 plans for the house and verified the square

14 footage and verified the number of parking spaces

15 and eliminated whatever is necessary, then that

16 would -- that would satisfy not the requirement to

17 come back for that process, but then that could be

18 appealed by them as well, if that's where this is

19 going.

20 MR. CRAMPTON: Going to court is where it's

21 going.

22 MS. ZEIDMAN: Yeah.

23 PRESIDENT MOORE: Okay.

24 MS. ARASKOG: So I think the first

25 decision, just so everybody knows, is was it a

<p style="text-align: right;">Page 94</p> <p>1 timely appeal, because, if it wasn't, then it goes 2 away. I mean, that's number one, if it was -- if 3 it was -- Right, Skip? I mean, it has to be a 4 timely appeal at least for the first two. 5 MR. RANDOLPH: You have to make a 6 determination based -- as to whether it's a timely 7 appeal, and I think, if you wish, even -- whatever 8 you decide on that, I think you should -- you 9 could -- in case the court disagrees with your 10 decision on that, you might wish to have in the 11 record how you feel about the other issue, which 12 is the -- what -- what law applies. 13 MS. ARASKOG: Okay. 14 MR. RANDOLPH: Do you agree, Amanda? 15 MS. QUIRKE-HAND: I think that a motion on 16 the appeal would have to be, A, whether special 17 exception is required; B, whether -- for the 18 tennis court; B, whether a special exception is 19 required for the supplemental parking; and, C, 20 whether a variance is required for the placement 21 of the tennis court within the principal setback. 22 I think that those motions have to be made. And 23 you can state, you know, obviously reasons for 24 your granting or denial, but the motion has to 25 be...</p>	<p style="text-align: right;">Page 96</p> <p>1 exception for the tennis court? 2 MS. QUIRKE-HAND: We received notice. 3 MR. CASTRO: Yes. 4 MS. ARASKOG: Okay. 5 MR. CASTRO: That's why we had them send 6 out another notice saying that it was being -- 7 they were withdrawing. 8 MS. ARASKOG: That becomes a new action 9 because they were noticed. I don't know. So, to 10 me, I'm just saying that's a new action. What I 11 worry is that the court would say, "Well, yeah, 12 how are you looking back there when you gave 13 notification for a special exception, then you 14 said it wasn't, and they appealed that?" So 15 that's where I'm concerned. 16 PRESIDENT MOORE: Okay, Mr. Crampton. 17 MR. CRAMPTON: Yeah, Paul, let me just 18 check signals here. So I thought I heard you say 19 that, unless a tennis court had lighting and was 20 built on a platform -- and I think there was one 21 other -- 22 MAYOR CONIGLIO: A rebound. 23 MR. CRAMPTON: -- had a backboard to it -- 24 MS. ARASKOG: On a structure or -- 25 MR. CRAMPTON: -- then it didn't need a</p>
<p style="text-align: right;">Page 95</p> <p>1 MS. ARASKOG: And I'm torn, so I'll let 2 somebody else make the motion. 3 MR. RANDOLPH: Well, I mean, clearly, if 4 you think that the appeal has been untimely filed 5 and you vote that way, you could stop there. I'm 6 just suggesting that, if you stop there and that 7 gets overturned, then you haven't made any 8 findings in regard to the other issues. So the 9 other issues are -- relate to the supplemental 10 parking, whether a special exception is needed for 11 that, whether a special exception is needed for 12 the tennis court and whether or not a variance is 13 needed for the -- 14 MS. QUIRKE-HAND: Skip, unless you 15 disagree, I would request three separate motions. 16 MR. RANDOLPH: Yeah. Well, it doesn't 17 matter as long as you make -- as long as we make 18 findings. And you could do it -- you could do it 19 by separate motion because it may well be that 20 there'd be a different vote in regard to the 21 supplemental parking than there would be in regard 22 to the tennis courts. 23 MS. ARASKOG: Last question: Was there 24 notification on that special exception, the one 25 when you decided that they needed a special</p>	<p style="text-align: right;">Page 97</p> <p>1 special exception; is that right? 2 MR. CASTRO: That's still my -- 3 MR. CRAMPTON: And does this court have any 4 of those? 5 MS. ARASKOG: No. 6 MR. CRAMPTON: No, all right. Second 7 thing, on parking, I thought I heard you say that 8 parking under a -- 9 MR. CASTRO: The way it literally reads, it 10 would need a special exception despite previous 11 determinations in interpretation. 12 MR. CRAMPTON: So parking would need a 13 special exception? 14 MS. ARASKOG: Yes. 15 MR. CASTRO: The way it reads. 16 MR. CRAMPTON: And the fence, which is, 17 what, 10 feet high instead of 7 feet, would that 18 need a special -- 19 MR. CASTRO: Well, the code -- 20 Unfortunately -- 21 MS. ARASKOG: 30-foot setback. 22 MR. CASTRO: A tennis court is required to 23 have a 10-foot high fence around it. 24 MR. CRAMPTON: Yeah. 25 MR. CASTRO: And a tennis court can be</p>

<p style="text-align: right;">Page 98</p> <p>1 within a required yard, except for a street front 2 or side or street rear yard, but the catch-22 is 3 you can't have the required fence unless the fence 4 meets the principal setback because it exceeds the 5 maximum height in the code. Inadvertently, that 6 change was made, which requires now the tennis 7 court, because it has to have the fence around it, 8 to have a 30-foot setback.</p> <p>9 MR. CRAMPTON: So, in your opinion --</p> <p>10 MR. CASTRO: Under the new code. Under the 11 old code, it was treated as an unenclosed 12 accessory structure, and the same language was in 13 the code about it can be in a required yard except 14 for the front. So it could be -- At that time, in 15 2017, it could have been within 10 feet of the 16 property line, but, under the new code, it cannot.</p> <p>17 MR. CRAMPTON: Gee.</p> <p>18 MS. ZEIDMAN: Oh, boy.</p> <p>19 MR. CRAMPTON: I mean, this is -- this is 20 elliptical.</p> <p>21 PRESIDENT MOORE: Okay, let's try and bring 22 it to a head. Maggie, why don't you give it a 23 shot.</p> <p>24 MS. ZEIDMAN: I'm going to give it a shot, 25 but, Mr. Hanlon, does your client believe that a</p>	<p style="text-align: right;">Page 100</p> <p>1 reads, but, in terms of previous interpretations, 2 that's not the way we interpreted --</p> <p>3 MS. ARASKOG: What would the court look at?</p> <p>4 MS. QUIRKE-HAND: The code.</p> <p>5 MS. ZEIDMAN: Let me just finish.</p> <p>6 Precedent was then that we did not interpret it in 7 -- in that light --</p> <p>8 MR. CASTRO: That's correct.</p> <p>9 MS. ZEIDMAN: -- that it required a special 10 exception?</p> <p>11 MR. CASTRO: But literally, the way it 12 reads, it reads differently.</p> <p>13 MS. ZEIDMAN: And I don't know what to do 14 with that.</p> <p>15 MR. HANLON: There are two parking areas on 16 appellants' property.</p> <p>17 MS. ARASKOG: Wait, wait. Hold on, hold 18 on.</p> <p>19 MR. HANLON: They didn't obtain a special 20 exception.</p> <p>21 MS. ARASKOG: Hold on, hold on.</p> <p>22 MS. ZEIDMAN: I don't know what you do with 23 that. You have --</p> <p>24 MS. ARASKOG: Why don't we ask Skip?</p> <p>25 MS. QUIRKE-HAND: 134-790, subsection --</p>
<p style="text-align: right;">Page 99</p> <p>1 special exception -- was your client noticed that 2 a special exception was --</p> <p>3 MS. QUIRKE-HAND: They're the applicant.</p> <p>4 MS. ZEIDMAN: I mean, whoever, did they 5 realize that there was a special exception? 6 That's the thing.</p> <p>7 MS. QUIRKE-HAND: We received notice. We 8 received notice, yeah.</p> <p>9 MS. ZEIDMAN: All right, well, here's what 10 I think: I think that that was -- Call it what 11 you would -- what you will, whether it was an 12 error in judgment. I'm not sure what you would 13 call it. Whether it was interpretation of how it 14 was written. I think that's probably what this 15 was, and it got out of hand, but it does not 16 appear that a special exception was needed for the 17 tennis court because all of this predates -- 18 predates all of that anyway.</p> <p>19 As for the parking, it would seem that, 20 from the get-go, if I understand it correctly, 21 that the supplemental parking did need -- is that 22 right, Paul?</p> <p>23 MS. ARASKOG: According to the code, it 24 did. According to the way --</p> <p>25 MR. CASTRO: According to the way the code</p>	<p style="text-align: right;">Page 101</p> <p>1 MR. CASTRO: It just depends -- It depends 2 on if it's required parking or supplemental 3 parking. So, depending on the size of that house, 4 which looks really big, at 100 Emerald Beach Way, 5 they -- that's probably all required parking. I 6 don't know.</p> <p>7 MS. QUIRKE-HAND: The special exception 8 application that's part of the record says that 9 the parking area, provide the number of off-street 10 parking spaces that are available, provide the 11 number that are required, zero. Then it has to be 12 supplemental parking. That's part of the record.</p> <p>13 MS. ARASKOG: And, see, that's the problem 14 I would ask Skip is, you know, the court is going 15 to go by the code usually, or is it going to go by 16 precedent?</p> <p>17 MR. HANLON: That's not a correct 18 interpretation of the code.</p> <p>19 MS. ARASKOG: Hold on, hold on, hold on.</p> <p>20 MR. HANLON: She's giving you the wrong 21 advice.</p> <p>22 MS. ARASKOG: It is Paul who just said 23 something about not acting -- So just give me a 24 second. So tell me, Skip, because it was actually 25 Paul who said that. Are they going to base it on</p>

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1 the code, or are they going to base it on how we
 2 follow the code, the court?

3 MR. RANDOLPH: I don't know. Based upon
 4 the argument that I heard from Paul, that's the
 5 first time I've heard Paul say that the code seems
 6 to allow it.

7 MS. ARASKOG: And that's what's concerning
 8 me.

9 MR. CASTRO: Well, there's inconsistencies
 10 as well because there's the Accessory Use section
 11 that says uses customarily accessory to the
 12 principal use are permitted, and, normally,
 13 parking is accessory to a principal use, but...

14 MS. QUIRKE-HAND: Except in this case where
 15 you can't even drive from the parking lot to the
 16 house.

17 MR. ARASKOG: So I'm just going back. Can
 18 both of you not even, just for a minute, please,
 19 because I'm just trying to talk to Paul. Paul
 20 actually stated that the code -- if you read the
 21 code by itself, it would require a special
 22 exception; however, that's not the precedent that
 23 you're following.

24 MR. CASTRO: I believe it's inconsistent
 25 because one section says it's a special exception

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1 use, and another section says uses that are
 2 customarily accessory to a principal use, and
 3 parking is customarily accessory to a principal
 4 use. So I can't explain why in 1978 they
 5 required, if you had a lot as big as the
 6 Thorntons' property, if you wanted to build one
 7 extra parking space over and above what the code
 8 required, you'd have to spend \$2,000 to file a
 9 special exception application. That makes no
 10 sense to me when you've got 70 percent landscaped
 11 over it.

12 MS. ARASKOG: But that's the law on the
 13 books.

14 MR. CASTRO: That's the way it reads.

15 MS. ARASKOG: Okay, thank you.

16 MR. CRAMPTON: Skip, will you please just
 17 lay out for us, and to help Maggie and the rest of
 18 us, what the choices are between?

19 MR. RANDOLPH: Yeah, your first decision to
 20 make, I believe, based upon Mr. Castro's
 21 testimony, is whether or not this was timely
 22 filed. Then you have to make a decision -- If you
 23 find that it's not timely filed, you could leave
 24 it at that because the appeal could be argued to
 25 be --

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1 MR. CRAMPTON: Honestly, Skip, I don't
 2 think any of us know. There's just been a whole
 3 bunch of dates thrown around there, and I don't
 4 think any of us are really clear as to what the --
 5 what the progression is.

6 MR. RANDOLPH: The progression is this --

7 MAYOR CONIGLIO: We go back to what Paul
 8 said, that his decision was August of 2017. He
 9 believes that a timely appeal should have been
 10 done when you made your administrative decision.
 11 Is that correct, Paul?

12 MR. RANDOLPH: Correct, Paul?

13 MR. CASTRO: That's -- That's correct, and,
 14 instead of appealing the way they should have to
 15 the town council in an administrative decision,
 16 they appealed straight to circuit court. So I'm
 17 not even sure why the courts would even hear that
 18 if they didn't even follow the due process portion
 19 of an appeal as it relates to our code itself,
 20 which they're following here today.

21 MS. ARASKOG: And then the other argument
 22 is that -- so there are two arguments. You argue
 23 that, because a notification went out for a
 24 special exception, and even though they withdrew
 25 it, that you had the right to appeal the

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1 withdrawal. So that's -- that's where the
 2 decision sits. Was it --

3 MR. RANDOLPH: She's not appealing the
 4 withdrawal. She's appealing Paul's decision --

5 MS. ARASKOG: I understand, but --

6 MR. RANDOLPH: -- that no special exception
 7 was needed, which is exactly the same opinion he
 8 gave in August of 2017.

9 MS. ARASKOG: It is, but he gave a
 10 different one shortly -- Okay, so he didn't say,
 11 when that notification went out, that they needed
 12 a special exception when they applied -- when they
 13 applied for one.

14 MS. QUIRKE-HAND: Yes, when we received the
 15 notification that a special exception
 16 application was going to be heard.

17 MS. ARASKOG: But I'm saying there are two
 18 things -- I'm just saying, Skip, that you could
 19 look at it either way. I don't know which way --

20 MR. RANDOLPH: Well, you've got two
 21 arguments --

22 MR. CRAMPTON: Yeah, that's right.

23 MS. ARASKOG: Go ahead.

24 MR. CRAMPTON: I think I'm seeing it here.
 25 So, with respect to the timely appeal, would that

<p style="text-align: right;">Page 106</p> <p>1 -- that appeal that was made was supposed to be 2 made to the town council; is that correct? 3 MR. RANDOLPH: Just like this one. 4 PRESIDENT MOORE: Yes. 5 MR. CRAMPTON: Yeah, but I'm talking about 6 back then. So we're dealing with the question, if 7 they didn't come to us and they basically ignored 8 the town council, when, in fact, they should have 9 followed that process, then, I mean, that's their 10 fault. 11 MR. RANDOLPH: They didn't ignore the town 12 council. 13 MS. QUIRKE-HAND: No. 14 MR. RANDOLPH: They -- 15 MR. CRAMPTON: They went to the court. 16 MR. RANDOLPH: If it's correct -- No. 17 MS. ARASKOG: No, no, no, no. 18 MR. RANDOLPH: If it's correct that Paul 19 told them in 2017 that there was no special 20 exception needed, then they should have appealed 21 that at the time. 22 MS. QUIRKE-HAND: There's no evidence in 23 the record that we received notice that there was 24 a written decision that a special exception was 25 not required in 2017. In 2017, we appealed ARCOM</p>	<p style="text-align: right;">Page 108</p> <p>1 that time. So they didn't need to get notice 2 because they filed the appeal. They were at the 3 meeting making arguments unrelated to ARCOM about 4 them needing a special exception for supplemental 5 parking and the tennis court, which wasn't under 6 the purview of ARCOM, which is some of the 7 arguments they made at ARCOM, which weren't under 8 their purview. 9 MS. QUIRKE-HAND: Those arguments were made 10 to the circuit court on a motion for rehearing by 11 both the town and the applicants, and those 12 arguments were rejected by the circuit court. The 13 court denied the motions for rehearing and issued 14 the mandate. These arguments have been made 15 before the circuit court. We did not waive them. 16 MR. CASTRO: They should have appealed the 17 administrative decision of staff as required in 18 the code, and they did not do that. 19 MR. CRAMPTON: Okay. 20 MS. ARASKOG: That was not found by the 21 court, but it wouldn't be anyway because they 22 decided not to weigh in on those two issues. 23 MS. LINDSAY: Want to do the motion that 24 way? 25 MR. CRAMPTON: I will make a motion that</p>
<p style="text-align: right;">Page 107</p> <p>1 to the town council. We made those special 2 exception arguments. We made those special 3 exception arguments at the circuit court, and the 4 circuit court did not reach those issues because 5 they -- because we prevailed on the appeal on the 6 other issue, which is that there was no competent 7 substantial evidence in the record. 8 MR. CASTRO: But they were at the meeting 9 on August 8th or 9th, 2017, when you heard their 10 appeal when they made that argument, and I made a 11 direct opinion to you on the record, public 12 hearing, public record, that they didn't need it, 13 and I gave the reasons why, and they never 14 appealed that decision. So, while -- 15 MS. QUIRKE-HAND: We've been appealing to 16 the town council, to the town council. He's 17 saying -- 18 MR. CASTRO: No, you -- They filed an 19 appeal of ARCOM's decision. They never filed an 20 appeal of staff's decision when we made that 21 decision at that public hearing, and I explained 22 why they didn't need the special exception 23 because, one, tennis courts had to be upon a 24 structure or a backboard or lighted or that the 25 supplemental parking as previously interpreted at</p>	<p style="text-align: right;">Page 109</p> <p>1 the appeal was not filed in a timely manner and 2 that, whatever procedures that lie now -- I mean, 3 it's going to court anyway. 4 MAYOR CONIGLIO: Stick with your first 5 motion. Stick with timely. 6 MR. CRAMPTON: I'm sticking with it wasn't 7 filed in a timely -- in a timely way. 8 MS. ARASKOG: But, Skip, didn't you want an 9 answer on all three? 10 MR. RANDOLPH: A denial of the appeal 11 because it was not timely filed? Is that -- 12 MR. CRAMPTON: Well, that's the way -- 13 Yeah. 14 PRESIDENT MOORE: Yes. 15 MR. CRAMPTON: Yes. 16 MS. ARASKOG: So you make a motion to deny 17 the appeal because -- There you go. 18 MS. QUIRKE-HAND: Can I get a separate 19 motion, Skip, on the special exception on the 20 variance? It's two different -- 21 MR. CASTRO: I just think you should 22 bifurcate all three appeals separately because my 23 argument about the timely appeal has to do with 24 the tennis court and supplemental parking. It has 25 not nothing to do with the variance.</p>

<p style="text-align: right;">Page 110</p> <p>1 MR. RANDOLPH: No, no. We're not talking 2 about the variance. 3 PRESIDENT MOORE: We're just talking about 4 a timely appeal here. 5 MR. CRAMPTON: That's right, and they 6 didn't. 7 MS. ARASKOG: Well -- 8 PRESIDENT MOORE: Lew, go ahead. 9 MR. CRAMPTON: Yes, I move that the appeal 10 be denied because of -- well, that the appeal be 11 denied because it was -- the original motion was 12 not filed in a timely manner. 13 MS. QUIRKE-HAND: For clarification, which 14 appeal? There is three appeals. 15 MR. CRAMPTON: You want to -- Should we go 16 to each of them? 17 MS. QUIRKE-HAND: Yeah, the facts are 18 different because the variance decision has never 19 been issued in writing. There's never been a 20 written decision that says that there's no 21 variance required. 22 MR. CASTRO: My -- 23 MS. QUIRKE-HAND: I am appealing his 24 statement on the record at ARCOM on January 23rd, 25 and that appeal was timely. He stated on the</p>	<p style="text-align: right;">Page 112</p> <p>1 says it's 30; that's why I said, well, why don't 2 you -- why don't you separate all three appeals 3 out and act on each one separately. 4 MR. CRAMPTON: Right. 5 MS. QUIRKE-HAND: Right, because Mr. 6 Castro's position is that the variance appeal is 7 timely. 8 MR. HANLON: Well, I think it's also very, 9 very important, for appeal purposes, to determine 10 what law applies to the application today. I 11 think that's the most important issue before you. 12 MR. CRAMPTON: The appeal is on all three. 13 It's on the special exceptions and the variance, 14 or is it -- 15 MS. ARASKOG: It's on the special exception 16 for the parking, special exception for the tennis 17 court and variance -- 18 MR. CRAMPTON: But Paul's administrative 19 decision only dealt with one of those three; is 20 that correct? Or did it deal with all three? 21 MR. RANDOLPH: I believe the two -- 22 MS. QUIRKE-HAND: The two special 23 exceptions. The special exception application 24 included the tennis court and the parking. 25 MR. CRAMPTON: Well, would that -- would</p>
<p style="text-align: right;">Page 111</p> <p>1 record -- 2 MR. RANDOLPH: Are you appealing his 3 decision that no -- 4 MS. QUIRKE-HAND: There's two papers: The 5 special exception, which relates to the 6 November/December decision, the, yes, there's a 7 special exception; no, there's not a special 8 exception. That is the special exception appeal 9 related to both the tennis court and the parking 10 lot. Then there's a second appeal that's on the 11 agenda that is a variance should be required for 12 location of the tennis court within the principal 13 setback. That appeal was filed after his 14 statement on the record at ARCOM January 23rd that 15 a variance wouldn't be required. 16 MR. CASTRO: I believe that portion is 17 timely. 18 MS. QUIRKE-HAND: Thank you. 19 PRESIDENT MOORE: Okay. Mr. Crampton. 20 MR. CRAMPTON: So which is was the one -- 21 MR. CASTRO: Because the code changed in 22 2018, so, when this came back, okay, the code had 23 changed, and I made a decision at that time that 24 it should have gone under the old code which only 25 required a 10-foot setback when the code today</p>	<p style="text-align: right;">Page 113</p> <p>1 that kill the whole -- the whole deal? 2 MS. ARASKOG: No. 3 MAYOR CONIGLIO: No. Keep going. 4 MR. CRAMPTON: Well, then we have to go to 5 the other, all right. So -- All right, so I would 6 move that the -- that the appeal be denied because 7 of the appeal to -- because the appeal for the two 8 special exception items was not timely with 9 respect to the timing of Paul's decision -- Paul's 10 administrative decision made at the time. It was 11 not filed in a timely manner. 12 MAYOR CONIGLIO: Do we have a second? 13 PRESIDENT MOORE: All right, I'll give you 14 -- I'll give you your second, Lew. 15 MR. CRAMPTON: Thanks. 16 THE CLERK: Mr. Crampton? 17 MR. CRAMPTON: Aye. 18 THE CLERK: Ms. Moore? 19 MS. MOORE: Yes. 20 THE CLERK: Ms. Araskog? 21 MS. ARASKOG: No. 22 THE CLERK: Ms. Lindsay? 23 MS. LINDSAY: I have a question. Do we 24 need to say which law we are applying? 25 MS. ARASKOG: That will come next. That's</p>

<p style="text-align: right;">Page 114</p> <p>1 a separate issue.</p> <p>2 MS. LINDSAY: Okay, yes.</p> <p>3 THE CLERK: Ms. Zeidman.</p> <p>4 MS. ZEIDMAN: I have a question. Paul, did</p> <p>5 you just say to us that it was done in a timely</p> <p>6 manner? Did I hear you say that?</p> <p>7 MR. CASTRO: I do not believe that the</p> <p>8 appeals for the supplemental parking or the tennis</p> <p>9 court were timely.</p> <p>10 MS. ZEIDMAN: Okay. Yes.</p> <p>11 PRESIDENT MOORE: Okay. Now, we need --</p> <p>12 MS. ARASKOG: Want to take a stab at the</p> <p>13 next one, Lew?</p> <p>14 MAYOR CONIGLIO: Well, that's the variance.</p> <p>15 PRESIDENT MOORE: That's the variance, so I</p> <p>16 guess your question, Lew, is --</p> <p>17 MR. CRAMPTON: No, the variance was with</p> <p>18 respect to the --</p> <p>19 MS. ARASKOG: New laws.</p> <p>20 MR. CRAMPTON: -- fence, right.</p> <p>21 MR. RANDOLPH: They're appealing your</p> <p>22 decision, Paul, that a variance was not needed</p> <p>23 because of the old law?</p> <p>24 MR. CASTRO: That we were looking at it</p> <p>25 from the perspective of when they originally came</p>	<p style="text-align: right;">Page 116</p> <p>1 the time they originally came in and before it was</p> <p>2 appealed.</p> <p>3 MR. CRAMPTON: For the fence?</p> <p>4 MR. CASTRO: For the fence.</p> <p>5 MS. ARASKOG: The positioning of the fence.</p> <p>6 It's whether it can be within the easement, the</p> <p>7 side yard setback or not.</p> <p>8 MS. QUIRKE-HAND: The fence and the tennis</p> <p>9 court.</p> <p>10 MS. LINDSAY: Isn't this one about which</p> <p>11 law we're going to apply?</p> <p>12 MS. ARASKOG: Yes, it is. And can I ask --</p> <p>13 can I ask the attorney a question on her -- How</p> <p>14 did you apply the law to the case that you cited</p> <p>15 where they forced them to take it down?</p> <p>16 MS. QUIRKE-HAND: Pinecrest Lakes vs.</p> <p>17 Shidel, they issued a building permit during the</p> <p>18 pendency of an appeal. They constructed a big</p> <p>19 residential project, and the court issued an order</p> <p>20 to rip it down because they said, look, when you</p> <p>21 get a building permit during the pendency of an</p> <p>22 appeal, you proceed at your own risk. If we --</p> <p>23 You know, if we were to allow somebody to use that</p> <p>24 as an estoppel argument, then appeals would be</p> <p>25 totally meaningless and our circuit courts would</p>
<p style="text-align: right;">Page 115</p> <p>1 in and filed for ARCOM and got approval and got</p> <p>2 appealed, went to council, and it was over -- it</p> <p>3 was not overturned, and then they filed for the</p> <p>4 permit and were issued the permit in October, and</p> <p>5 it was quashed almost a year later. So we've had</p> <p>6 -- In between those times, the code changed, and</p> <p>7 we did not feel that it was fair and equitable to</p> <p>8 make them now go back, even though they proceeded</p> <p>9 at their own risk, and try to obtain a variance</p> <p>10 based upon a criteria in the code to keep the</p> <p>11 tennis court where they pulled the permit or where</p> <p>12 it was originally approved by ARCOM but then</p> <p>13 quashed.</p> <p>14 MR. CRAMPTON: Well, you did say, Paul --</p> <p>15 MS. ARASKOG: I have a question for the</p> <p>16 attorney.</p> <p>17 MR. CRAMPTON: -- that the variance -- that</p> <p>18 the fence, you felt, was -- was a timely appeal?</p> <p>19 MR. CASTRO: Well, yes, because the code</p> <p>20 change happened in 2018, and, when they came back</p> <p>21 in and filed, and then, from the standpoint of</p> <p>22 asking for the variance for the side yard setback,</p> <p>23 I had testified in front of the ARCOM before they</p> <p>24 deferred it that, you know, the code had changed,</p> <p>25 but I still felt that they came under the code at</p>	<p style="text-align: right;">Page 117</p> <p>1 be without that jurisdiction.</p> <p>2 MR. HANLON: But demolition of the</p> <p>3 structures has nothing to do with the applicable</p> <p>4 law, and the state law in Florida, as stated in</p> <p>5 State Farm vs. LaForet and Young vs. Altenhaus</p> <p>6 says that any new laws have to be applied</p> <p>7 prospectively and not retroactively, and that's</p> <p>8 really the caselaw that you need to listen to</p> <p>9 today. That really controls the issue, not on</p> <p>10 demolition. We have much more caselaw to support</p> <p>11 that issue, too, but those are two Florida Supreme</p> <p>12 Court cases that specifically apply that</p> <p>13 principle, that legal principle.</p> <p>14 PRESIDENT MOORE: Mayor.</p> <p>15 MAYOR CONIGLIO: That would be the way I</p> <p>16 understand it, that the variance that they filed a</p> <p>17 qualified appeal on --</p> <p>18 MR. HANLON: Timely.</p> <p>19 MAYOR CONIGLIO: -- a timely appeal on was</p> <p>20 based on the new law, but, if you look at it from</p> <p>21 the August 2017 application, whether they built it</p> <p>22 or not, if they came back to apply now, they would</p> <p>23 go by that ruling.</p> <p>24 MS. LINDSAY: By the old law.</p> <p>25 MS. ARASKOG: If they waited.</p>

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1 MAYOR CONIGLIO: Right.

2 MS. QUIRKE-HAND: 18-203 of the code is so

3 clear, I don't think you can get around it. It

4 says, if the -- if the building permit expires or

5 is void, you have got to create it as a new

6 project. 18-203 is unambiguous.

7 MR. HANLON: I think you heard Skip's

8 advice earlier on what his initial reaction was

9 when the appeals court remanded it, the same cause

10 for further findings.

11 MR. RANDOLPH: It says, in the event such

12 approval becomes void, an application for approval

13 shall be required in the same form and manner as

14 if submitted as a new project.

15 MS. ARASKOG: Ouch.

16 MR. RANDOLPH: And my initial reaction,

17 when we first started out with this, before there

18 was any discussion about a special exception, was

19 that the applicant was going to have to come back,

20 based upon the court's mandate, based upon the law

21 at the time, and make findings in regard to the

22 application that was made, the application that

23 the court ruled on. There's argument --

24 MR. HANLON: Well, appellant is only

25 speaking about the building permit, not the

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1 application. We're here to determine the

2 application and its merits, what law applies to

3 the application. Well, the court told us. You

4 know, go back, take said cause back to the ARCOM

5 for further findings.

6 MS. QUIRKE-HAND: The court did not say

7 that you have to travel under the old code.

8 18-203 cannot be ignored.

9 MR. RANDOLPH: Well, that's going to be an

10 issue on appeal.

11 MS. ARASKOG: Yes, it will be.

12 MR. CRAMPTON: I'm going to make a motion

13 that basically I move that this particular case

14 does go back to ARCOM, and that ARCOM --

15 MS. ARASKOG: No, no, no.

16 MR. CRAMPTON: I can't do that?

17 MS. ARASKOG: No.

18 MAYOR CONIGLIO: Because they don't -- they

19 don't --

20 MS. QUIRKE-HAND: We already have to go

21 back to ARCOM.

22 MR. CRAMPTON: Oh, great. Have a good

23 time.

24 MS. ARASKOG: You're deciding whether the

25 old law or the new law applies for the variance.

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1 We're talking about the variance. Does the old

2 law, or the new law apply?

3 MR. HANLON: For everything.

4 MS. QUIRKE-HAND: If you listen to Logan

5 Elliott's comments on the record, it was a

6 clarification. It's not a new law.

7 PRESIDENT MOORE: Lew, go ahead.

8 MR. CASTRO: He was wrong.

9 MR. RANDOLPH: What's in front of you now

10 is her appeal from Paul's decision that you do not

11 need a variance, correct?

12 MS. QUIRKE-HAND: That's correct.

13 MS. ARASKOG: Yes.

14 MR. RANDOLPH: That's before you now. So

15 you should rule on that and state the reasons why

16 you're ruling the way you are.

17 MR. CRAMPTON: Well, I think we would want

18 to uphold Paul's decision.

19 MS. ARASKOG: Maggie, do you want to do it?

20 You look like you're ready.

21 MS. ZEIDMAN: Well, I'm thinking -- This

22 might -- See if this is where you were going, Lew,

23 that -- I'm of the opinion, though it seems very

24 divided, that this would have been based on the

25 old law, which was before January 23rd, 2018. And

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1 so, therefore, it would be --

2 MS. ARASKOG: That no variance would be

3 needed.

4 MS. ZEIDMAN: -- no variance needed.

5 Exactly.

6 PRESIDENT MOORE: No variance required.

7 MS. ZEIDMAN: Thank you.

8 MR. HANLON: Denying the appeal.

9 MR. RANDOLPH: That would be denying --

10 denying the appeal from Paul Castro's decision

11 that a variance is not needed based upon what you

12 have just stated, that the -- it did not need a

13 variance under the old law --

14 MS. ZEIDMAN: Right.

15 MR. RANDOLPH: -- and, therefore --

16 MS. ZEIDMAN: And that that law applies in

17 this case.

18 MR. RANDOLPH: Okay. And, therefore, the

19 appeal is denied.

20 MS. ZEIDMAN: Right.

21 PRESIDENT MOORE: Is there a second to

22 Maggie's motion?

23 MR. CRAMPTON: Second.

24 THE CLERK: Ms. Zeidman.

25 MS. ZEIDMAN: Go ahead.

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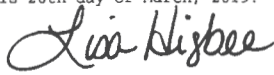
1 MS. LINDSAY: Just discussion. Mr. Hanlon,
2 and you're saying there's lots of Supreme Court
3 case law to support that; is that correct?
4 MR. HANLON: Yes, yes, the two cases I
5 cited, and I have -- I have several others, but
6 the Young case, the State Farm -- Young is 472
7 So.2d 1152, State Farm, 658 So.2d 55; Gupton case,
8 656 So.2d 475. That's the First DCA.
9 MS. ARASKOG: What's the application?
10 MR. HANLON: Pardon?
11 MS. ARASKOG: Can you just give me the
12 application of the law?
13 MR. HANLON: Sure. It's that any new laws
14 are applied prospectively and not retroactively.
15 MS. ARASKOG: Okay.
16 PRESIDENT MOORE: There's a motion and a
17 second.
18 THE CLERK: Ms. Zeidman.
19 MS. ZEIDMAN: Yes.
20 THE CLERK: Mr. Crampton.
21 MR. CRAMPTON: Aye.
22 THE CLERK: Ms. Araskog.
23 MS. ARASKOG: If I ruled the first way on
24 the first one, I think I have to say no, right?
25 MR. RANDOLPH: Not necessarily.

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1 MS. ARASKOG: Okay, so yes. Yes.
2 THE CLERK: Ms. Lindsay.
3 MS. LINDSAY: Yes.
4 THE CLERK: Ms. Moore.
5 PRESIDENT MOORE: Yes.
6 MS. ARASKOG: Can we take a two-minute
7 break, please?
8 PRESIDENT MOORE: Yep.
9 MR. HANLON: Thank you all for your
10 patience.
11 (Proceedings concluded at 9:06 p.m.)
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CERTIFICATE

1
2
3 STATE OF FLORIDA
4 COUNTY OF PALM BEACH
5
6
7 I, Lisa Higbee, Court Reporter, certify
8 that I was authorized to and did stenographically
9 report the foregoing proceedings and that the
10 transcript is a true and complete record of my
11 stenographic notes.
12
13 Dated this 26th day of March, 2019.
14 
15
16 Lisa Higbee, RPR, RMR
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TOWN OF PALM BEACH

Information for Town Council Meeting on: March 19, 2019

To: Mayor and Town Council

From: Josh Martin, Director of Planning, Zoning and Building

Re: Administrative Appeals relative to the Tennis Courts, Supplemental Parking and Required 10-Foot High Tennis Court Perimeter Fencing on the Lot at 1236 South Ocean Boulevard

Date: March 8, 2019

STAFF RECOMMENDATION

Staff recommends that the Town Council uphold Staff's administrative decisions on both appeals.

GENERAL INFORMATION

On December 28, 2018 and January 24, 2019, Amanda Quirke Hand, attorney representing 100 Emerald Beach, LLC, filed appeals of three administrative decisions related to the tennis court, supplemental parking and the tennis court fence located at 1236 South Ocean Boulevard (copies attached). The appeals are summarized as follows:

1. Staff's determination that the property owner of the approved tennis court at 1236 South Ocean Boulevard did not need a special exception with site plan review approval from the Town Council. The property owner erroneously filed a special exception application for the tennis court, and the Zoning Administrator determined the special exception was not required and allowed the applicant to withdraw the zoning application.
2. Staff's determination that the approved supplemental parking did not need a special exception with site plan review approval for supplemental parking; and
3. Staff's determination that 100 Emerald Beach, LLC, does not need a variance to have the required 10 foot high perimeter fence around the tennis court 30 feet from the side property line in lieu of the 10 foot previously approved.

Staff's justifications for each of the determinations above are as follows:

1. The only time a tennis court is required to obtain a special exception with site plan review based on Section 134-1759(d)(g)&(e) of the Code is if the tennis court has a backboard or rebound wall; is built upon a structure or is lighted. The Code reads as follows:

Sec. 134-1759. Tennis, shuffleboard and racquetball courts.

(a)...

....

- (d) The construction of any facility involving **the use of a ball backboard or rebound wall in any district of the town shall be subject to an application for special exception as specified in section 134-227 through section 134-233.**

- (e) The construction of **any tennis court, shuffleboard court or similar use upon any structure in the town shall be subject to an application for special exception as specified in section 134-227 through section 134-233.**
 - ...
 - (g) The **town council may permit, as a special exception with site plan review, minimal state of the art night lighting** from 9:00 a.m. to 9:00 p.m. for tennis, shuffleboard and racquetball courts, provided that the applicant shall demonstrate to the town council that the light and noise created by the tennis court, shuffleboard or racquetball court will be adequately mitigated as it relates to adjacent residential structures and vehicular right-of-way. All tennis, shuffleboard and croquet court lighting shall be equipped with a locked, light timer switch to ensure that the lighting will be controlled to operate only within the hours established in this subsection.
2. The Town has never required supplemental parking for a single-family home on the same lot to obtain special exception with site plan review approval; this interpretation is at least 25 years old. The subject property is in the R-AA zoning district. While Section 134-790(7) states "Supplemental parking, allowed only in a manner consistent with the zoning district in which it is located" is a special exception use, staff has for at least 25 years interpreted that to be for a principal use on a property. An example of supplemental parking as a special exception would be if a property owner bought a piece of property across the street from the main house, and pursued approval to build only supplemental parking on that residential lot for the use of the main property. Almost every single-family home in the Town has supplemental parking on the lot. The Town has never required special exception for that parking based on this language.

In 2017, when the appellant appealed ARCOM's approval regarding the tennis court to the Town Council, they argued at that time on the public record that the property owner needed a special exception for supplemental parking. Staff stated that their long standing interpretation has been that the supplemental parking, which was required to obtain special exception approval, is only for a principal use on a property; this interpretation/decision was not appealed.

3. The approved tennis court, supplemental parking and its required ten-foot high perimeter fencing was reviewed by the Zoning Administrator in 2017, prior to the approval by ARCOM (B-0046-2017, approved June 29, 2017). At that time, Section 134-1759(a) & (b) (copy attached) allowed tennis courts and the required 10-foot high perimeter fence to be within required side and rear yards. Staff had a long-standing interpretation, however, that the tennis court fence had to meet the minimum setback requirement of an unenclosed accessory structure (10-foot setback).

After an unsuccessful appeal to Town Council of ARCOM's approval, a building permit was issued on October 2, 2017, for among other items, the tennis court. The permit was based on the 2017 Zoning Code provisions for tennis courts. As construction was ongoing, the appellant appealed ARCOM's decision to circuit court, which eventually remanded the case back to ARCOM for reconsideration. Also between the building permit issuance and court judgement to remand the case back to the ARCOM, the Code requirements for the tennis court fencing changed (May 12, 2018). The new Code changes provided inconsistencies and setback changes for tennis courts.

The new Section 134-1759(b) states that

"Tennis courts or shuffleboard courts and similar accessory uses, not enclosed by a structure, may be constructed within yard areas, except the required front yard, required street side yard and required street rear yard as prescribed by this chapter.

However, based on the new code provision below, a tennis court can never be within a yard area because the required 10-foot tall fence, which exceeds the maximum height of seven feet based on Sections 134-1666 through 134-1670 of the Code, has to have the same setback as the principal structure, which in this case is 30 feet.

“Tennis courts shall include as an integral part of the construction thereof proper fence or wall enclosures contiguous to the court. Such fence or wall enclosures are to be at least ten feet in height. **Said fence or wall enclosure shall be out of the required principal structure setback if said enclosure exceeds the maximum height allowed in section 134-1666 through 134-1670 of the Code.** Where visible from adjacent properties or the public or private street right-of-way, tennis courts shall be screened with plantings at least the same height as the tennis court fence.”

The tennis court, supplemental parking and required tennis court perimeter fence were reviewed for zoning compliance by Town staff, approved by ARCOM, and the tennis court and supplemental parking issued a building permit in 2017. The tennis court and supplemental parking on the lot does not need a special exception, and the perimeter fence is grandfathered as a required part of the tennis court and does not need a variance. To bring up new arguments and appeals after the fact that building permits have been issued, and the tennis court built, is unfair and is an estoppel issue.

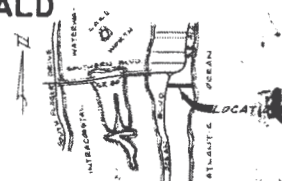
In closing, staff would like to point out that each of these appeals should have been filed within thirty days of either the ARCOM, Staff approval or building permits issued in 2017. Therefore, staff does not believe they met the intent of Section 134-145 for timely filing an appeal of these administrative decisions which were made at that time. Nevertheless, even if timely filed, the appeals should be denied based on the facts and arguments set forth above.

cc: Kirk Blouin, Town Manager
Jay Boodheshwar, Deputy Town Manager
zf & pf

E

IN GOVERNMENT LOT 1, SECTION 2, TWP. 44 S., RGE. 43 E.
BEING A REPLAT OF THE REPLAT OF THE EMERALD
RECORDED IN PLAT BOOK 43, PAGE 17
PALM BEACH COUNTY, FLORIDA
TOWN OF PALM BEACH
IN 1 SHEET - SHEET NO. 1

177



LOCATION MAP
NOT TO SCALE

Figure 1. Schematic diagram of the experimental setup. The subject is seated at a table, viewing a video screen. The screen displays a horizontal line with a central point and two points on either side, labeled 1, 2, and 3. The subject is instructed to move the hand to the point labeled 1.

TITLE CERTIFYING
STATE OF FLORIDA
COUNTY OF PALM BEACH

Very truly yours,

 [Signature]

NOTES

SURVEYOR'S CERTIFICATION

7 hereby certify that the plot above shown is a true and correct representation of a survey made under my responsible direction and supervision and that said survey is accurate to the best of my knowledge and belief; and that (P.C. 94). Permanent Reference Monument have been placed as required by law and that (P.C. 94) Permanent Control Points will be set under the same system as noted on page 27.

(Seal) _____
F.S.N. 200808

120 DECEMBER 6th, 1952 to Peter

This instrument was prepared by Peirce, F. Kyle in the office of Robert E. Dyer and Associates, Inc., Engineers and Planners, 2200 Florida Avenue Road, West Palm Beach, Florida.

DESCRIPTION

All the Plat of THE WHEELS, according to the Plat thereof on file in the Office of the Clerk of the Circuit Court, in and for Palm Beach County, Florida, in Plat Book #1, Page 17

[illegible][illegible]

AL'S REAPPLYMENT

STATE OF FLORIDA
COUNTY OF PALM BEACH

before as personally appeared, personally known, and known to exist in and was executed (signed and attested to fact for) before me, Notaries Corporation, on

WITNESSED by agent and official each then DOX
 Day of Dec-26, 1988.


 Holly C. Taylor


 Attorney L. Paul

bioRxiv preprint doi: <https://doi.org/10.1101/2019.04.10.332824>; this version posted April 10, 2019. The copyright holder for this preprint (which was not certified by peer review) is the author/funder, who has granted bioRxiv a license to display the preprint in perpetuity. It is made available under aCC-BY-NC-ND 4.0 International license.

My Commission expires

Field Book	Page	ROBERT E. OWEN & ASSOCIATES, INC.	Job No.	82-1040
Design	P. KRICK	CONCRETE - PLUMBING - SHOOTING	Date	AS SHOWN
Drawn	M. SIKORA	WEST PALM BEACH	Date	JULY, 1988
Checked		FLORIDA	Sheet	
			of	
		IN 1 SHEET - SHEET NO. 1	File	8F-2245-C

F

TOWN OF PALM BEACH

Planning & Zoning Commission

Martin Klein, Chair

Lewis Crampton, Vice Chair

Alan Goldboro, Member

Kenneth Walker, Member

Carol LeCates, Member

Rick Pollack, Member

Michael Spaziani, Alternate Member

Ronald Berk, Alternate Member

LOCATION: 360 South County Road,
Palm Beach, Florida

Date: Tuesday, November 28, 2017

TIME: 9:30 a.m.

1 (Thereupon, the following proceedings were had on
2 Agenda Item VI; Consideration of State Proposed Zoning
3 Text Amendments Deferred from the October 17th
4 Commission Meeting:

5 VI C - Zoning Item 10. Tennis Court
6 Regulations.)

7 MR. ELLIOT: Good morning. Logan Elliot,
8 Zoning Technician. I'll be presenting Agenda Item
9 VI C and VI D. I will begin with VI C which was
10 deferred from last month's meeting. It's on Item
11 10, Tennis Court Regulations.

12 So apparently the Code has three paragraph
13 styled regulations for tennis courts and what staff
14 has found is that when people read through these
15 three paragraphs, they walk away saying I have no
16 idea what's required for tennis courts. So what
17 we've done is broken it down into kind of a
18 checklist-style, bullet point-style list of the
19 regulations for the Code.

20 The only real decision making that was done in
21 this process was there was some conflicting Code.
22 requirements in these three paragraphs. One
23 required that fences that are required to be
24 contiguous to the tennis court be ten to twelve
25 feet and another provision required them to be a

1 ten-foot minimum. What we've included today in the
2 (inaudible) review is just the ten-foot minimum and
3 staff doesn't see any merits of requiring them to
4 be limited to twelve-feet. So we've presented to
5 you a ten-foot minimum.

6 And the other decision was there was a
7 provision that said night lighting is prohibited,
8 period, and then in another paragraph it was
9 included that night lighting could be approved by
10 the Town Council as a special exception. I went
11 back to the last tennis courts ordinance, which was
12 done in 1997, and the special exception was
13 included then, which was the most recent
14 modification to the Code. So I think it was
15 intended to have the night lighting be included as
16 a special exception, and the prohibited sentence
17 probably should have been removed at that point.

18 So basically, we're just breaking down the
19 paragraphs and the checklist and we made those two
20 slight modifications.

21 MS. LECATES: I have a question. What is the
22 justification for not including it in lot coverage?
23 What if you were to have a hard surface, for
24 instance?

25 MR. ELLIOT: Well the lot coverage is just

1 counting the coverage of the lot by structure. If
2 you included the tennis court in structure than
3 that would reduce your (inaudible) potential for
4 the home or for any guest houses. The tennis
5 courts are not included in the landscaped open
6 space calculations.

7 MS. LECATES: So is it distinct from curbing's
8 coverage, is that what you're saying? Or do we not
9 have any curbing's coverage --

10 MR. ELLIOT: -- it's basically treated the
11 same as any hardscape or the driveway or any pool
12 deck. It doesn't count as landscaped open space
13 but it also doesn't count as lot coverage.

14 UNIDENTIFIED MALE SPEAKER: Even if it's a
15 grass court it does not count in landscaped open
16 space.

17 MR. ELLIOT: So you have to have --

18 MS. LECATES: -- right but there's a
19 difference between having something that is
20 impervious and something that can drain.

21 UNIDENTIFIED MALE SPEAKER: Well they still
22 have to meet their landscaped open space
23 requirements and their two-inch storm water
24 retention.

25 MS. LECATES: Okay. So it is sort of

1 encompassed?

2 UNIDENTIFIED MALE SPEAKER: Yes, I mean it
3 penalizes them --

4 MS. LECATES: -- okay, okay --

5 UNIDENTIFIED MALE SPEAKER: -- from having a
6 deck somewhere else because the tennis court
7 counts--

8 MS. LECATES: -- okay, okay.

9 CHAIRMAN: Michael?

10 MR. SPAZIANI: My main concern is if you have
11 these lights going on, I think we need a time
12 limit, so that people aren't up at 2:00 o'clock,
13 3:00 o'clock in the morning playing tennis. I
14 really think we need to regulate the time that
15 somebody can go out there and play tennis.

16 MR. ELLIOT: If you look at Item G --

17 MR. SPAZIANI: -- okay, gotcha --

18 MR. ELLIOT: -- proposed 9:00 a.m. to 9:00
19 p.m. --

20 MR. SPAZIANI: -- okay, perfect. That's what
21 I thought so I just had to --

22 MR. KLEIN: -- I mean, I think this is just
23 long overdue. If you look at the first page, one,
24 two three, lines or sections that refer to that, I
25 mean, you'd have to spend an hour just flipping

1 through the sections --

2 MR. ELLIOT: -- they're really not --

3 MR. KLEIN: -- for clarification, I mean
4 correct me if I'm wrong, but is there any
5 substantive change or is this (inaudible)?

6 MR. ELLIOT: No, I mean the only decision that
7 we really made is what I mentioned about the ten to
8 twelve feet and the special exception. Otherwise,
9 we just separated out the sentences.

10 MR. KLEIN: Okay. Motion has been made and
11 second to approve. All in favor say aye? Opposed?
12 Motion carries. Thank you.

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COURT REPORTER CERTIFICATE

STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

I, CATHY J. RUNDELL MURPHY, Reporter and
Notary Public for the State of Florida at Large,
certify that I was authorized to and did
stenographically report the foregoing EXCERPT of
the proceedings and that the transcript is a true
and complete record of my stenographic notes.

DATED this 19th day of March, 2019.

_____/S/_____
CATHY J. RUNDELL MURPHY
Notary Public, Florida
Commission #GG147128
Expires: October 31, 2021



**PLANNING AND ZONING COMMISSION
MINUTES
TUESDAY, NOVEMBER 28, 2017, 9:30 a.m.**

Please be advised that in keeping with a recent directive from the Town Council, the minutes of all Town Boards and Commissions will be "abbreviated" in style. Persons interested in listening to the meeting, after the fact, may access the audio of that item via the Town's website at www.townofpalmbeach.com or may obtain an audio recording of the meeting by contacting Kelly Churney, Secretary to the Planning & Zoning Commission at (561) 227-6408.

I. CALL TO ORDER AND ROLL CALL

Chair Klein called the meeting to order at 9:30 a.m.

Martin I. Klein, Chair	PRESENT
Lewis Crampton, Vice Chair	PRESENT
Alan S. Golboro, Member	PRESENT
Michael Ainslie, Member	ABSENT (excused)
Kenneth Walker, Member	PRESENT
Carol LeCates, Member	PRESENT
Rick Pollock, Member	PRESENT
Michael Spaziani, Alternate Member	PRESENT
Eric Christu, Alternate Member	PRESENT (left at 10:49 a.m.)
Ronald Berk, Alternate Member	PRESENT

Staff Members present were:

John Page, Director of Planning, Zoning & Building
Paul Castro, Zoning Administrator
Logan Elliott, Zoning Technician
Kelly Churney, Secretary to the Planning and Zoning Commission
Bill Bucklew, Building Official

Mr. Klein noted that Mr. Spaziani would be voting in the absence of Mr. Ainslie.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

Ms. Churney led the Commission with the Invocation and the Pledge of Allegiance.

III. APPROVAL OF THE AGENDA

Chair Klein welcomed all in attendance at the meeting.

Motion made by Mr. Crampton and seconded by Mr. Pollock to approve the agenda as presented. Motion carried with all in favor.

IV. APPROVAL OF OCTOBER 17, 2017 PLANNING AND ZONING COMMISSION MINUTES

Ms. LeCates suggested a change to the minutes regarding outdoor events in the C-PC district. Mr. Crampton stated his opinion on the conversation regarding this topic. Chairman Klein asked if the item could be addressed with Mr. Page during the break. After the break, the following motion was made to approve the minutes.

Motion made by Mr. Golboro and seconded by Mr. Crampton to approve the minutes from the October 17, 2017 meeting. Motion carried with all in favor.

V. COMMUNICATIONS FROM CITIZENS – 3 MINUTE LIMIT PLEASE

There were no citizens' comments at this time.

VI. CONSIDERATION OF STAFF PROPOSED ZONING TEXT AMENDMENTS DEFERRED FROM THE OCTOBER 17TH COMMISSION MEETING:

A. DAVID FRISBIE COMMUNICATION REGARDING MINIMUM FLOOD ELEVATION REQUIREMENTS AND WINDLOAD REQUIREMENTS FOR CONSTRUCTION

Mr. Page reviewed an email sent to the Town from David Frisbie regarding the global warming effects on our environment. Mr. Page stated he forwarded the email to the Town Council members and subsequently, they asked that the Planning and Zoning Commission review the issues. He stated there were no necessary actions to take after the presentation. Mr. Page also added that Bill Bucklew, Building Official for the Town, was present for the discussion. He also added that he is a certified floodplain manager.

Robert Frisbie, Jr. and Cody Crowell lead a presentation regarding climate changes, which they believe threaten the survivability of the Town. The focus of their presentation touched on sustainability, adapting to the twenty-first century and revenue generation. They urged for changes in the code to address the climate changes.

Rajiv Krishnan and Casey Ogden, Coastal Risk Consulting, discussed extreme weather and climate events that could affect Palm Beach's future.

Mary Galbicka, Celedinas Insurance, addressed the rising costs of insurance and things that can be done to mitigate the costs.

Mr. Page thanked the Frisbie family and stated that Mr. Bucklew could speak regarding elevating current building codes to address environmental changes.

Mr. Crampton stated that he is the chair of the sustainability committee for West Palm Beach and discussed how they address these issues. Mr. Crampton thought a recommendation to the Town Council to set up a similar committee here in the Town would be the next step.

Mr. Spaziani discussed the difference between wave height and storm surge during a storm. He recommended metal retaining walls next to the beach. He stated he supports LEEDs asked the Frisbie family what they are doing to lower their carbon footprint. Mr. Frisbie responded. Mr. Spaziani suggested that the Tesla Corporation make a presentation to the Town regarding their new solar roofing solutions.

Mr. Pollock asked the Frisbies where they are being prevented from progressing due to the current zoning code. Mr. Frisbie responded and Mr. Crowell suggested looking at the new floodplains on a street by street basis, rather than broad based.

Mr. Krishnan stated that FEMA flood maps are based on historical data and are not forward thinking.

Mr. Page suggested that Mr. Bucklew inform the Commission of what rules and regulations are currently in place for the Town.

Mr. Bucklew addressed the Commission and told them about an ongoing coastal study being performed by FEMA and the stringent requirements for barrier islands, such as the Town, that are in place in the Code today.

Mr. Pollock asked the Frisbie family if there was any questions that they wanted the Commission to answer. Mr. Crowell stated there were not any questions they needed addressed but stated they would like to collaborate with the Town for its future.

Mr. Frisbie suggested the possibility of a committee or subcommittee, to look at the current code with a comprehensive perspective for the future.

Mr. Golboro asked to receive a copy of the presentation for his review. He also suggested that the Commission develop a list of items for discussion and research to present to the Town Council for their approval.

Mr. Walker was appreciative to the Frisbie family and hoped that the Town would be in support of changes for the future.

Ms. LeCates was in favor of a task force or a committee that could rewrite changes to the Code.

Mr. Christu was complimentary to Frisbies and thought there needs to be a comprehensive review of the Code.

Mr. Page discussed the issue of building heights in Palm Beach. He added that this topic had been a popular topic at many ARCOM meetings. Mr. Page stated he would like to relay the items discussed to the Town Council.

Mr. Berk was appreciative to the Frisbie family and suggested that changes often occur and therefore the Code needs to stay fresh. Mr. Berk submitted that direction from the Town Council was needed.

Ms. LeCates asked if there was anything to prevent a group of citizens from gathering and discussing these issues. Mr. Page responded.

Mr. Golboro asked if the State of Florida would be requiring different building heights at the beginning of the New Year. Mr. Bucklew responded.

Mr. Pollock inquired about the current base flood elevations. Mr. Bucklew responded and explained NGVD and NAVD.

Mr. Crampton stated he would like copy of the presentation. Mr. Crampton thought that focusing on just the Code was too narrow of an approach and suggested phasing in changes over time. He added that a comprehensive approach was the best tactic and that directive should come from the Town Council.

Mr. Klein thanked the Frisbie family for the presentation. He indicated that the Code could be improved and brought up to date. He asked the Frisbie family to return with suggestions that the Commission could deliberate and pass along to the Town Council.

Mr. Page requested that Mr. Frisbie and Mr. Crowell email him the presentation so that he could forward it to the Town Council and the Planning and Zoning Commission.

A short break was taken at 10:49 a.m. The meeting resumed at 11:04 a.m.

B. ZONING ITEM 5. CONSTRUCTION RELATED PARKING AT PRIVATE CLUBS

Mr. Castro reintroduced zoning item number five since the item was deferred in October. Mr. Castro explained the proposal regarding creating a Code provision, which would allow for construction parking at private clubs in residential zoning districts in the Town. Mr. Castro proposed new language, which would add this type of parking as an accessory use to a private club for projects only in the Town of Palm Beach. Mr. Castro reviewed how this would apply to some of the private clubs on the island.

Mr. Golboro suggested that this provision should apply for passenger vehicles and trucks under certain weight limits. Mr. Castro responded.

Mr. Klein asked about the genesis of this discussion. Mr. Castro stated that the direction of this conversation came from the Town Manager's office and the issues that have arisen with construction parking.

Mr. Spaziani asked if the clubs on the island had been contacted about this possibility. Mr. Page responded and stated only one club was not interested.

Mr. Pollock asked if it was necessary to define the calendar days when this would be applicable. Mr. Castro stated he would add a limitation similar to "out of season" before this is presented to the Town Council.

Motion made by Mr. Golboro and seconded by Mr. Crampton to approve the proposed changes as modified to include Mr. Castro's proposed changes. Motion carried with all in favor.

Mr. Castro stated he would send the modified language to Mr. Klein before it was presented to the Town Council.

C. SOLAR PANEL REGULATIONS

Mr. Castro introduced the item to the Commission and reviewed the solar panel regulations that are currently allowable. Mr. Castro stated that the Town Council had asked the Commission to readdress this item since the technology has significantly changed.

Mr. Golboro suggested that the Architectural Review Commission approve any proposed solar panels since they are the professionals. Ms. LeCates agreed with Mr. Golboro.

Mr. Walker stated that he has seen some of the new solar technologies and added they are looking more residential. He added that the Town should encourage new technologies.

Mr. Klein asked if this regulation was limited to only the R-AA zoning district. Mr. Castro stated the regulations applied to every district. Mr. Klein asked if site screening would be applicable for solar panels. Mr. Castro responded.

Mr. Pollock asked why there was a limitation on the amount of solar panels of 30%. Mr. Castro stated it was the suggestion of the Planning and Zoning Commission.

There was a short discussion about allowing the Architectural Review Commission approve solar panels. Mr. Castro suggested adding that solar panels would require an ARCOM major project approval with notice to the neighboring properties to the Code.

Mr. Klein asked Mr. Castro about the revised language. Mr. Castro stated the revised language would read, "Solar panels shall be permitted subject to the Architectural Commission approval with notice to the neighboring properties."

Mr. Spaziani suggested developing a definition for solar panels versus solar roof tiles. Mr. Page suggested eliminating panels and adding solar roof components or materials. The Commission agreed.

Motion made by Mr. Golboro and seconded by Mr. Crampton to approve the modified language relating to solar panel regulations. Motion carried with all in favor.

VII. **CONSIDERATION OF NEW ZONING ITEM RELATED TO HISTORICAL AND GOVERNMENTAL SIGNAGE**

Mr. Castro introduced historical and governmental signage in the Town and stated the genesis of this item was the renovation of Bradley Park. Mr. Castro suggested adding a regulation to allow the proposed signage but to leave it to the Town Council to approve it. He added that the Town Council would approve the size, dimensions, and look of any proposed signage.

Mr. Page stated that the Town Council was supportive of this issue and asked the Planning and Zoning Commission to approve the proposed language. He also added that existing signage in the Town would be grandfathered in to any regulations proposed.

Mr. Castro suggested that he would draft language relating to this issue to show to Chairman Klein before presenting it to the Town Council.

Motion made by Mr. Crampton to approve staff to draft language regarding historical and governmental signage.

Mr. Spaziani asked if there were any negative consequences to this issue. Mr. Castro stated he did not believe there were any negative consequences as the signs would be placed on public property and approved by the Town Council.

Mr. Golboro asked if an exception would be added for state signs. Mr. Castro stated he would only be adding historical markers.

Ms. LeCates seconded the motion. Motion carried with all in favor.

D. **ZONING ITEM 10. TENNIS COURT REGULATIONS**

Mr. Elliott reintroduced zoning item number ten since the item was deferred in October. He stated that the language that was inconsistent in the Code regarding tennis court regulations and explained how the language was changed to provide clarity.

Ms. LeCates asked about justification for not including hardcourts in lot coverage calculations. Mr. Elliott responded. Mr. Castro added that grass courts do not count in landscaped open space calculations.

Mr. Spaziani stated his main concern were the hours permitting lighted courts. Mr. Elliott stated that staff is proposing 9 a.m. to 9 p.m.

Mr. Klein thought the changes were overdue.

Motion made by Mr. Golboro and seconded by Mr. Spaziani to approve the changes to zoning item number ten. Motion carried with all in favor.

E. ZONING ITEM 11. CUBIC CONTENT RATIO CREDIT OF 5% FOR UNENCLOSED PATIOS, LOGGIAS, PORCHES AND TERRACES ON FIRST FLOOR

Mr. Elliott reintroduced zoning item number eleven since the item was deferred in October. He explained that staff felt the language in the Code was confusing and wanted to change the language to make it clearer. Mr. Elliott provided examples of cubic content ratio diagrams and calculations on the overhead projector.

Mr. Castro stated the intent was to clean up the language to allow it to read as it has been interpreted.

Ms. LeCates asked if this was allowing owners to have more unenclosed structures. Mr. Logan stated that has not, due to the way staff has been interpreting the Code.

Mr. Castro stated that architects have complained about how the Code was written.

Mr. Walker was in favor of the change and thought the change made sense.

Motion made by Mr. Walker and seconded by Mr. Crampton to approve the changes to zoning item number eleven. Motion carried with all in favor.

Ms. LeCates requested that drawings be included in the backup in the future to allow more time to study the drawings.

F. DEMOLITION THRESHOLD REGULATIONS GOVERNING NONCONFORMING BUILDINGS AND CURRENT ZONING CODE PROVISIONS

Mr. Castro introduced this item and stated that the Town Council asked the Planning and Zoning Commission to study this item after an appeal was made on one of his decisions. The Town Council suggested looking at the possibilities of adding a caveat to exempt accessory buildings or revising the method in which staff measures demolition for a non-conforming building or exempting accessory buildings from CCR calculations. Mr. Castro stated the Code has been interpreted in this manner for 30 years. Mr. Castro handed out the current section of the Code to the Commission.

Mr. Pollock stated it seemed like the owner was being penalized, even if the net changes were the same at the end of the project.

Ms. LeCates questioned whether cubic footage was appropriate in this situation. She indicated that the intent of the Code needed to be preserved but thought it could be modified. Mr. Castro responded.

Mr. Walker stated he has rarely sees the cubic footage language in his experience. Mr. Walker thought the footprint of the structure was more relevant. Mr. Klein stated that many years ago, the calculations were based on the floor area ratio, which proved to be unsuccessful. He added that staff moved to using cubic content ratio, which seemed more successful. Mr. Castro stated staff moved to cubic footage after owners were tearing down their whole homes and rebuilding.

Mr. Castro suggested that he liked using perimeter walls rather than cubic footage, excluding windows.

Mr. Walker was in favor of renovations if the owner did not add more square footage or change the use of the structure.

Mr. Klein stated he was present during the conversation at the Town Council meeting and reviewed the Council's debate on the subject.

Mr. Castro explained the intent of the current Code for non-conforming structures.

Mr. Klein asked if Mr. Castro if he recommended a solution.

Many of the Commissioners offered solutions for the change to the Code and discussion ensued.

Ms. LeCates stated she understood the intent of the Code was to deliberately discourage the perpetuation of non-conforming structures. Discussion ensued on this topic.

Mr. Page asked Mr. Castro if he had an idea on how the language could be simplified. Mr. Castro provided some suggestions.

Discussions ensued about remodeling and rebuilding non-conforming structures.

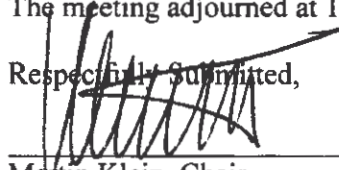
Mr. Castro suggested working on modified language with Ms. LeCates and returning to the next meeting with the new language for discussion. Mr. Klein agreed. Mr. Castro stated the issues at hand were 1) when to make a non-conforming building meet the Code and 2) making sure the interpretation was consistent.

Mr. Castro asked the Commission to look at the proposed 2018 Meeting Dates to see if any of the dates would conflict with religious holidays.

VIII. ADJOURNMENT

The meeting adjourned at 12:13 p.m. with the benefit of a motion.

Respectfully Submitted,



Martin Klein, Chair
Town of Palm Beach
Planning & Zoning Commission

G

Filing # 61586661 E-Filed 09/15/2017 02:24:17 PM

IN THE FIFTEENTH
JUDICIAL CIRCUIT COURT
IN AND FOR PALM BEACH
COUNTY, FLORIDA

APPELLATE DIVISION

CASE NO.

100 EMERALD BEACH WAY,
LC,

Petitioner,

v.

THE PALM BEACH TOWN COUNCIL, and
MARGARET B. THORNTON,

Respondents.

**PETITION FOR ISSUANCE OF
WRIT OF CERTIORARI**

Petitioner, 100 EMERALD BEACH WAY, LC ("100 Emerald" or "Petitioner"), by and through its undersigned counsel, hereby respectfully petitions this Court, pursuant Rules 9.030(c)(2), (3) and 9.100, Fla. R. App. P., for the issuance of a Writ of Certiorari to review and quash the decision of Respondent, THE PALM BEACH TOWN COUNCIL (the "Town Council"), denying the Petitioner's appeal (the "Appeal") of the approval by the Architectural Commission ("ARCOM") of the Town of Palm Beach (the "Town") of a project application to build a tennis complex consisting of two

(2) tennis courts (the "Tennis Complex") and a separate paved parking area for a minimum of eight (8) to ten (10) vehicles (the "Parking Facility") filed by MARGARET B. THORNTON ("Applicant"), a neighbor of Petitioner [A-1]¹, and as grounds therefore states as follows:

BASIS FOR INVOKING THE JURISDICTION OF THIS COURT

This Court has jurisdiction pursuant to Florida Rules of Appellate Procedure 9.030(c)(2), (3) and 9.100(c), as this is a proceeding to review by certiorari a quasi-judicial action of a commission of local government, which action is not directly appealable under any other provision of general law. Pursuant to Florida Rule of Appellate Procedure 9.100, Petitioner respectfully requests that this Court issue a writ of certiorari quashing the Town Council's denial of Petitioner's Appeal of ARCOM's decision to approve the application to develop the Tennis Complex and Parking Facility. [A-1].

¹ References to the Appendix shall be in the following form: [A-__]. The pages of the Appendix have been consecutively numbered and references to __ shall be to the page number of the Appendix. References to transcripts shall be in the following form: A-_:L. __ shall refer to the consecutively numbered page of the Appendix, and L shall refer to the line number of the transcript.

SUMMARY OF ARGUMENT

1. The Town Council did not have a legitimate basis to deny the Appeal. The Town Council's denial of the Appeal must be quashed because: (A) ARCOM and the Town Council departed from the essential elements of law by applying the wrong law by: (i) not requiring Applicant to prove its compliance with the Town Code; and (ii) failing to require Applicant to seek an obtain a special exception to develop the Tennis Complex and Parking Facility; and (B) Applicant failed to demonstrate by competent substantial evidence that it met the criteria for approval of the development of the Tennis Complex and Parking Facility.

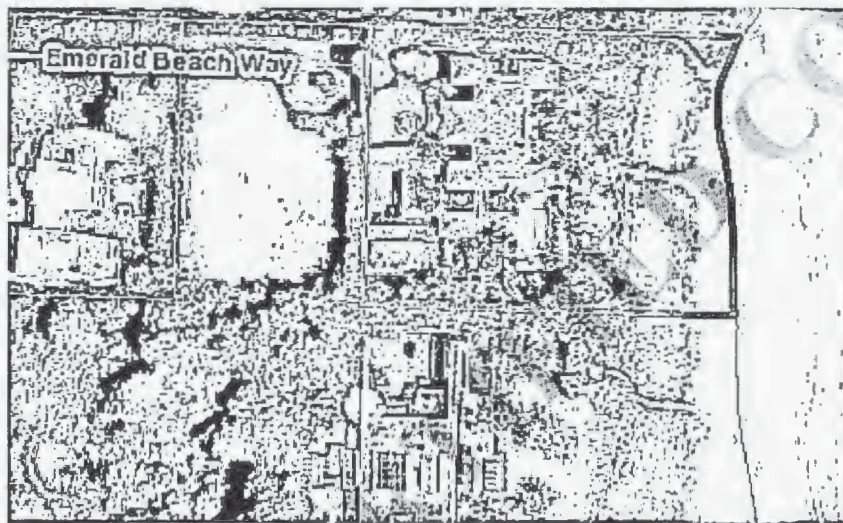
FACTS UPON WHICH THE PETITIONER RELIES

A. 100 Emerald and Applicant Own Neighboring Properties

2. 100 Emerald owns a home and property located at 100 Emerald Beach Way in the Town (the "100 Emerald Home"). [A-112]. The 100 Emerald Home is an oceanfront home which is accessed via Emerald Beach Way. [A-112-13].

3. Emerald Beach Way is a small cul-de-sac which provides access to three (3) lots: (A) the 100 Emerald Home; (B) 1230 S. Ocean Boulevard, a single family home; and (C) a property called Residential Lot 2

("Lot 2"). [*Id.*]. Emerald Beach Way and the properties identified can be seen in the aerial photograph attached below (which is attached for illustrative purposes only) – The 100 Emerald Home is on the far right and surrounded by red; Lot 2 is the green lot in the middle and 1230 S. Ocean Boulevard is on the left:



See also [A-72].

4. Located between two (2) single family homes, Lot 2 was intended to be developed into a single family house when the area was platted. [A-113].

5. The Applicant owns (with her husband) 1236 S. Ocean Blvd. ("Applicant's Home"), an oceanfront home directly to the South of the 100 Emerald Home. Applicant's Home appears on the bottom of the aerial photo. Applicant (with her husband) also owns Lot 2. [A-118] [A-112].

6. The 100 Emerald Home, Lot 2, 1230 S. Ocean Blvd. and Applicant's Home are located in the R-AA, Large Estate Residential zoning district and an area designated as Single-Family under the Town's Comprehensive Plan. [A-113].

B. Applicant Applies to ARCOM For Approval to Develop the Tennis Complex and Parking Facility on Lot 2 Between the 100 Emerald Home and 1230 S. Ocean Blvd.

7. ARCOM is a seven member commission created by the Town Council "to preserve various elements of urban beauty and require that new projects enhance the existing elements." See Town Code of Ordinances (the "Code") §§ 18-146, 18-147. Pursuant to §§ 18-175 and 18-205 of the Code, applications for building permits, landscaping and other development are presented to and considered by ARCOM. Pursuant to § 18-177 of the Code, decisions of ARCOM are appealable to the Town Council.

8. On May 24, 2017, Applicant filed an Application for Project Review for a Major Project by ARCOM (the "Application") which was assigned New Business: Case No. B-046-2017. [A-118]. The Application sought approval from ARCOM for development of the Tennis Complex and Parking Facility as follows: the "Addition of two tennis courts. One court will be a hard court and the other a grass court. Additional landscaping will

be provided to buffer courts accordingly. Parking area will be included."²
[Id.].

9. Included with the Application were various 2 dimensional drawings of the proposed Tennis Complex. [A-119-25]. Elevations were not included. [Id.]. The Application, site plan and other drawings did not demonstrate that any fence or wall would be contiguous to the Tennis Complex; did not identify the height or nature of fencing or other barrier around the Tennis Complex; and did not identify the height of the landscaping that was intended to be used to buffer the Tennis Complex. [Id.].

10. Applicant did not apply for a special exception to develop the Tennis Complex even though the site plan for the Tennis Complex included a "Tennis Canopy Structure." [A-119]. Furthermore, although Applicant proposed supplemental Parking Facility to be located on Lot 2 for the use of employees at Applicant's Home, Applicant did not apply for a special exception. [Id.].

² The description of the request was written in ALLCAPS. For convenience and ease of reading, this quotation has not incorporated the ALLCAPS but otherwise accurately quotes the Application.

C. **100 Emerald Objects to the Application**

11. On June 27, 2017, 100 Emerald submitted a letter of objection to the Application (the "Objection"). [A-112]. The Objection sets forth numerous grounds why ARCOM should have denied the Application. Among the objections raised by 100 Emerald were the following:

- A. The Tennis Complex and Parking Facility would be visible by the 100 Emerald Home and 1230 S. Ocean Blvd. from Emerald Beach Way and the visibility and lack of sufficient landscaping and walls violated the requirements of § 134-1759 of the Code [A-114];
- B. The Tennis Complex and Parking Facility are inappropriate in relation to the established character of the single-family estates immediately adjacent to Lot 2 [A-113];
- C. The Tennis Complex and Parking Facility are excessively dissimilar to any other properties located within a 200 foot radius [A-117];
- D. The Tennis Complex and Parking Facility will create unreasonable noise disturbance and create security issues for the 100 Emerald Home and 1230 S. Ocean Blvd. [A-115-16];

E. The Tennis Complex and Parking Facility are not in harmony with the existing developments of the neighboring properties [A-113]; and

F. The design and appearance of the Tennis Complex and Parking Facility will diminish the appearance and value of the adjacent properties [A-116].

D. ARCOM Hearing on August 28, 2017 on the Application

12. Hearing was held before ARCOM on the Application on June 28, 2017. [A-83]. Dustin Mizell, the Applicant's landscape engineer made the presentation to ARCOM on behalf of the Applicant. [A-86:12-15].

13. Mr. Mizell contended that the parking lot was for service parking at Applicant's Home rather than being for the Tennis Complex (even though the parking area is located adjacent to the Tennis Complex and not remotely near Applicant's Home or the access point to Applicant's Home). [A-88:10-21] [A-92:3-9].

14. Mr. Mizell stated that Areca palms would be planted as a buffer and noise deflection around the Tennis Complex. [A-90:1-12]. Mr. Mizell did not state anything regarding the height of the Areca palms. [*Id.*]. Mr. Mizell acknowledged that the Applicant was requesting to build a "prefab

tennis structure." [A-95:5-6]. Mr. Mizell further stated "[w]e're not even putting chain link around the tennis court." [A-95:12-13].

15. Barbara Hall of Greenberg Traurig represented 100 Emerald at the hearing before ARCOM. [A-96:8-13]. Ms. Hall stated that granting a permit for the Tennis Complex and Parking Facility would violate a number of conditions for granting a permit under the Code because:

- A. No home in the vicinity had two (2) tennis courts and a remote parking area [A-96:14-17];
- B. The Application and proposed Tennis Complex and Parking Facility did not minimize the impacts on 100 Emerald and 1230 S. Ocean Blvd, the neighbors of Lot 2, and instead shifted the impact onto the neighbors rather than Applicant's Home [A-96:18-A-97:3];
- C. The plans did not provide sufficient detail for the Tennis Complex and Parking Facility [A-97:9-14]; and
- D. Adopting the reasons set forth in the Objection [A-98:8-10].

16. The only reference made to a wall was to an existing wall between the properties (rather than enclosing the Tennis Complex), which according to Mr. Mizell was six (6) feet in height. [A-98:22-A-99:6] [A-128].

17. A vote was taken by ARCOM on the Application, and ARCOM unanimously approved the Application. [A-100-101] [A-76]. ARCOM made no findings that Applicant had met the criteria for approval. [Id.].

E. 100 Emerald Appeals ARCOM's Approval of the Application to the Town Council

18. Pursuant to § 18-177 of the Code, on July 7, 2017, 100 Emerald filed a timely appeal of ARCOM's decision to grant the Application to allow development of the Tennis Complex and Parking Facility on Lot 2 (the "Appeal") and requested the Town Council to overturn ARCOM's decision. [A-77].

19. 100 Emerald adopted and incorporated the Objection in its entirety in the appeal. [A-77-78]. The Appeal further noted that ARCOM made no findings as to compliance with the criteria set forth in § 18-205(a) of the Code and that the burden of proof of compliance as on the Applicant. [A-79].

20. The Appeal further specifically raised the following grounds:

- A. There was no evidence in the record demonstrating that the Tennis Complex was in harmony with the development in the area because the Tennis Complex was not enclosed within Applicant's Home but rather consisted of two (2) tennis courts and a parking facility located between 100

Emerald Home and 1230 S. Ocean Blvd., and was not designed to make it compatible with the residences in the area [A-79];

B. There was no evidence in the record demonstrating that the Tennis Complex was designed to be attractive from Emerald Place or the 100 Emerald Home and would only be shielded by Areca palms [A-79-80];

C. There was no evidence in the record demonstrating that the Tennis Complex and Parking Facility would provide security for the neighboring homes or protection against vibration and noise [A-80]; and

D. There was no evidence in the record that the Parking Facility would be used for Applicant's employees rather than in connection with the Tennis Complex [A-80-81].

F. The Town Council Hears the Appeal on August 9, 2017

21. The Town Council held a hearing on the Appeal on August 9, 2017. [A-2]. The Town Attorney acknowledged the proceeding was quasi-judicial. [A-8:3-5].

22. At the hearing on the Appeal, Ms. Hall raised the following grounds for reversal of ARCOM's decision to approve the Application:

- A. The Application was deficient because the plans failed to provide elevations and failed to provide specifics regarding the height and dimensions of enclosures of the Tennis Complex and Parking Facility [A-10:21-A-11:19] [A-13:13-18];
- B. A special exception was required under the Town Code for the Parking Facility which constituted supplementary parking for Applicant's Home [A-9:22-A-10:20];
- C. Under § 134.1756 of the Code, the proposed supplementary use as a Parking Facility and a Tennis Complex was separated from the principal use of Applicant's Home [A-12:6-20];
- D. That the Application to develop a Tennis Complex with a Parking Facility is dissimilar from any development in the single-family neighborhood [A-24:4-12]; and
- E. The Applicant failed to demonstrate compliance with the criteria for approval by ARCOM [A-12:21-A-13:3].

23. After the presentations were completed, the Town Council voted to deny the Appeal but did not make any findings. [A-40:9-17] [A-41].

24. On August 16, 2017, John Page, Director of the Town's Planning, Zoning & Building Department sent Ms. Hall a letter informing 100 Emerald of the Town Council's decision to deny the Appeal. [A-1].

NATURE OF THE RELIEF SOUGHT

25. 100 Emerald respectfully requests that this Court grant its Petition for Writ of Certiorari, enter an Order to Show Cause why the relief requested herein should not be granted, and ultimately, quash the Town Council's Denial of 100 Emerald's Appeal of ARCOM's decision to grant the Application for Applicant to develop the Tennis Complex and Parking Facility.

LEGAL ARGUMENT IN SUPPORT OF PETITION

I. STANDARD OF REVIEW

26. Quasi-judicial decisions of local governments "are subject to review by certiorari." *Board of County Commissioners of Brevard County v. Snyder*, 627 So. 2d 469, 474 (Fla. 1993). The Florida Supreme Court set forth guidelines for distinguishing a quasi-judicial act from a legislative one, noting that "[g]enerally speaking, legislative action results in the formulation of a general rule of policy, whereas judicial action results in the application of a general rule of policy." *Id.* at 474. *See also Broward*

County v. G.B.V. Int'l. 787 So. 2d 838, 843 (Fla. 2001) (actions of local government agencies subject to review by certiorari).

27. The Florida Supreme Court has further made it clear that certiorari is the available means for "appellate review of decisions of local governments on building permits, site plans, and other development orders. These local government decisions are quasi-judicial in nature and thus subject to certiorari review by the courts." *Park of Commerce Associates, etc. v. City of Delray Beach, et al.*, 636 So. 2d 12, 15 (Fla. 1994). See also *Webb v. Town Council of Town of Hilliard*, 766 So. 2d 1241, 1243 (Fla. 1st DCA 2000) ("Local government decisions pertaining to building permits, site plans, special zoning exceptions, and other development orders generally are deemed quasi-judicial in nature, thus subject to certiorari review.").

28. The Florida Supreme Court has described circuit court certiorari review of quasi-judicial local government decisions as "first-tier" certiorari review. See *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982). In first-tier certiorari review of quasi-judicial decisions of local governments, the Circuit Court must determine whether: (a) procedural due process was afforded; (b) the local government's decision complied with the essential requirements of law; and (c) the local government's decision was

supported by competent substantial evidence. *FP&L v. City of Dania*, 761 So. 2d 1089 (Fla. 2000); *Irvine*, 495 So. 2d at 167; *Haines City Community Development v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995); *Valliant*, 419 So.2d at 626; *Broward County v. G.B.V.*, 787 So. 2d 838, 843 (Fla. 2001). If the foregoing requirements are not satisfied, the Circuit Court should halt the miscarriage of justice and quash the decision of the local government. *G.B.V.*, 787 So. 2d at 844.

29. The Town Council's denial of the Appeal must be quashed because: (A) ARCOM and the Town Council departed from the essential requirements of law; and (B) Applicant failed to demonstrate by competent substantial evidence that it met the criteria for approval of the development of the Tennis Complex and Parking Facility.

**II. THE TOWN COUNCIL'S DENIAL OF THE APPEAL
MUST BE QUASHED BECAUSE THE TOWN COUNCIL
DEPARTED FROM THE ESSENTIAL REQUIREMENTS
OF LAW**

30. The Town Council's denial of the Appeal must be quashed because both the Town Council and ARCOM departed from the essential requirements of law by not applying the correct law to the Application. ARCOM and the Town Council completely ignored § 134-1759 of the Town's Code, which specifically provides development standards for tennis courts and completely failed to require Applicant to demonstrate compliance therewith.

In fact, the record shows that Applicant fails to comply with the Town's tennis court ordinance and ARCOM was required to deny the Application and the Town Council was required to grant the Appeal. The Town Council (and ARCOM) further departed from the essential requirements of law by not requiring Applicant to obtain a special exception to develop the Tennis Complex and Parking Facility. The Application demonstrates that the proposed tennis courts were to be built upon and contiguous to a "structure" as defined by the Code, which requires a special exception under § 134-1759(a) of the Code. Moreover, as the Parking Facility should be deemed supplementary parking, such Parking Facility required a special exception under § 134-790(7) of the Code.

31. While a departure from the essential requirements of law requires more than a simple legal error or erroneous conclusion based upon the application of the correct law, a departure exists "when there has been a violation of a clearly established principle of law resulting in a miscarriage of justice." *Custer Med. Ctr. v. United Auto. Ins. Co.*, 62 So. 3d 1086, 1092 (Fla.2010) (quoting *Combs v. State*, 436 So. 2d 93, 96 (Fla.1983)).

32. "A failure to observe the essential requirements of law has been held synonymous with a failure to apply the correct law." *Progressive Express Ins. Co. v. McGrath Cmty. Chiropractic*, 913 So. 2d 1281, 1284

((Fla. 2d DCA 2005); accord *Progressive Express Ins. Co. v. Devitis*, 924 So. 2d 878, 879 (Fla. 4th DCA 2006). See also *Heggs*, 658 So.2d 523 (reliance on incorrect law amounts to a departure from the essential requirements of law).

A. The Town Council Departed From the Essential Requirements of Law By Ignoring Its Own Ordinance Which Specifically Applies to the Development of Tennis Courts

33. Section 18-205 of the Code sets forth the criteria for the issuance of a building permit and was applicable to ARCOM's consideration of the Application and the Town Council's consideration of the Appeal. Section 18-205(a)(9) of the Code requires an applicant for a building permit to demonstrate that "[t]he proposed development is in conformity with the standards of this Code and other applicable ordinances insofar as the location and appearance of the buildings and structures are involved." (Emphasis added). Thus, an applicant for a building permit is required to demonstrate that the proposed development conforms with applicable standards of the Code and other applicable ordinances.

34. Section 134-1759(b) of the Code provides in pertinent part as follows specifically regarding the development of tennis courts:

Every tennis court **shall** include as an integral part of the construction thereof **proper fence or wall enclosures contiguous to the court, such fence or wall enclosures to be at least ten feet in height and not exceeding 12 feet in height.**³ All tennis courts shall be **sight screened with plantings at least the same height as the tennis court fence enclosures**, where visible from adjacent properties or the public or private street right-of-way. (Emphasis added).

35. According to the Supreme Court of Florida, "[m]unicipal ordinances are subject to the same rules of construction as are state statutes." *Rinker Materials Corp. v. City of North Miami*, 286 So. 2d 552, 553 (Fla. 1973) (holding that contrary to the argument of the city, under the plain and ordinary meaning of the zoning ordinance at issue, property owner had right to construct concrete batching plant in area zoned for industrial use). *See also Powell v. City of Delray Beach*, 711 So. 2d 1307, 1309 (Fla. 4th DCA 1998) (the "same rules that apply in the construction of state statutes are employed in the construction of local ordinances"); *Nash v. Fort Lauderdale Board of Adjustment*, 462 So. 2d 88, 89 (Fla. 4th DCA 1985) ("[m]unicipal ordinances are construed upon the same basis as statutes").

36. "One of the most fundamental tenets of statutory construction" is that a statutory term is given "its plain and ordinary meaning." *Green v. State*, 604 So. 2d 471, 473 (Fla. 1992). *See also Coral Cadillac, Inc. v.*

³ Section 134-1759(b) of the Code refers to the ten foot height requirement utilizing letters and the 12 foot height requirement utilizing numbers.

Stephens, 867 So. 2d 556, 558 (Fla. 4th DCA 2004) (undefined term of statute "should be defined by their plain and ordinary meaning"); *Rinker*, 286 So. 2d at 554 ("statute or ordinance must be given its plain and obvious meaning"); *Powell*, 711 So. 2d at 1310. The use of "shall" in an ordinance or statute is mandatory and leaves local governments no discretion. *See S.R. v. State of Florida*, 346 So. 2d 1018 (Fla. 1977); *Psychiatric Institute of Delray, Inc. v. Keel*, 717 So. 2d 1042 (Fla. 4th DCA 1998); *Florida Tallow Corporation v. Bryan*, 237 So. 2d 308 (Fla. 4th DCA 1970).

37. Additionally, a specific statute or ordinance covering a particular subject area controls and takes precedence over a statute covering the same and other subjects in more general terms. *See McKendry v. State*, 641 So. 2d 45, 46 (Fla. 1994); *Butterworth v. X Hospital*, 763 So. 2d 467, 470 (Fla. 4th DCA 2000); *C.S. and J.S. v. S.H. and K.H.*, 671 So. 2d 260, 268 (Fla. 4th DCA 1996); *Brescher v. Associates Financial Services Company, Inc.*, 460 So. 2d 464, 467 (Fla. 4th DCA 1984). Stated slightly differently, it is "well established that, where there is in the same statute a specific provision, and also a general one that in its most comprehensive sense would include matters embraced in the former, the particular provision will nevertheless prevail; the general provision must be taken to affect only such cases as are not within the terms of the particular provision." *Fletcher v.*

Fletcher, 573 So.2d 941, 942 (Fla. 1st DCA 1991) (holding that more specific statutory section including "disability benefits" to be included in gross income took precedence over general definition of income that excluded VA disability benefits). See also *Craig v. School Board of Broward County*, 679 So. 2d 1219, 1223 (Fla. 4th DCA 1996) (holding that specific statutory section providing speed limit applicable to school buses overrode general section of statute allowing vehicles to rely on posted speed limits). Finally, perhaps the most fundamental rule of statutory interpretation is to give effect to every provision of a statute or ordinance and to reject any interpretation that would nullify or render meaningless any provision of the statute or ordinance. *Unruh v. State*, 669 So. 2d 242, 245 (Fla. 1996) ("As a fundamental rule of statutory interpretation, courts should avoid readings that would render part of a statute meaningless") (internal quotation omitted).

38. There is no question that § 134-1759 of the Code is specifically applicable to Applicant's Application to develop the Tennis Complex. Pursuant to § 18-205(a)(9) of the Code, Applicant was required to demonstrate compliance with § 134-1759 of the Code as a criteria for the granting of its Application. ARCOM and the Town Council departed from the essential requirements of law by failing to require Applicant to demonstrate compliance

with § 134-1759. In fact, the record and presentation made at the hearings demonstrate emphatically that the proposed Tennis Complex violates the requirements of § 134-1759.

39. Section 134-1759(b) of the Code specifically requires that every tennis court is required (though the use of the mandatory term "shall") to have a 10-12 foot high fence or wall contiguous to the tennis court as an integral part of the construction of the tennis court. The Code further requires plantings of the same height as the fence or wall to site screen the tennis court from adjacent properties or private or public right-of-ways. *Id.*

40. The Application's drawings of the proposed Tennis Complex did not identify the height or nature of fencing or other barrier around the Tennis Complex nor the height of the landscaping that was intended to be used to buffer the Tennis Complex. [A-119-125]. 100 Emerald specifically objected to the deficiency of Applicant's site plan and drawings which did not provide sufficient information and that the proposed development violated § 134-1759 because same would be visible from Emerald Beach Way and the 100 Emerald Home. [A-114] [A-97:9-23].

41. At the June 28, 2017 hearing before ARCOM, Mr. Mizell stated that Areca palms would be planted as a buffer and noise deflection but made no mention of the height of the Areca palms. [A-90:1-12]. Mr. Mizell further

stated "[w]e're not even putting chain link around the tennis court." [A-95:12-13]. Mr. Mizell did not state anything regarding the installation of a 10-12 foot fence or wall contiguous to the Tennis Complex or to establish that plantings would fully site screen the Tennis Complex from 100 Emerald or Emerald Beach Way (no such fence, wall or landscaping are part of the site plan). Indeed, Mr. Mizell's only reference to a fence or wall was made with respect to the existing wall on the property line which was six (6) feet high and which was not contiguous to and would not enclose the Tennis Complex. [A-98:22-A-99:6].

42. ARCOM and the Town Council departed from the essential requirements of law by not applying the correct law and by not requiring Applicant to comply with or demonstrate compliance with § 134-1759(b) of the Code which is specifically applicable to tennis courts. Indeed, ARCOM and Town Council completely ignored their own Code section which is applicable to the development requirements for tennis courts. Accordingly, the Town Council and ARCOM departed from the essential requirements of law and the Town Council's decision to deny the Appeal should be quashed.

B. The Town Council Departed the Essential Requirements of Law By Failing to Require Applicant to Seek and Obtain a Special Exception

43. The Town Council further departed the essential requirements of law by ignoring its own ordinances and failing to require Applicant to seek and obtain a special exception as a prerequisite to the development of the Tennis Complex and Parking Facility.⁴

⁴ 100 Emerald specifically raised the special exception issue for the Parking Facility before the Town Council giving the Town Council the opportunity to comply with the essential requirements of law. Moreover, appellate courts have inherent power to correct fundamental errors even in the absence of a timely objection in the lower tribunal as an exception to the preservation of error requirement. In *Sanford v. Rubin*, 237 So. 2d 134, 137 (Fla. 1970), the Florida Supreme Court explained that fundamental error, "which can be considered on appeal without objection in the lower court, is error which goes to the foundation of the case or goes to the merits of the cause of action." See *Hugh v. State*, 751 So. 2d 718, 719 (Fla. 5th DCA 2000) (Harris, J. concurring). "The rule that questions not presented to and ruled upon by the trial court are not reviewable on appeal is subject to the exception that an appellate court may consider and rule upon a constitutional or fundamental error when first raised or revealed on the record on appeal." *Stevens v. Allegro Leasing, Inc.*, 562 So. 2d 380, 381-82 (Fla. 4th DCA 1990) (citation omitted). A fundamental error is the equivalent of a departure from the essential requirements of law. See *Farhud v. Clark*, 399 So. 2d 1079 (Fla. 1st DCA 1981) ("material fundamental error in application of the law which constitutes a departure from the essential requirements of law"). Because the Town Council and ARCOM applied the incorrect law and departed from the essential requirements of law, the Court may consider the special exception arguments regarding the Tennis Complex and Parking Facility.

(i) **A Special Exception Is Required to Construct the Tennis Complex**

44. Section 134-1759(a) of the Code provides in part that: "the construction of any tennis court, shuffleboard court or similar use upon any structure in the town shall be subject to an application for special exception." "Structure" is defined by § 134-2(b) of the Code as: "anything constructed, placed or erected on land, submerged land or over water, the use of which requires permanent or temporary location on the land, submerged land or over water, or attachment to something having permanent or temporary location on or over the land, submerged land, or water." (Emphasis added).

45. As noted above, a "statute or ordinance must be given its plain and obvious meaning." *Rinker*, 286 So. 2d at 554. The terms and provisions of an ordinance must be given effect and no provision thereof may be rendered meaningless or ignored. *Unruh*, 669 So. 2d at 245.

46. Once again, the mandatory term "shall" is used in § 134-1759(a) of the Code. The construction of any tennis court "upon any structure" requires an application for a special exception. Section 134-2(b) of the Code broadly defines "Structure" as anything constructed, placed or erected on land. Applicant's site plan provides for the construction of a "Tennis Canopy Structure". [A-119]. Mr. Mizell further stated the Applicant

was requesting to build a "prefab tennis structure." [A-95:5-6]. Accordingly, Applicant's own Application acknowledges that Applicant is constructing a "Structure" as defined in the Code. As demonstrated on the site plan, the tennis courts will be built upon and contiguous to the "structure". Pursuant to the plain and ordinary meaning of § 134-1759(a), Applicant is required to obtain a special exception to develop the Tennis Complex. Neither ARCOM nor the Town Council paid any attention to the Town's own specific ordinance regarding tennis courts and did not require Applicant to seek or obtain a special exception. By ignoring the special exception requirement of § 134-1759(a) of the Code, the Town Council (and ARCOM) applied the incorrect law and departed from the essential requirements of law.

**(ii) A Special Exception is Required to Construct the
Parking Facility**

47. The Town Council and ARCOM further departed from the essential requirements of law with regard to the Parking Facility proposed by Applicant by not requiring Applicant to seek and obtain a special exception as required for supplemental parking. [A-9:22-A-10:20].

48. Section 134-2(b) of the Code defined "Parking, supplemental" to mean: "those parking facilities provided as an administrative approval or special exception use and which are in addition to existing on-site required parking . . ." The Code further defines an "Accessory use" as meaning "a

subordinate use or structure customarily incident to the principal use or structure located on the lot or located on a contiguous lot when a unity of title has been provided."

49. Section § 134-790(7) provides that in the R-AA, large estate residential district, supplemental parking is a use requiring a special exception. The Parking Facility proposed by Applicant clearly constitutes supplemental parking as that term is defined in the Code. [A-119]. The plain and ordinary meaning of the terms must be applied. The Town Council and the Court are not allowed to ignore or render meaningless the language of the Code. Applicant is proposing a separate Parking Facility on Lot 2 in addition to the "existing on-site required parking" at Applicant's Home. According to Applicant, the Parking Facility is being used to service Applicant's Home rather than the Tennis Complex. [A-88:10-21] [A-92:3-9].

50. Pursuant to §§ 134-227 and 134-790 (as applicable in the R-AA, large estate residential district of the Code), special exceptions require a site plan and site plan review – which did not take place on the Application. The requirements for the granting of a special exception are contained in § 134-229 of the Code. ARCOM did not consider such requirements and has no power to consider applications for special exceptions which are

determined by the Town Council under § 134-226 of the Code. Accordingly, a special exception was required for Applicant's request to build a supplemental Parking Facility on Lot 2. The Town Council applied the wrong law in failing to require Applicant to seek and obtain a special exception and therefore departed from the essential requirements of law.

51. For these reasons, the Town Council's decision to deny the Appeal should be quashed.

III. ARCOM'S APPROVAL OF THE APPLICATION AND THE TOWN COUNCIL'S DENIAL OF THE APPEAL WERE NOT SUPPORTED BY COMPETENT SUBSTANTIAL EVIDENCE

52. The Town Council's denial of the Appeal should also be quashed because ARCOM's granting of the Application was not supported by competent substantial evidence – and therefore neither was the Town Council's denial of the Appeal.

53. The review criteria for ARCOM's approval of the issuance of a building permit are set forth in § 18-205(a) of the Code as follows:

(a) The architectural commission may approve, approve with conditions, or disapprove the issuance of a building permit in any matter subject to its jurisdiction only after consideration of whether the following criteria are complied with:

(1) The plan for the proposed building or structure is in conformity with good taste and design and in

general contributes to the image of the town as a place of beauty, spaciousness, balance, taste, fitness, charm and high quality.

(2) The plan for the proposed building or structure indicates the manner in which the structures are reasonably protected against external and internal noise, vibrations, and other factors that may tend to make the environment less desirable.

(3) The proposed building or structure is not, in its exterior design and appearance, of inferior quality such as to cause the nature of the local environment to materially depreciate in appearance and value.

(4) The proposed building or structure is in harmony with the proposed developments on land in the general area, with the comprehensive plan for the town, and with any precise plans adopted pursuant to the comprehensive plan.

(5) The proposed building or structure is not excessively similar to any other structure existing or for which a permit has been issued or to any other structure included in the same permit application within 200 feet of the proposed site in respect to one or more of the following features of exterior design and appearance:

- a. Apparently visibly identical front or side elevations;
- b. Substantially identical size and arrangement of either doors, windows, porticos or other openings or breaks in the elevation facing the street, including reverse arrangement; or

c. Other significant identical features of design such as, but not limited to, material, roof line and height of other design elements.

(6) The proposed building or structure is not excessively dissimilar in relation to any other structure existing or for which a permit has been issued or to any other structure included in the same permit application within 200 feet of the proposed site in respect to one or more of the following features:

- a. Height of building or height of roof.
- b. Other significant design features including, but not limited to, materials or quality of architectural design.
- c. Architectural compatibility.
- d. Arrangement of the components of the structure.
- e. Appearance of mass from the street or from any perspective visible to the public or adjoining property owners.
- f. Diversity of design that is complimentary with size and massing of adjacent properties.
- g. Design features that will avoid the appearance of mass through improper proportions.
- h. Design elements that protect the privacy of neighboring property.

(7) The proposed addition or accessory structure is subservient in style and massing to the principal or main structure.

(8) The proposed building or structure is appropriate in relation to the established character of

other structures in the immediate area or neighboring areas in respect to significant design features such as material or quality or architectural design as viewed from any public or private way (except alleys).

(9) The proposed development is in conformity with the standards of this Code and other applicable ordinances insofar as the location and appearance of the buildings and structures are involved.

(10) The projects location and design adequately protects unique site characteristics such as those related to scenic views, rock outcroppings, natural vistas, waterways, and similar features. (Emphasis added).

54. Applicant failed to submit competent substantial evidence that the proposed Tennis Complex and Parking Facility is in "conformity with the standards of this Code and other applicable ordinances insofar as the location and appearance of the buildings and structures are involved" as required by § 18-205(a)(9) of the Code. Applicant failed to submit competent substantial evidence that the proposed Tennis Complex and Parking Facility: (a) "is not excessively dissimilar in relation" to neighboring properties; (b) is in harmony with the neighboring areas; or (c) appropriate in relation to the established character of their neighboring areas as required by § 18-205(a)(4),(6) and (8).

55. "Competent substantial evidence" has been defined to mean the following in this context:

Substantial evidence has been described as such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred. We have stated it to be such relevant evidence as a reasonable mind would accept as adequate to support a conclusion. *Becker v. Merrill*, 155 Fla. 379, 20 So. 2d 912; *Laney v. Board of Public Instruction*, 153 Fla. 728, 15 So. 2d 748. In employing the adjective "competent" to modify the word "substantial," we are aware of the familiar rule that in administrative proceedings the formalities in the introduction of testimony common to the courts of justice are not strictly employed. *Jenkins v. Curry*, 154 Fla. 617, 18 So. 2d 521. We are of the view, however, that the evidence relied upon to sustain the ultimate finding should be sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached. To this extent the "substantial" evidence should also be "competent."

Pollard v. Palm Beach County, 560 So. 2d 1358 (Fla. 4th DCA 1990) (quoting *De Groot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957)). See also *Marion County v. Priest*, 786 So. 2d 623, 625 (Fla. 5th DCA 2001). Opinion, popularity and generalized policy considerations do not constitute competent substantial evidence. In making a decision in a quasi-judicial hearing, a local government should base its decision on facts.

56. Vague, generalized, unsubstantiated speculation by laypersons about what might happen, unsubstantiated by any competent facts, is not competent evidence and mere generalized statements of opposition must be disregarded by the decision makers. *Marion County*, 786 So. 2d at 626 (citing *Metro. Dade County v. Blumenthal*, 675 So. 2d 598, 607 (Fla. 3d

DCA 1995)); *Pollard*, 560 So. 2d 1358; *City of Apopka v. Orange County*, 299 So. 2d 657 (Fla. 4th DCA 1974); *Debes v. City of Key West*, 690 So. 2d 700, 702 (Fla. 3rd DCA 1997).

A. There Was No Competent Substantial Evidence that the Tennis Complex Complies with § 134-1759 of the Code as Required by § 18-205(a)(9) of the Code

57. For the reasons discussed above, Applicant failed to demonstrate through any evidence (much less competent substantial evidence) that the proposed Tennis Complex complies with the Town's Code. One of the required criteria for ARCOM to approve the issuance of a building permit is that competent substantial evidence demonstrate that the proposed development is in "conformity with the standards of this Code and other applicable ordinances insofar as the location and appearance of the buildings and structures are involved." Code § 18-205(a)(9). Section 134-1759(b) of the Code specifically requires that every tennis court is required (though the use of the mandatory term "shall") to have a 10-12 foot high fence or wall contiguous to the tennis court as an integral part of the construction of the tennis court. The Code further requires plantings of the same height as the fence or wall to site screen the tennis court from adjacent properties or private or public right-of-ways. *Id.*

58. Applicant's site plan and drawings do not demonstrate any 10-12 foot high fence or wall contiguous to the tennis courts are required by § 134-1759(b) of the Code. [A-119-125]. Applicant's site plan and drawings do not demonstrate plantings of landscaping of 10-12 feet in height (the same as the wall or fence which does not exist) that will block the tennis courts from being visible from Emerald Beach Way and the 100 Emerald Beach Home as required. [Id.]. Neither Applicant, Mr. Mizell nor anyone from the Town testified or otherwise provided any evidence of these facts at the ARCOM hearing on the Application on June 28, 2017. [A-83-101]. 100 Emerald specifically objected to the Application on the grounds that: (A) the tennis courts would be visible from Emerald Beach Way in violation of § 134-1759 of the Code [A-114] and that the plans and drawings did not provide sufficient detail to determine how Applicant was planning on enclosing the tennis courts or minimizing noise. [A-97:9-13] [A-116]. Accordingly, Applicant failed to submit competent substantial evidence that the proposed Tennis Complex conformed with the Code and therefore the Town Council's denial of the Appeal must be quashed.

B. There Was No Competent Substantial Evidence that the Tennis Complex and Parking Facility Were Not Dissimilar to Neighboring Properties; Were in Harmony With Developments in the Area and Were Appropriate in Relation to the Established Character of the Area

59. Applicant further failed to present competent substantial evidence that the proposed development of the Tennis Complex and Parking Facility met the other criteria of § 18-205(a) of the Code. Applicant could not and did not identify a single other property that had a two tennis court complex with parking facilities next to the tennis courts and detached from the residence, for a minimum of eight (8) to ten (10) vehicles in any single family residential neighborhood in the Town much less in the R-AA large estate residential district in which Lot 2, the 100 Emerald Home and Applicant's Home are located.

60. Pursuant to § 18-205(a)(6) of the Code, Applicant was required to demonstrate by competent substantial evidence that the proposed Tennis Complex and Parking Facility "is not excessively dissimilar" to the properties within 200 feet of the proposed site. Pursuant to § 18-205(a)(8) of the Code, Applicant was required to demonstrate by competent substantial evidence that the proposed Tennis Complex and Parking Facility "is appropriate in relation to the established character of other structures in the immediate area or neighboring areas." Pursuant to § 18-205(a)(4),

Applicant was required to demonstrate by competent substantial evidence that the proposed Tennis Complex and Parking Facility "is in harmony with the proposed developments on land in the general area, with the comprehensive plan for the town, and with any precise plans adopted pursuant to the comprehensive plan."

61. Applicant failed to introduce competent substantial evidence to support ARCOM finding that Applicant met any of these criteria. There simply was no evidence presented of a similar Tennis Complex and Parking Facility being developed in the immediate area or elsewhere. Although some houses in the area (and within 200 feet) have single tennis courts, none have two (2) courts surrounded by parking for 8-10 vehicles at a minimum. No tennis court has been designed to be located between two (2) neighboring houses rather than adjacent to the primary residence for which the tennis court will be used. The same applies to the Parking Facility. There was no competent substantial evidence that the Tennis Complex and Parking Facility were not dissimilar to the neighboring area; that the Tennis Complex and Parking Facility would be in harmony with the neighboring area or would be appropriate in the neighboring area.

62. ARCOM's decision to approve the Application was not supported by competent substantial evidence. For this reason, the Town

Council's denial of the Appeal was also not supported by competent substantial evidence. As such, both the Town Council's denial of the Appeal and ARCOM's decision to approve the Application should be quashed.

CONCLUSION

Accordingly, this Court should grant the Petition for Writ of Certiorari, quash the August 16, 2017 decision of the Town Council to deny the Appeal, reverse ARCOM's June 28, 2017 approval of the Application, remand this matter for further proceedings consistent herewith, and award Petitioner its costs together with such other and further relief as the Court deems just, proper and appropriate.

Respectfully submitted,

MOSKOWITZ, MANDELL, SALIM &
SIMOWITZ, P.A.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petition for Writ of Certiorari has been served by E-mail and U.S. Mail on this 15th day of September 2017 pursuant to Fla.R.App.P. 9.420(c) on:

John C. Randolph, Esq.
Town Attorney
Jones Foster Johnston & Stubbs, P.A.
Flagler Center Tower
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jrandolph@jonesfoster.com

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By: /s Michael W. Moskowitz
MICHAEL W. MOSKOWITZ
Florida Bar No. 254606
mmoskowitz@mmsslaw.com

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that Petitioner's Petition for Writ of Certiorari complies with the requirements of Rule 9.210 of the Florida Rules of Appellate Procedure.

MOSKOWITZ, MANDELL, SALIM &
SIMOWITZ, P.A.

Attorneys for Petitioner

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H

LEHTINEN
SCHULTZ

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DE LA FUENTE

AMANDA QUIRKE HAND
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AQUIRKE@LEHTINEN-SCHULTZ.COM

December 28, 2018

**VIA HAND DELIVERY AND
ELECTRONIC MAIL**

Josh Martin
Director, Planning, Building and Zoning Dept.
360 S. County Rd.
Palm Beach, FL 33480
jmartin@townofpalmbeach.com

Paul Castro
Zoning Administrator
pcastro@townofpalmbeach.com

Re: Administrative Appeal (Section 134-141, et. seq.): 1236 South Ocean Boulevard

Dear Messrs. Martin and Castro:

This Firm represents 100 Emerald Beach Way LC ("Abutting Neighbor"), owner of the property located at 100 Emerald Beach Way. Pursuant to Town of Palm Beach Code Section 134-141, *et. seq.*, this is an appeal of the administrative decision or determination by an administrative official. On or about December 13, 2018, the Town made an administrative determination that no special exception would be required for the construction of two tennis courts at 1236 South Ocean Boulevard. However, the Town administration does not have the authority or discretion to circumvent the Code requirements for a special exception for tennis courts¹ or for Supplemental Parking² in the R-AA zoning district, and therefore, Abutting Neighbor appeals. Abutting Neighbor is the immediate neighbor, is an aggrieved person, and is directly affected by the decision of the administrative official.

The Application

John L. Thornton and Margaret B. Thornton ("Applicants") filed an application for a special exception and site plan approval to permit "construction of two tennis courts and associated details including 10-12 feet high landscaping and fencing and small service parking area." (Ex. A, the "Special Exception Application.") The Special Exception Application (Z-18-00162) was actually scheduled for public hearing before the Town Council on January 9, 2019.

¹ § 134-1759 (e)

² § 134-790

However, on December 13, 2018, Applicants withdrew the Special Exception Application “based on the Town’s determination³ that no special exception or site plan approval is required for the Applicant’s tennis courts.” (Ex. B). Subsequently, on December 19, 2019, Applicants submitted the same plans for ARCOM review for the “[a]ddition of two tennis courts. One court will be a hard court and the other a grass court. The courts will be surrounded by a fence approximately 10’ tall and various landscaping at or above the height of the fence. Additional landscaping will be provided to buffer courts accordingly. Separate staff parking area ~~will be~~ is also included.” (the “ARCOM Application,” Ex. C).

The reality is the two tennis courts and “separate staff parking area” are ALREADY CONSTRUCTED. There is no mention in either the Special Exception Application, nor the ARCOM Application, that this is actually a request for an after the fact approval for major construction without the required permits. Applicants, with the assistance of the Town administration, are attempting to avoid a special exception to be heard before the Town Council where these violations will be aired at a public hearing. It is evident that the Town and the Applicants are working together to make an end run at the lawsuit filed by Abutting Neighbor against them for constructing the tennis court without proper approval. (Ex. D).

A Special Exception and Site Plan Review Are Mandatory for Tennis Courts

The Code of the Town of Palm Beach does not give the Town administration the authority or discretion to decide that a special exception is not required because the Code is absolutely clear:

§ 134-1759 (e) The construction of any tennis court, shuffleboard court or similar use upon any structure in the town shall be subject to an application for special exception as specified in section 134-227 through section 134-233.

The subject property at 1236 South Ocean Blvd. is located in the R-AA zoning district. Several accessory uses are enumerated in the Town Code which are permitted without a special exception, including private nurseries, private greenhouses, private garages, private swimming pools, etc. § 134-788. Notably absent from the list of permitted accessory uses are private tennis courts. Therefore, as the zoning staff initially determined, a special exception must be required in accordance with § 134-1759, and the Town’s administrative determination that a special exception is not required is erroneous and must be reversed.

A Special Exception and Site Plan Review Are Mandatory for Supplemental Parking

Applicant has also illegally constructed a parking lot in an R-AA zoning district which requires a special exception. Although the Special Exception Application and the ARCOM Application casually refer to a “small service parking area” and a “separate staff parking area” respectively, such parking area also requires a special exception. Section 134-790(7) specifically states that all supplemental parking requires a special exception in the R-AA zoning district, and is “allowed only in a manner consistent with the zoning of the district in which it is located.” Supplemental parking is

³ Counsel for Abutting Neighbor has requested copies of the Town’s determination, but has not received a copy of any written determination as of the date of this Appeal.

defined as parking in addition to the required parking. § 134-2. The parking lot, which is ALREADY CONSTRUCTED AND BEING USED, holds at least ten (10) trucks. (Ex. E) Conspicuously absent from the plans is (a) the total number of parking spaces in the “small service parking area”; (b) any parking calculations whatsoever; and (c) the setback of the parking area from Emerald Beach Way. Supplemental parking in the R-AA zoning district can only be permitted by special exception. Therefore, the Town’s administrative determination that a special exception is not required is erroneous and must be reversed.

The Town Council has Exclusive Jurisdiction to Grant or Deny Special Exceptions

Most importantly, the Town Council is the entity vested with authority to grant or deny special exceptions:

§134-226 (a) The town council shall hear and decide special exceptions, decide such questions as are involved in determining if and when special exceptions should be granted, and grant special exceptions with appropriate conditions and safeguards or deny special exceptions when not in harmony with the purpose and intent of this chapter.

As stated in the Special Exception Application, the application must comply with the criteria for site plan review set forth in § 134-226, et. seq. and the requirements for granting a special exception set forth in §134-229. Furthermore, residents, including Abutting Neighbor, would be afforded the opportunity for due process at a public hearing on the Special Exception Application.


The Town’s administrative determination that a special exception is not required for tennis courts (a) is clearly contrary to § 134-1759 (e), which provides that a special exception is mandatory; (b) is clearly contrary to § 134-790, which specifically requires a special exception for Applicant’s parking lot; (c) illegally divests the Town Council of their exclusive jurisdiction and authority to decide whether to grant or deny the special exception; and (d) deprives residents, including Abutting Neighbor, of their due process right to appear and object at the public hearing, which was originally scheduled for January 9, 2019.

For these reasons and the reasons set forth in the Lawsuit (incorporated herein as part of this appeal), Abutting Neighbor appeals the Town’s administrative decision that a special exception is not required for two tennis courts and small service parking area at 1236 South Ocean Boulevard. Abutting Neighbor respectfully requests that this appeal be scheduled for hearing before the Town Council at the next available meeting in accordance with §134-141, et. seq.

Abutting Neighbor reserves all rights and remedies. Abutting Neighbor continues to object to the illegal construction of the two tennis courts, commercial parking area, and associated improvements at 1236 South Ocean Boulevard. Counsel for Abutting Neighbor has made a public records request for all documents and communications related to 1236 South Ocean Boulevard, and reserves the right to supplement this appeal accordingly.

Please govern yourselves accordingly.

LEHTINEN SCHULTZ PLLC

By: 
Amanda Quirke Hand, P.A.



Additions to the original
application are underlined and
deletions are lined through

TOWN OF PALM BEACH
Planning, Zoning & Building Department
360 S. County Rd.
Palm Beach, FL 33480

APPLICATION FOR PROJECT REVIEW BY THE ARCHITECTURAL REVIEW COMMISSION

Application Number: B-046-2017 (Revised)

5/24/17 (Original)
Date: 12/13/18 (Revised)

Application Type:

☒

Major
Minor

☐

Combination*
Minor with notice

*If Town Council review required, include Zoning Application Number: N/A

I. PROJECT ADDRESS: 1236 S. Ocean Blvd.

II. DESCRIPTION OF THE REQUEST: The exact wording in this section will appear on the ARCOM Agenda. Please include a comprehensive summarized description of the proposed project.

Addition of two tennis courts. One court will be a hard court and the other a grass court. ~~The courts will be surrounded by a~~
fence approximately 10' tall and various landscaping at or above the height of the fence. Additional landscaping will be
provided to buffer courts accordingly. ~~Separate staff parking area will be is also~~ included.

Number of Stories: _____ Roof Material (type): _____

Const. Type: CBS: _____ Frame: _____ Colors: Building: _____ Roof: _____

Trim: _____ Shutters: _____ *this information to be included on the cover sheet of the ARCOM plans

III. DESIGN PROFESSIONAL(S):

☐
☒
☐

Architect
Landscape Architect
Other: _____

☐
☐
☐

Design Consultant
Engineer
Check if you are an ARCOM member and this project will result
in a voting conflict for you.

Name of Professional: Dustin Mizell / Environment Design Group License #: RLA#6666784

Phone number: 561-832-4600 Email address: dustin@environmentdesigngroup.com

IV. OWNER/AGENT INFORMATION:

Property Owner's Name: John L. Thornton and Margaret B. Thornton

Owner's Address (if different from Subject Address): c/o M. Timothy Hanlon

340 Royal Poinciana Way, Suite 321, Palm Beach, FL 33480 Phone number: 561-659-1770

Signature (owner or owner's legally authorized agent*):

M. Timothy Hanlon, as Atty/Agent

*if signed by a legally authorized agent, must be accompanied by a Power of Attorney or statement from the property owner authorizing the signer to sign on the owner's behalf.

(printed name and title) M. Timothy Hanlon, as Attorney and Agent



ARCOM # B-046-2017 (Revised)

NOTICE AFFIDAVIT

STATE OF FLORIDA
COUNTY OF PALM BEACH

BEFORE ME THIS DAY PERSONALLY APPEARED M. Timothy Hanlon
WHO BEING DULY SWORN, DISPOSES AND SAYS THAT:

- 1) He/She is the owner, or the owner's authorized agent*, of the real property legally described in the Architectural Commission Application.
- 2) The accompanying Property Owners List is, to the best of his/her knowledge, a complete and accurate list of all property owners' mailing addresses and property control numbers dated no later than 90 days prior to the Architectural Commission hearing at which the subject application will be heard, and as recorded in the last official tax rolls for the subject property and all other properties within **two hundred fifty (250) feet** of the real property as described in the Application for Architectural Review, or all property within **two hundred fifty (250) feet** of all contiguous property owned wholly or in part by the owner of the real property described in the Application for Architectural Review.
- 3) A copy of the ARCOM application, a Notification to Property Owners and a single page graphic depiction showing a building and landscaping elevation of the intended project will be included in each envelope mailed to surrounding property owners, and will be mailed **at least 30 days prior** to the ARCOM meeting using the labels provided by the Property Appraiser's Office (unless this is a combo notice).

FURTHER AFFIANT SAYETH NOT.

The foregoing instrument was acknowledged before me this 13th day of December, 2018, by
Month/Year

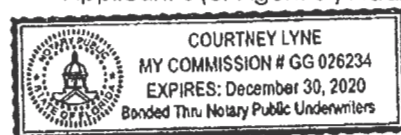
M. Timothy Hanlon who is personally known to me or who has produced
(Name of person acknowledging)

_____ as identification.
(type of identification)

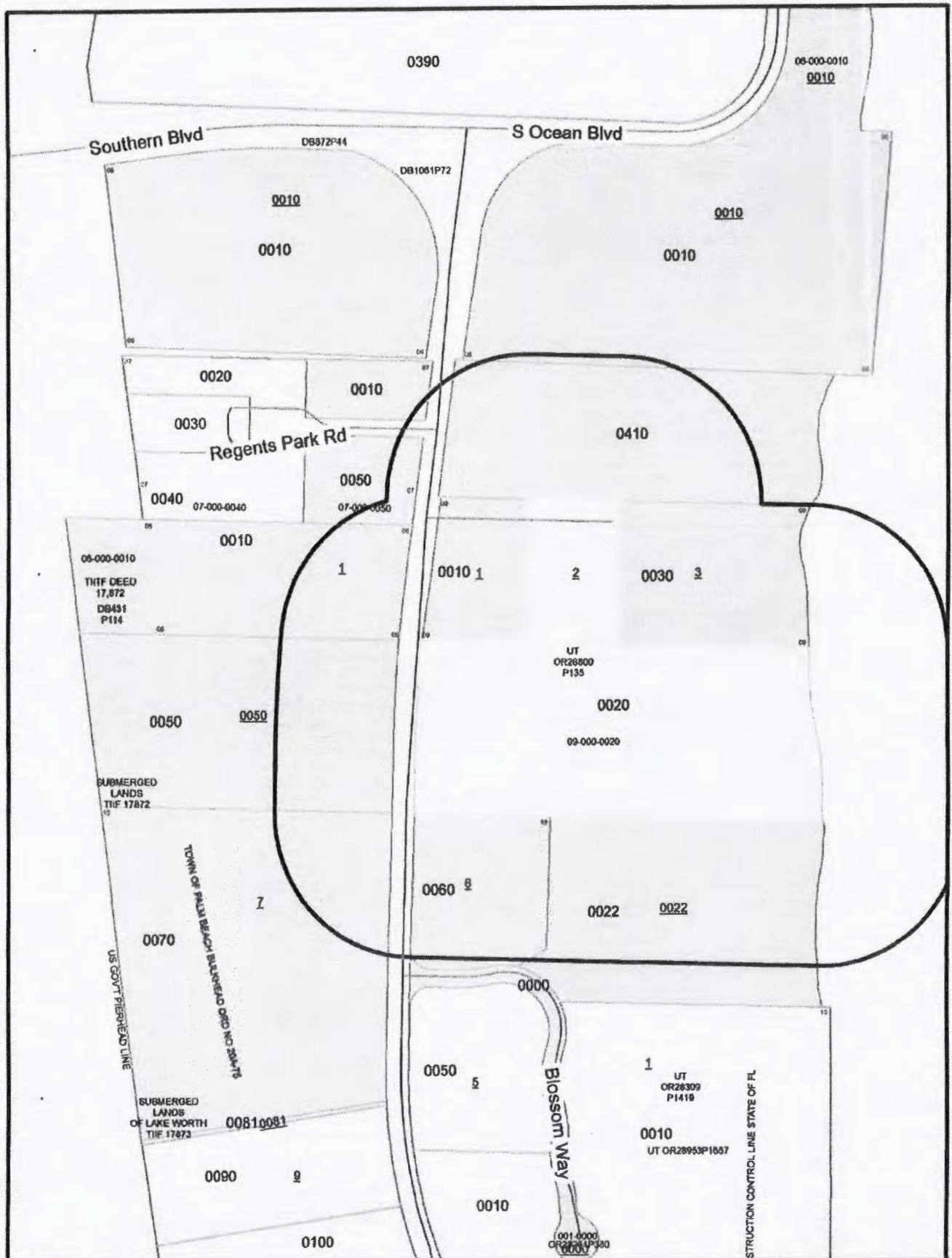
M. Timothy Hanlon
Applicant's (or Agent's*) Signature
Courtney Lyne
Notary as to Owner or to Authorized Agent

M. Timothy Hanlon
Applicant's (or Agent's) Printed Name
340 Royal Poinciana Way, Suite 321
Palm Beach, FL 33480
Applicant's (or Agent's*) Address

My Commission Expires: _____



*If Agent, you must attach a Power of Attorney or Authorization from the Property Owner.



Dorothy Jacks, CFA
Palm Beach County
Property Appraiser

Notes:

Location: Downtown Service Center
0 45 90 180 270 360
Map Scale



Key

Selected Parcels 100 200 300 400 500
Others 100 200 300 400 500

Produced on: 12/10/2018

Property Appraiser GIS - Property Detail list by parcel control number
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Buffer:

50434402090000020	Acres	5.90	Sales Instr	QC	MTG	EMERALD REPLAT OF REPLAT
THORNTON JOHN L &	Value \$	79,636,971.00	Price	\$ 10.00	PUSE SINGLE FAMILY	LT 2 &
PO BOX 3163	Taxbl \$	53,001,218.00	Date	4/17/2008	TaxDist 50447	2-44-43, S 300 FT OF N 649 FT OF GOV LT 1
	Bldg \$	10,688,935.00	Book	22582		
PALM BEACH FL 33480 1363	Land \$	68,948,036.00	Page	1568	NAV	

Buffer: 250

50434335000020410	Acres	3.58	Sales Instr	WD	MTG	35-43-43, S 135 FT OF GOV LT 2 E OF CO RD, 2-44-43, N 99 FT
GREENE JEFFREY &	Value \$	45,159,055.00	Price	\$ 24,000,000.00	PUSE SINGLE FAMILY	OF GOV LT 1 E OF CO RD
1200 S OCEAN BLVD	Taxbl \$	40,552,357.00	Date	12/3/2009	TaxDist 50417	
	Bldg \$	11,863,048.00	Book	23589		
PALM BEACH FL 33480 5000	Land \$	33,296,007.00	Page	1979	NAV	

50434335060000010	Acres	11.70	Sales Instr		MTG	P B CAUSEWAY PARK REVISED PLATLTS A TO M JNC (LESS CO RD
BATH & TENNIS CLUB INC	Value \$	23,700,000.00	Price	\$	PUSE CLB/LDG/UN HALL	R/W) & N 207 FT OF S 767 FT OF GOV LT 2 LYG E & ADJ TO OCEAN
1170 S OCEAN BLVD	Taxbl \$	20,843,730.00	Date		TaxDist 50417	BLVD
	Bldg \$	0.00	Book			
PALM BEACH FL 33480 5004	Land \$	0.00	Page		NAV	

50434335070000010	Acres	0.51	Sales Instr	WD	MTG	REGENTS PARK LT 1
MURRY PAUL THOMAS &	Value \$	5,043,619.00	Price	\$ 4,250,000.00	PUSE SINGLE FAMILY	
100 REGENTS PARK RD	Taxbl \$	3,903,571.00	Date	9/16/2011	TaxDist 50417	
	Bldg \$	1,708,674.00	Book	24755		
PALM BEACH FL 33480 5009	Land \$	3,334,945.00	Page	1665	NAV	

50434335070000050	Acres	0.71	Sales Instr	WD	MTG	REGENTS PARK
JANKOWSKY JOEL &	Value \$	6,268,279.00	Price	\$ 10.00	PUSE SINGLE FAMILY	LT 5 &
1333 NEW HAMPSHIRE AVE NW STE 400	Taxbl \$	6,268,279.00	Date	1/20/2017	TaxDist 50417	2-44-43, S 50 FT OF N 149 FT OF E 200 FT OF GOV LT 1 LYG W
	Bldg \$	1,673,688.00	Book	28877		
WASHINGTON DC 20036 1532	Land \$	4,594,591.00	Page	1181	NAV	

Property Appraiser GIS - Property Detail list by parcel control number
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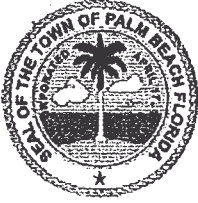
50434402000010022 MCCOURT FRANK 60 BLOSSOM WAY PALM BEACH FL 33480 5002	Acres 3.59 Value \$ 69,604,832.00 Taxbl \$ 69,554,832.00 Bldg \$ 13,471,552.00 Land \$ 56,133,280.00	Sales Instr WD Price \$77,060,000.00 Date 4/5/2017 1 Book 29000 Page 53	MTG PUSE SINGLE FAMILY TaxDist 50447 NAV	2-44-43, TH PT OF GOV LT 1 LYGE OF OCEAN BLVD AS IN OR3752 P1353
50434402000010050 AUDUBON SOCIETY OF THE EVERGLADES INC PO BOX 16914 WEST PALM BEACH FL 33416 6914	Acres 3.76 Value \$ 1,015.00 Taxbl \$ 0.00 Bldg \$ 0.00 Land \$ 1,015.00	Sales Instr Price \$ Date Book Page	MTG PUSE OUTDR REC/PARK LAND TaxDist 50447 NAV	2-44-43/34 43-43 S 300 FT OF N 649 FT OF GOV LT 1 LYG W OF OCEAN BLVD & TR IN DB431P114 (LESS TR IN DB887P451) & TH PT OF SUBMRG LANDS ADJ THERETO WITHIN
50434402090000010 SMM REALTY LLC 130 ROUTE 10 WHIPPANY NJ 07981 2107	Acres 0.97 Value \$ 9,302,835.00 Taxbl \$ 8,368,467.00 Bldg \$ 1,329,794.00 Land \$ 7,973,041.00	Sales Instr WD Price \$6,820,000.00 Date 3/20/2007 Book 21581 Page 5	MTG PUSE SINGLE FAMILY TaxDist 50447 NAV	EMERALD REPIAT OF REPIAT LT 1
50434402090000030 100 EMERALD BEACH WAY 350 ROUND HILL RD GREENWICH CT 06831 3343	Acres 2.01 Value \$ 43,286,465.00 Taxbl \$ 43,286,465.00 Bldg \$ 6,827,167.00 Land \$ 36,459,298.00	Sales Instr DT Price \$17,528,000.00 Date 5/15/2002 Book 13715 Page 1153	MTG PUSE SINGLE FAMILY TaxDist 50447 NAV	EMERALD REPIAT OF REPIAT LT 3
50434402100000060 CPPB HOLDINGS LLC 131 S DEARBORN ST CHICAGO IL 60603 5517	Acres 1.45 Value \$ 14,372,498.00 Taxbl \$ 14,372,498.00 Bldg \$ 2,068,206.00 Land \$ 12,304,292.00	Sales Instr WD Price \$15,250,000.00 Date 6/29/2015 Book 27640 Page 36	MTG PUSE SINGLE FAMILY TaxDist 50447 NAV	BLOSSOM ESTATE REPL LT 6
50434402100000070 PETERFFY THOMAS P 1255 S OCEAN BLVD PALM BEACH FL 33480 5008	Acres 5.98 Value \$ 37,075,424.00 Taxbl \$ 37,075,424.00 Bldg \$ 6,264,644.00 Land \$ 30,810,780.00	Sales Instr DT Price \$22,660,000.00 Date 4/8/2011 1 Book 24453 Page 539	MTG PUSE SINGLE FAMILY TaxDist 50447 NAV	BLOSSOM ESTATE REPL LT 7 & LT 8 (LESS S 7.50 FT)

Property Appraiser GIS - Property Detail list by parcel control number

50434402100010000	Acres	0.58	Sales instr	MTG	BLOSSOM ESTATE REPL	PRIVATE RD K/A BLOSSOM WAY
BLOSSOM EST HMOOWNERS ASSN INC	Value \$	0.00	Price \$	PUSE RESIDENTIAL COMMONAR		
505 5 FLAGLER DR STE 1002	Taxbl \$	0.00	Date	TaxDist 50447		
	Bldg \$	0.00	Book			
WEST PALM BEACH FL 33401 5949	Land \$	0.00	Page	NAV		

Town of Palm Beach
Planning, Zoning & Building Dept.
360 South County Road
P.O. Box 2029
Palm Beach, FL 33480
B-046-2017

SAMPLE



TOWN OF PALM BEACH
Planning, Zoning & Building Department
360 S. County Rd.
Palm Beach, FL 33480

Additions to the original
application are underlined and
deletions are lined through

APPLICATION FOR PROJECT REVIEW BY THE ARCHITECTURAL REVIEW COMMISSION

Application Number: B-046-2017 (Revised)

5/24/17 (Original)
Date: 12/13/18 (Revised)

Application Type:

<input checked="" type="checkbox"/>
<input type="checkbox"/>

Major
Minor

<input type="checkbox"/>
<input type="checkbox"/>

Combination*
Minor with notice

*If Town Council review required, include Zoning Application Number: N/A

- I. PROJECT ADDRESS: 1236 S. Ocean Blvd.
- II. DESCRIPTION OF THE REQUEST: The exact wording in this section will appear on the ARCOM Agenda. Please include a comprehensive summarized description of the proposed project.

Addition of two tennis courts. One court will be a hard court and the other a grass court. The courts will be surrounded by a fence approximately 10' tall and various landscaping at or above the height of the fence. Additional landscaping will be provided to buffer courts accordingly. Separate staff parking area will be is also included.

Number of Stories: _____ Roof Material (type): _____

Const. Type: CBS: _____ Frame: _____ Colors: Building: _____ Roof: _____

Trim: _____ Shutters: _____ *this information to be included on the cover sheet of the ARCOM plans

III. DESIGN PROFESSIONAL(S):

<input type="checkbox"/>
<input checked="" type="checkbox"/>
<input type="checkbox"/>

Architect
Landscape Architect
Other: _____

<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>

Design Consultant
Engineer
Check if you are an ARCOM member and this project will result in a voting conflict for you.

Name of Professional: Dustin Mizell / Environment Design Group License #: RLA#6666784

Phone number: 561-832-4600 Email address: dustin@environmentdesigngroup.com

IV. OWNER/AGENT INFORMATION:

Property Owner's Name: John L. Thornton and Margaret B. Thornton

Owner's Address (if different from Subject Address): c/o M. Timothy Hanlon

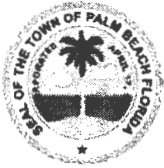
340 Royal Poinciana Way, Suite 321, Palm Beach, FL 33480 Phone number: 561-659-1770

Signature (owner or owner's legally authorized agent*):

*if signed by a legally authorized agent, must be accompanied by a Power of Attorney or statement from the property owner authorizing the signer to sign on the owner's behalf.

(printed name and title)

M. Timothy Hanlon, as Attorney and Agent



Town of Palm Beach Notification to Property Owners

Architectural Review Commission Project Notice

TO BE HEARD BY THE ARCHITECTURAL REVIEW COMMISSION ON January 23, 2019
AFTER 9:00 A.M., in the Town of Palm Beach Council Chambers located on the 2nd floor, 360 South County Road, Palm Beach. Pursuant to Section 18-202 (1) of the Town Architectural Review Ordinance, this application is being sent to all property owners within 250' radius of the location of the subject application.

All interested persons may appear and be heard at said Public Hearing and may likewise submit written statements prior to and at said Public Hearing. If any person decides to appeal any decision made by the Architectural Review Commission with respect to this matter, he/she will need to ensure that a verbatim record of the proceeding is made which record includes the testimony and evidence upon which the appeal is to be based. Please be advised that the Town does not enforce private covenants or deed restrictions.

ARCOM#: B-046-2017 (Revised)

Address: 1236 S. Ocean Blvd.

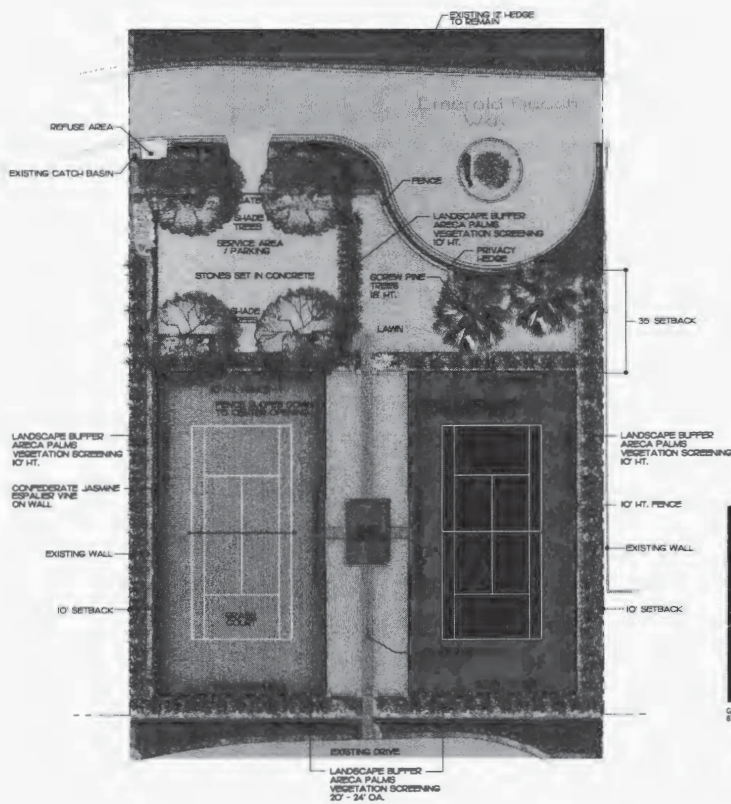
Applicant: John L. Thornton and Margaret B. Thornton

Project Description: Addition of two tennis courts. One court will be a hard court and the other a grass
court. The courts will be surrounded by a fence approximately 10' tall and various landscaping at or
above the height of the fence. Additional landscaping will be provided to buffer courts accordingly.
Separate staff parking area is also included.

This notification is not to solicit approval or disapproval. It is a required notification to surrounding property owners. The plans for the project are on file in the Planning, Zoning & Building Department and are available for review Monday through Friday between 8:30 a.m. and 4:30 p.m. or may be available via the Town's website at www.townofpalmbeach.com/index.aspx?NID=676. Please note that the applicant may submit revised plans and materials up to 9 days prior to the meeting date; therefore, if you are an interested party, you will need to contact the Town using the information below to verify if revisions have or have not been submitted.

If you would like to be automatically informed of changes to the ARCOM Agenda and Back-up Material, please visit our website www.townofpalmbeach.com and click on the "Stay Informed" button on the main page and follow the instructions provided and select Architectural Commission (ARCOM).

If you need further information relative to this project, please contact John Lindgren, Planning Administrator at 561-227-6414 or jlindgren@townofpalmbeach.com.



GATE 8" HEIGHT

LANDSCAPE ARCHITECT
DENISE
1014 South Bay
Suite 101
Palm Beach, FL 33480
Phone: 561.833.1111
Fax: 561.833.1112
www.denise.com
Landscape Architecture
Land Planning
Landscape Design/Construction



Private Residence
1256 South Ocean Boulevard
Palm Beach



JOB NUMBER: 17019-001-01
DESIGN BY: DENISE
DATE: 02-19-2017
REVISED BY: 02-27-2017
REVISION: 11-14-2018

B-046-2017



Garden Plan

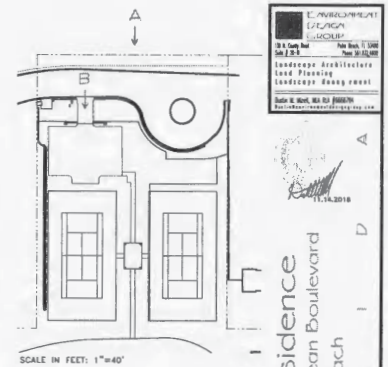
SCALE IN FEET 0' 16' 32' 48'

2018

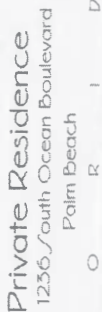
2018

ALL RIGHTS RESERVED. NO PART OF THIS DOCUMENT MAY BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT PERMISSION IN WRITING FROM DENISE.

1014 South Bay
Suite 101
Palm Beach, FL 33480
Phone: 561.833.1111
Fax: 561.833.1112
www.denise.com



SCALE IN FEET: 1"=40'



Elevation B - South Side of Emerald Beach Way / Additional Landscape Screening / Double Buffer

JOB NUMBER: 8 17018.00 LA
DRAWN BY: Duane M. Pineda
DATE: 11.14.2018

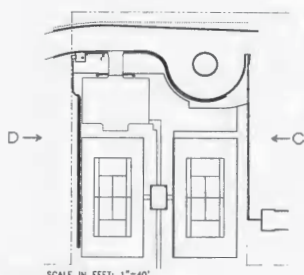
B-046-2017

2018
EXPOSURE: The following disclosure is a summary of the financial statements and related information to be furnished to the Commission. Such documents are not products of the SEC. They are prepared by the registrant and are subject to audit and review by the Commission. The Commission is not responsible for the accuracy or completeness of the information contained in the financial statements and related information. The Commission is not responsible for the accuracy or completeness of the information contained in the financial statements and related information. The Commission is not responsible for the accuracy or completeness of the information contained in the financial statements and related information.

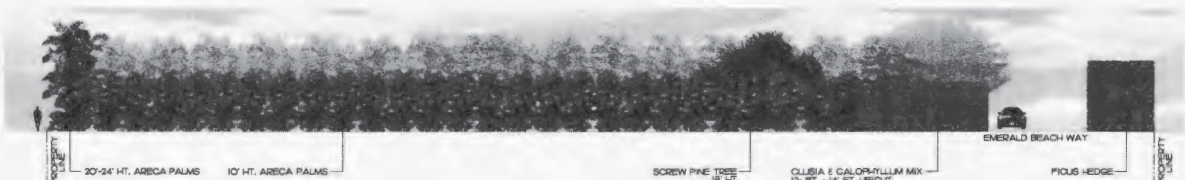
48 HOURS BEFORE DEPARTURE
CALL: 800-432-4770
AIRLINE TICKET ONLY
OF FLORIDA, INC.

Buffer Elevations

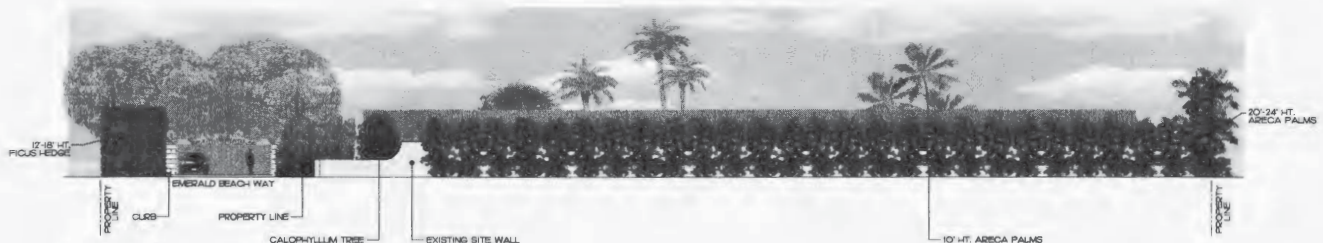
Figure 1 shows a schematic of a room with a width of 1.4 m and a height of 0.6 m. A smaller black rectangle in the bottom right corner is labeled 0.4 m.



LANDSCAPE ARCHITECT
LANDSCAPE DESIGN
 12345 Main St. Suite 100
 Los Angeles, CA 90001
 Phone: (310) 123-4567
 Fax: (310) 123-4568
 Email: info@landscapearchitect.com
 Website: www.landscapearchitect.com



Elevation C - East Property Line



Elevation D - West Property Line

2018
 12345 Main St. Suite 100
 Los Angeles, CA 90001
 Phone: (310) 123-4567
 Fax: (310) 123-4568
 Email: info@landscapearchitect.com
 Website: www.landscapearchitect.com

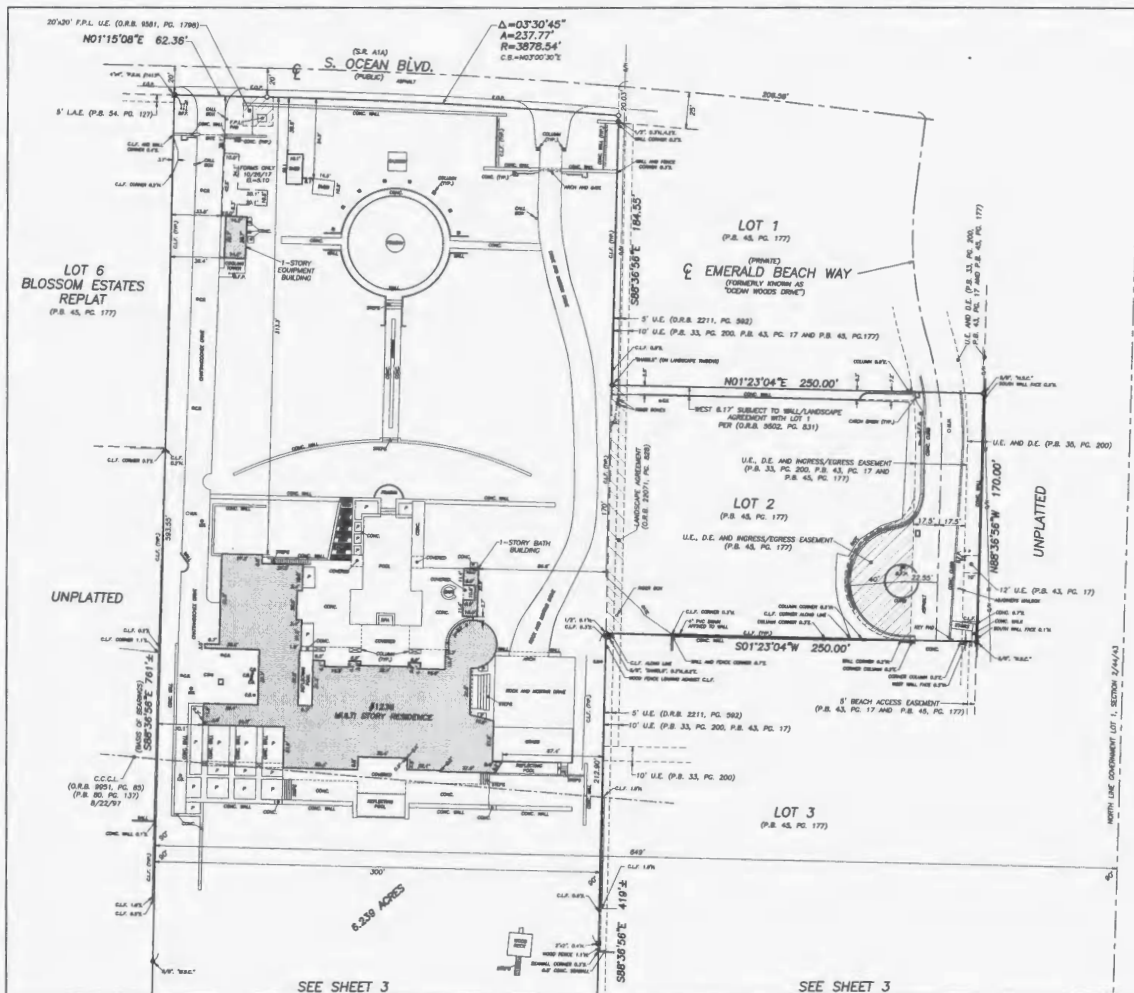
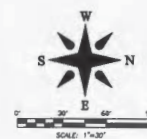
2018
 12345 Main St. Suite 100
 Los Angeles, CA 90001
 Phone: (310) 123-4567
 Fax: (310) 123-4568
 Email: info@landscapearchitect.com
 Website: www.landscapearchitect.com

Buffer Elevations
 SCALE IN FEET 0' 10' 20' 30'

Private Residence
 1236 South Ocean Boulevard
 Palm Beach
 F L O R I D A

JOB NUMBER: B-046-2017
 DRAWING BY: [Signature]
 DATE: 11.14.2018





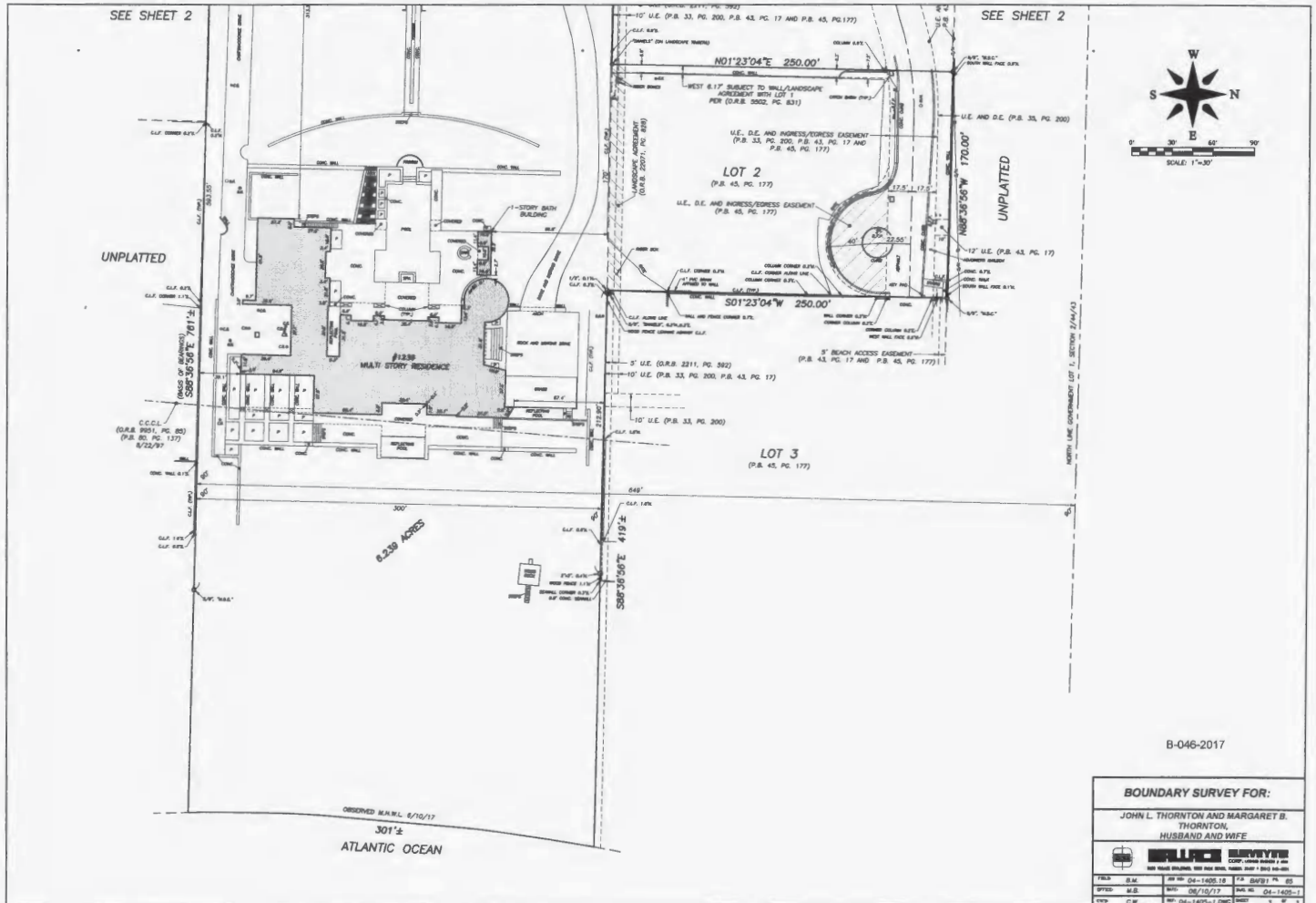
8-046-2017

BOUNDARY SURVEY FOR:

JOHN L. THORNTON AND MARGARET B.
THORNTON,
HUSBAND AND WIFE



FILED	B.M.	JO ID#	04-1405.18	PA	BA/BI	PA	85
DTED	M.B.	DATE	08/10/17	MAIL NO	04-1405-		
FILED	C.W.	REF ID	04-1405-1.0000	MAIL			





Site Data		LOS CALCULATIONS	
DESCRIPTION	REQUIRED	PROPOSED	
LOT 20% L&L			
LOT AREA	80,000 SQ. FT. MINIMUM		260,480 SQ. FT.
LANDSCAPE OPEN SPACE	MINIMUM 15% 143,253 SQ. FT.	53 %	147,317 SQ. FT. PROPOSED
HOPE AND LANDSCAPE SPARK	MINIMUM 45% 4,923 SQ. FT.	80 %	8,815 SQ. FT. PROPOSED
MINIMUM LOT COVERAGE FOR ONE OF TWO STORY BUILDINGS	MAXIMUM 25% 65,116 SQ. FT.	5.5%	14,389 SQ. FT. PROPOSED

Site Plan

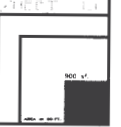
SCALE IN FEET 0' 30' 60' 90'

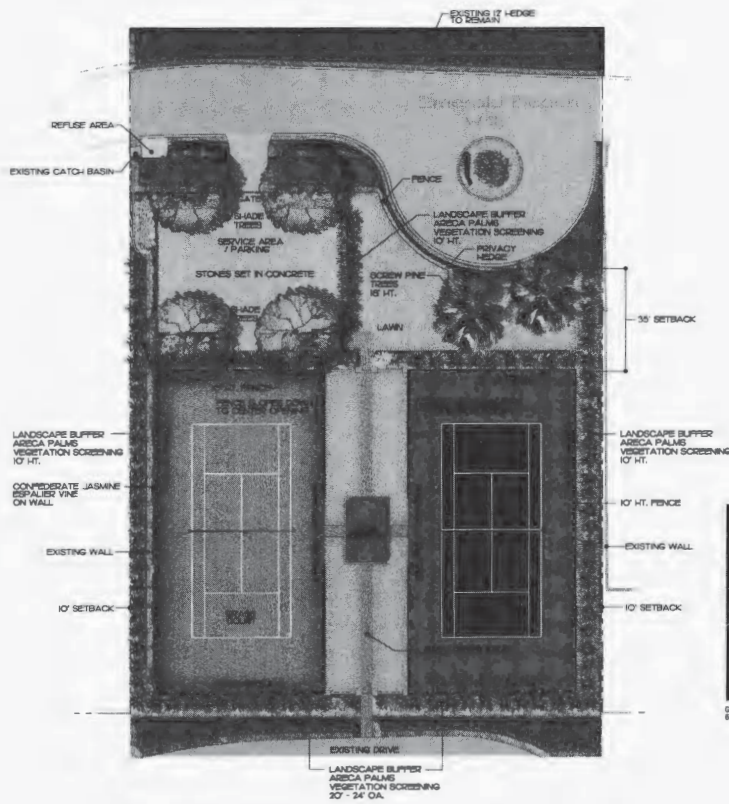
Private Residence
1200 Youth Ocean Boulevard
Palm Beach, FL 33480



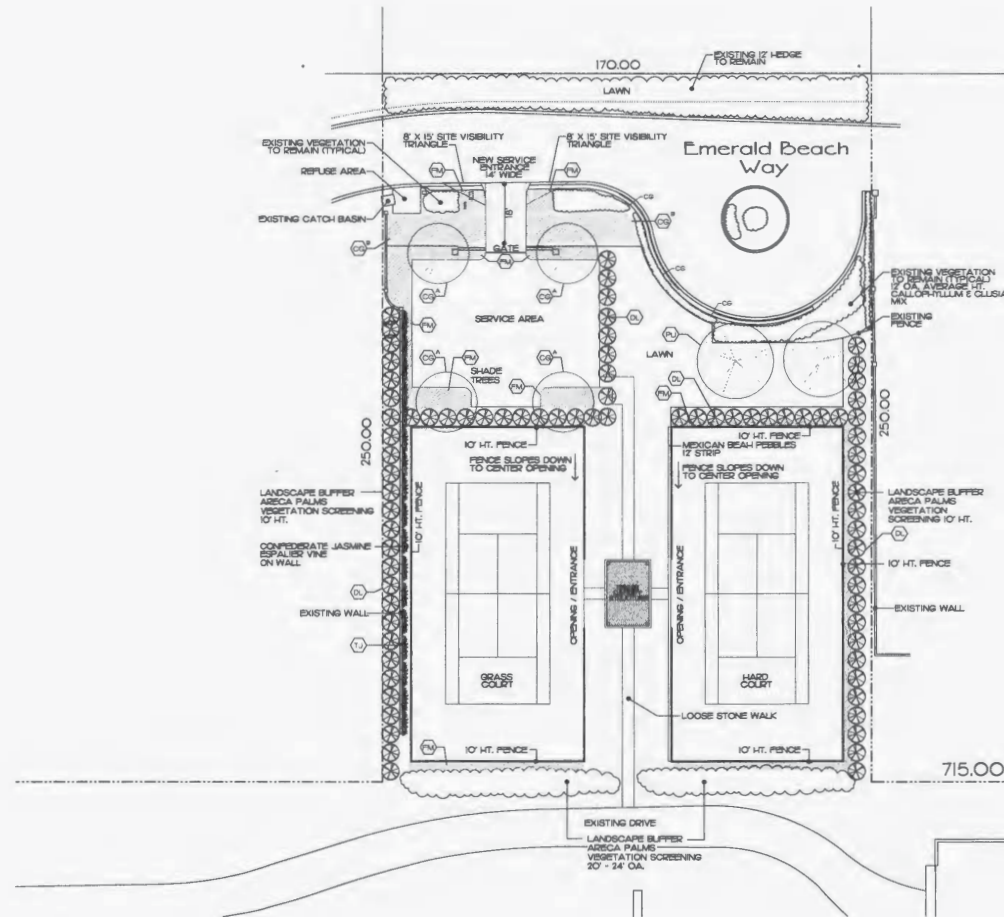
JOB NUMBER: # 17019.00 LA
DRAWN BY: LUGLES 25 PLEUNE
DATE: 05.19.2017
ARCOM SUBMITAL: 05.24.2017
REVISIONS: 11.14.2018

B-046-2017





Garden Plan
 SCALE IN FEET 0' 16' 32' 48'



Planting Schedule

SYMBOL/SET	PLANT NAME	QTY	DESCRIPTION
1	OLIVE BUTTERFLY	4	2' HT. 8" DIA. 1' CT.
2	SPYGLASS	10	10' HT.
3	PARROTIA	8	10' HT.

SYMBOL/SET	PLANT NAME	QTY	DESCRIPTION
4	OLIVE BUTTERFLY	48	2' HT.
5	POUR MONSIEUR	400	3' DIA.
6	WAXED/UNWAXED/ARABICA	40	10' HT. TO WALL



Private Residence
 1236 South Ocean Boulevard
 Palm Beach



JOB NUMBER: P-17018-00-04
 DRAWN BY: [Name]
 DATE: 05.19.2017
 REVISIONS: 11.14.2018

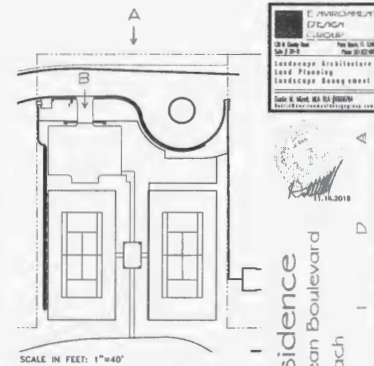
B-046-2017

1.5

2018
 2018
 1-800-452-4779
 1-800-452-4779

Planting Plan
 SCALE IN FEET 0' 16' 32' 48'





Elevation A - North Property Line



Elevation B - South Side of Emerald Beach Way / Additional Landscape Screening / Double Buffer

DESIGN
C. MOORE

128 W. County Street Phone 360-451-1144
Suite 200-0 Phone 360-452-4848

Landscape Architecture
Land Planning
Landscape Management

Daniel H. Moore, M.A. P.E. 1968/79
Landscape Architect



Private Residence
1236 South Ocean Boulevard
Palm Beach

JOB NUMBER: 6 17018.00 LA
DRAWN BY: Duane M. Haeberle
DATE: 11.14.2018

B-046-2017

SHEET 14

2018 (continued) The following statements are representations of the authors in the year 2018. These are not guarantees or promises. No one can predict the future. The authors are not responsible for any loss or damage caused by the use of the information provided in this article. The authors are not responsible for any loss or damage caused by the use of the information provided in this article. The authors are not responsible for any loss or damage caused by the use of the information provided in this article.

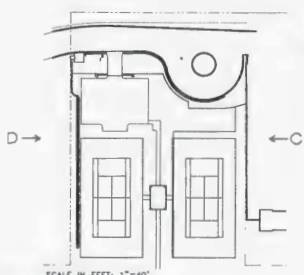
2018 (continued) The following statements are representations of the authors in the year 2018. These are not guarantees or promises. No one can predict the future. The authors are not responsible for any loss or damage caused by the use of the information provided in this article. The authors are not responsible for any loss or damage caused by the use of the information provided in this article. The authors are not responsible for any loss or damage caused by the use of the information provided in this article.

48 HOURS BEFORE DEPART
CALL 800-432-4770
BATHING 2000 AND CALL
OF FLORIDA, INC.

Buffer Elevations

SCALE IN FEET 0' 8' 16' 24'

SCALE IN FEET 0' 8' 16' 24'



T. THOMPSON & ASSOCIATES
 LANDSCAPE ARCHITECTS
 1111 15th Ave. Suite 100
 Palm Beach, FL 33480
 Phone: 561.833.1111
 Fax: 561.833.1112
 Email: tthompson@tthompson.com

11.14.2018

Private Residence
 1256 South Ocean Boulevard
 Palm Beach

A
D
I
R
O
L
E

JOB NUMBER: 8-171618-02 LA
 DRAWN BY: EUGENIE W. PUGH
 DATE: 11.14.2018

B-046-2017



Elevation C - East Property Line



Elevation D - West Property Line

2018
 I have reviewed the plans and specifications for this project and find them to be in accordance with the requirements of the applicable codes and regulations. I am a duly licensed landscape architect in the State of Florida, and I am not providing any services that would constitute a conflict of interest. I am not providing any services that would constitute a conflict of interest.

2018
 I have reviewed the plans and specifications for this project and find them to be in accordance with the requirements of the applicable codes and regulations. I am a duly licensed landscape architect in the State of Florida, and I am not providing any services that would constitute a conflict of interest. I am not providing any services that would constitute a conflict of interest.

Buffer Elevations



11-14-20

Private Residence
1236 South Ocean Boulevard
Palm Beach

JOB NUMBER: 6 17019.00 LA
DRAWN BY: Duane H. Hurd
DATE: 11.14.2018

B-046-2017

2018

COMPETITION
The following individuals are beneficiaries of services in the Lubbock area. They are not employees of the City and are not compensated by the City. Their services are provided on a voluntary basis and are not created, paid for, or controlled by the City. The City is not responsible for the actions of these individuals. The City is not responsible for the actions of these individuals.

2018

BOARD MEMBERS
The following individuals are members of the City Board of Directors. They are not employees of the City and are not compensated by the City. Their services are provided on a voluntary basis and are not created, paid for, or controlled by the City. The City is not responsible for the actions of these individuals. The City is not responsible for the actions of these individuals.

48 HOURS BEFORE ORDERING
CALL 800-433-4770
BANKRUPT STATE AND CALL
OF FLORIDA, INC.

Buffer Sections 



[illegible]

November 29, 2018

Town of Palm Beach

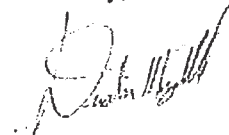
Re: 1236 S. Ocean Boulevard - Landscape Architecture- Town of Palm Beach
(Sports court additions)

The following revisions have been made to the submittal plans dated 11.14.2018:

- Existing pedestrian gate and service access has been removed
- Additional landscape screening has been added to fill in the gap from the gate and service access removal
- Tennis court "fence" note has been expanded to add 10' ft. ht. specification
- Interior coconut palms have been removed
- Large 18' ft. ht. Screw Pine trees have been added (2) – providing additional buffer screening
- Landscape buffer note has been added
 - Areca palms*
 - Vegetation screening*
 - 10' ft. ht.*
- Additional areca palms along the east side of the service area have been added to provide more vegetation screening
- Vehicular gate has been reduced from 8' ft. ht. to 6' ft. ht.
- Existing 12'ft. – 14'ft. vegetation / landscape buffer (north of Emerald Beach Way) Has been added on the plan
- Tennis court color has been revised
- Confederate jasmine vines have been added in espalier pattern along interior of west wall
- Elevation of tennis shade structure had been added on the plan
- Additional landscape buffer elevations have been submitted (sheets L4 & L5)
- Buffer sections were included in submittal (sheet L6)

Thank you.

Sincerely,



Dustin M. Mizell, MLA RLA #6666784
Environment Design Group



ZONING APPLICATION
TOWN OF PALM BEACH

Z-18-00162
(Zoning Case Number)

This application includes requests for:

- ☒ Site Plan Review
☒ Special Exception
☐ Variances

TO BE HEARD BY THE TOWN COUNCIL ON JANUARY 9, 2019 AFTER 9:30 A.M., IN THE TOWN OF PALM BEACH COUNCIL CHAMBERS LOCATED ON THE 2ND FLOOR, 360 SO. COUNTY ROAD, PALM BEACH.

Pursuant to the Town Zoning Code of Ordinances, Sections 134-172 (Special Exceptions and Variances) and/or 134-328 (Site Plan Review), this application is being sent to all property owners within 300' of the location of the subject zoning application. A copy of this application along with all exhibits such as large drawings and other supporting documents that are not attached to this application are available for inspection at the Town's Planning, Zoning & Building Department, 360 S. County Rd., east entrance, weekdays between the hours of 8:30 a.m. and 4:30 p.m.

All interested persons may appear and be heard at said Public Hearing and may likewise submit written statements prior to and at said Public Hearing. If any person decides to appeal any decision made by the Town Council with respect to this matter, he/she will need to ensure that a verbatim record of the proceeding is made which record includes the testimony and evidence upon which the appeal is to be based.

Please be advised that the Town does not enforce private covenants or deed restrictions.

I. **SUBJECT ADDRESS:** 1236 South Ocean Blvd. Zoning District R-AA

Legal Description See Exhibit "A"

Fee Simple Property Owner's Name John L. Thornton and Margaret B. Thornton

Name and address of person who can receive service of process for purposes of litigation in Palm Beach County M. Timothy Hanlon, Alley, Maass, Rogers & Lindsay, P.A., 340 Royal Poinciana Way, Suite 321, Palm Beach, FL 33480

Applicants Name John L. Thornton and Margaret B. Thornton
Contact Phone (561) 659-1770

II. **DESCRIPTION OF THE REQUEST TO BE HEARD BY TOWN COUNCIL, citing applicable Town Zoning Code Section Number(s):**

A. Applicable Zoning Code Section Number(s):

1. Section 134-226: Town Council Powers.
2. Section 134-227: Town Council authorization, compliance and site plan review required.
3. Section 134-229: Requirements for granting.
4. Section 134-326: Purpose of review process; building permit denial pending approval; costs of extraordinary professional advice.
5. Section 134-1759: Tennis, shuffleboard and racquetball courts.

B. Description of request by Zoning Section Number(s):

1. **134-1759. Special Exception and Site Plan Approval requested to permit construction of two tennis courts and associated details including 10-12 feet high landscaping and fencing and small service parking area. One court will be a hard court and the other a grass court.**

III. **APPLICATIONS CONTAINING SITE PLAN REVIEW**

If the application contains Site Plan Review, complete **Exhibit B**, and briefly describe below the reasons why such application should be approved. This explanation should be a summary of information provided in Exhibit B (Site Plan Review by Town Council as stated in the Town's Zoning Code at Section 134-329).

See Exhibit B and the plans prepared by Environment Design Group. The proposed tennis courts will be surrounded by fencing and landscaping between 10 and 12 feet high to screen the courts from the two contiguous neighbors and from the neighbor across the street. The Applicants' entire property is already screened by hedges and walls, and the courts have an additional layer of screening from within their property. The Applicants own the portion of Emerald Beach Way that passes through their property within the east and west boundaries and over which only the three residents of Emerald Beach Way have an ingress and egress easement. The south border of the portion of Emerald Beach Way that the Applicants own is screened with calophyllum and clusia (the north border of the Applicants' private road is between 11 and 15 feet south of the north boundary of their property). The proposed location of the tennis courts will have no negative impact on any neighbors and will not in any way create any additional burden on Town provided services. In fact, if the Applicants terminated the existing Unity of Title, the portion of Applicants' property on which the courts are to be located qualifies as a single family lot in the R-AA zoning district, and a large home, swimming pool and accessory structure could be built on the property. As a result, the proposed use decreases the potential burden on the neighbors and the Town Services.

IV. **APPLICATIONS CONTAINING SPECIAL EXCEPTIONS**

If the application contains requests for Special Exceptions, complete **Exhibit C**, and briefly describe below the reasons why such application should be approved. This explanation should be a summary of information provided in Exhibit C (Requirements for granting Special exceptions by the Town Council as stated in the Town's Zoning Code at Section 134-229).

The tennis courts are a permitted special exception use under the Zoning Code, and multiple neighbors have existing tennis courts. The tennis courts represent a less intense use and lower impact on the neighbors and the Town versus a new single family residence, swimming pool and accessory structure which are allowed if the Unity of Title were terminated (in 2007, ARCOM and Town Council approved a 13,789 sq. ft. home on this portion of property when it was known as 200 Emerald Beach Way). In addition, the courts will be well screened through attractive landscaping and fencing, and the potential massing and size of a single family home would create dramatically more impact on the neighbors and Town services versus the courts. See the attached plans prepared by Environmental Design Group, which show landscaping at 10-12 feet in height; a 10 foot high fence surrounding the courts and screened by 10-12 foot (at least) Areca palms. Density is also reduced, which is a goal under the Town's comprehensive plan.

Z-18-00162

Zoning Case Number

In addition,

- on the east boundary of the property, there is a wall over 6 feet on top of which is a ficus hedge of over 10 feet (so combined height over 16 feet);
- on the north boundary, there is a hedge of ficus and hibiscus approximately 12 feet high;
- on the west boundary, there is a wall of over 6 feet bordered by 10-12 foot palms;
- and to the south, the Applicants' property extends over 300 feet with a garden dense with trees over 25-30 feet.

V. APPLICATIONS CONTAINING VARIANCES

If the application contains requests for variances, please respond to the questions below, and complete **Exhibit D** (Findings for authorizing a variance as stated in the Town's Zoning Code at Section 134-201).

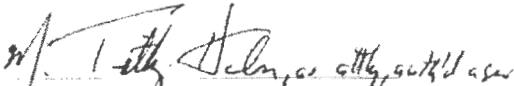
N/A

- a. Applicants should provide a brief description of the special conditions which when subjected to a literal enforcement of the provisions of the zoning ordinance will result in unnecessary and undue **HARDSHIP**. This explanation should be a summary of information provided in Exhibit D.
- b. Applicants should address how granting of a variance for these special conditions will not be contrary to the public's interest.

VI. SITE HISTORY

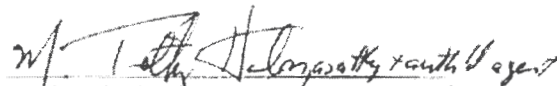
Please provide a detailed history in chronological order of all zoning-related requests processed on or after January 1, 1970 applicable to this property. This information should be attached as **Exhibit E - SITE HISTORY**.

Respectfully submitted,


M. Timothy Hanlon, as attorney/agent for
John L. Thornton and Margaret B. Thornton

Applicants' Signature

M. Timothy Hanlon
Alley, Maass, Rogers & Lindsay, P.A.
Attorney/Agent for Property Owner
340 Royal Poinciana Way, Suite 321
Palm Beach, FL 33480
(561) 659-1770


M. Timothy Hanlon, as attorney/agent for
John L. Thornton and Margaret B. Thornton

Fee Simple Property Owner's Signature
(or his/her duly authorized attorney)

c/o M. Timothy Hanlon
Alley, Maass, Rogers & Lindsay, P.A.
340 Royal Poinciana Way, Suite 321
Palm Beach, FL 33480
(561) 659-1770

Z-18-00162
Zoning Case Number

EXHIBIT A - LEGAL DESCRIPTION

Parcel 1:

Being that part of the South 300 feet of the North 649 feet of Government Lot 1 in Section 2, Township 44 South, Range 43 East, Palm Beach County, Florida, lying between the waters of the Atlantic Ocean and the center line of Ocean Boulevard. Subject to the right-of-way of Ocean Boulevard.

and

Parcel 2:

Lot 2, REPLAT OF THE REPLAT OF THE EMERALD, according to the Plat thereof, recorded in Plat Book 45, Page 177, of the Public Records of Palm Beach County, Florida.

EXHIBIT B – REQUEST FOR SITE PLAN REVIEW

In order to assist the Town Council in reviewing the site plan application, please ensure that the following items have been addressed.

1. Sufficiency of statements on ownership and control of the subject property and sufficiency of conditions of ownership or control, use and permanent maintenance of common open space, common facilities or common lands to ensure preservation of such lands and facilities for their intended purpose and to ensure that such common facilities will not become a future liability for the Town.

The proposed tennis courts and landscaping are all within the Applicants' property and there are no common elements applicable to this property. The courts and landscaping will be maintained to the same high standard as the balance of the Applicants' property is maintained.

2. Intensity of use and/or purpose of the proposed development in relation to adjacent and nearby properties and the effect thereon.

The intensity of use and purpose of the tennis courts are both dramatically less impactful than what is permitted under the Zoning Code. The portion of Applicants' property on which the courts are proposed qualifies as a single family lot, and a new home, swimming pool and accessory structure could all be constructed in lieu of the courts. In 2007, both ARCOM and Town Council approved the construction of a 13,789 sq. ft. single family residence on said portion (and none of the current neighbors objected), which is a much more intense use and represents dramatically more size and massing than two unlighted, heavily screened tennis courts.

3. Ingress and egress to the property and the proposed structure thereof, with particular reference to automotive and pedestrian safety; separation of automotive traffic; traffic flow and control; provision of services and servicing of utilities and refuse collection; and access in case of fire, catastrophe or emergency.

The proposed improvements do not affect ingress, egress or Town services in any way. Access to Applicants' property is already provided from the main entrance on S. Ocean Blvd. and also from Emerald Beach Way. Most of Emerald Beach Way is owned by Applicants, which is a private ingress/egress easement located on Applicants' property and owned by Applicants and which serves only three property owners. The portion of Emerald Beach Way not owned by the Applicants is owned by SMM Realty, LLC over which the Applicants have an ingress and egress easement. Mr. Maoli, the owner of SMM Realty, has written a letter in support of the Applicants' application for the addition of two tennis courts. The owners of 100 Emerald Beach Way merely possess an easement to use Emerald Beach Way solely for ingress and egress to its property. The proposed use actually reduces the impact on Town Services and traffic because density is reduced.

4. Location and relationship of off-street parking and off-street loading facilities to thoroughfares and internal traffic patterns within the property, with particular reference to automotive and pedestrian safety, traffic flow and control, access in case of fire or catastrophe, and screening and landscaping.

No new traffic will result because use is only by the Applicants' family and guests. All parking for Applicants' property is on-site. Access is already existing through S. Ocean

Blvd. (main entrance) and through the portion of Emerald Beach Way owned by SMM Realty over which Applicants have an ingress/egress easement. Again, parking impact is actually reduced as compared to the alternative of construction of a new single family residence.

5. Proposed screens and buffers to preserve internal and external harmony and compatibility with uses inside and outside the property boundaries.

See Landscape Plan for landscape screening. The proposed new fencing and landscaping are between 10 and 12 feet in height and will provide excellent screening from the neighbors' properties and the private ingress/egress easement at the north end of their property. Specifically, landscape and buffering will include a 10 foot high fence around the courts, enclosed by 10-12 foot Areca Palms.

In addition:

- on the east boundary of the property, there is a wall over 6 feet on top of which is a ficus hedge of over 10 feet (so combined height over 16 feet) ;
- on the north boundary, there is a hedge of ficus and hibiscus approximately 12 feet high;
- on the west boundary, there is a wall of over 6 feet bordered by 10-12 foot palms;
- and to the south, the Applicants' property extends over 300 feet with a garden dense with trees and palms over 25-30 feet.

In addition, within the Applicants' property there is an additional layer of screening along the south border of their privately owned road (which is within their property boundaries). With the exception of the easternmost oceanfront property boundary, which is unrelated to this application, all boundaries have walls and hedges in excess of ten feet.

6. Manner of drainage on the property, with particular reference to the effect of provisions for drainage on adjacent and nearby properties and the consequences of such drainage on overall town capacity.

See the attached drainage plan prepared by Gruber Consulting Engineers, Inc. All drainage required under the Zoning Code is provided.

7. Utilities, with reference to hook-in locations and availability and capacity for the uses projected.

Utilities are fully available to the property. No demand for new services is created by the proposed use. The courts will not be lighted

8. Recreation facilities and open spaces, with attention to the size, location and development of the areas as to adequacy, effect on privacy of adjacent and nearby properties and uses within the property, and relationship to community-wide open spaces and recreation facilities.

The tennis courts meet all open space and landscape requirements and will actually lead to far greater open space than what would be created if a new single family home were constructed.

9. Such other standards as may be imposed by this chapter for the particular use or activity involved.

No other standards apply to the tennis court use.

10. Height of commercial structures with reference to adjoining buildings, the effect on uniformity in height, and the general principle of retaining the low profile scale of commercial architecture.

The tennis courts will be for the use of Applicants' family and guests and will not be commercial structures.

11. Visible size and bulk. The proposed development should be so arranged that it minimizes the visible bulk of the structures to drivers and pedestrians on abutting roadways, the point of reference being the centerline of the abutting roadways, with the intent being to maintain visual impact of multistory buildings at the same relative level of intensity as a single-story building at the minimum required setback.

The proposed tennis courts will greatly reduce size, mass and bulk as compared to the result had a new single family residence been constructed (especially compared to the 13,789 sq. ft. residence approved in 2007). No buildings are proposed, and the courts will be well landscaped and screened. No impact will result to pedestrians or drivers as no additional traffic will result. The access to the tennis courts is through an ingress egress easement over SMM Realty's privately owned road and thus its entrance does not abut a public roadway. The property has three neighbors all of whose properties are well screened: to the east, there is a wall over 6 feet high on top of which is a hedge over 10 feet tall (combined height over 16 feet); to the north, there are two layers, the 12 foot tall hedge along the northern boundary and a second hedge bordering the Applicants' private road along its southern edge which will exceed ten feet; and to the west, there is a wall of 6'8" with a hedge of palms over 10 feet high. The visual impact of the tennis courts will be well screened and the result will be softer and significantly less impactful than the homes of surrounding neighbors. Obviously, the height and mass of the tennis courts are dramatically less than the neighboring homes or a new home if constructed there. See attached plans prepared by Environment Design Group.

EXHIBIT C - REQUEST FOR SPECIAL EXCEPTION

The Town Council must find the application in conformance with a number of requirements. Please provide sufficient information on each of the requirements to enable the Council to make a determination on your application.

1. The use is a permitted special exception use as set forth in article VI of this chapter.

Tennis courts are permitted special exception uses per Section 134-1759 of the Zoning Code.

2. The use is so designed, located and proposed to be operated that the public health, safety, welfare and morals will be protected.

The design, location and operation of the tennis courts will protect the public health, safety, welfare and morals because the use is typical in the neighborhood and sound and views will be extremely limited due to the landscaping and fencing to serve as screening and buffering. Specifically landscape and buffering will include a 10 foot high fence around the courts, enclosed by 10-12 foot Areca Palms.

In addition:

- on the east boundary of the property, there is a wall over 6 feet on top of which is a ficus hedge of over 10 feet (so combined height over 16 feet) ;
- on the north boundary, there is a hedge of ficus and hibiscus approximately 12 feet high;
- on the west boundary, there is a wall of over 6 feet bordered by 10-12 foot palms;
- and to the south, the Applicants' property extends over 300 feet with a garden dense with trees and palms over 25-30 feet.

Further, the use as a tennis court reduces density and mass which would result had a separate house, pool and accessory structure be constructed on the lot, which are all permitted under the Zoning Code if the Unity of Title were terminated.

3. The use will not cause substantial injury to the value of other property in the neighborhood where it is to be located.

The use as tennis courts will not cause any substantial injury to the value of other properties because density is reduced and attractive sight screening is included. Open space will be increased, which is valued in the real estate industry. The neighbors are receiving the benefit of Parcel 2 remaining as open space (see Section 134-1759, which does not count tennis courts under the lot coverage calculation) versus the massive almost 14,000 sq. ft. residence previously approved by the Town.

4. The use will be compatible with adjoining development and the intended purpose of the district in which it is to be located.

Tennis courts are permitted special exception uses, and several neighbors in the vicinity also have tennis courts. Furthermore, the Applicants' property is unusual in its large acreage (approximately 6 acres) and as such can easily accommodate a hard tennis court and a grass tennis court without creating any negative impact on the neighbors or the Town.

5. The use will comply with yard, other open space, and any special requirements set out in article VI for the particular use involved.

Yes. No variances are requested. The courts fully comply with all Zoning Code requirements.

6. The use will comply with all elements of the comprehensive plan.

The use is permitted and desired under the Town's comprehensive plan. Further, density is reduced by unifying this single family property with the main residence property and using it as a tennis court, which meets a goal of the Town's Comprehensive Plan.

7. The use will not result in substantial economic, noise, glare, or odor impacts on adjoining properties and properties generally in the district.

The tennis courts will not result in substantial economic, noise, glare, or odor impacts on adjoining properties and properties generally in the district because the courts will not have lighting and the proposed landscaping and fencing will prevent all of such impacts. In addition, density will be reduced and open space will be increased, both of which provide a positive impact on adjoining properties and other properties in this district.

8. Adequate ingress and egress to property and proposed structures thereon and off-street parking and loading areas will be provided where required, with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe.

Emerald Beach Way is a private road, the eastern portion of which is owned by the Applicants and the western portion by SMM Realty over which the Applicants have an ingress and egress easement. Applicants own the portion of Emerald Beach Way that lies immediately north of the proposed tennis courts and none of Emerald Beach Way lies on the 100 Emerald Beach Way property. As a result, the street yard setback for the courts is actually increased and provides additional buffer. A parking area for staff is also proposed between the courts and Emerald Beach Way, but the use will not create any additional parking or traffic demand because the courts are for use only by Applicants' family and guests. In addition, the owner of the property immediately to the west, SMM Realty, (Tom Maoli), has written a letter of support for the Applicants' proposed addition of two tennis courts.

9. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, and economic impact shall be compatible and in harmony with properties in the district.

No signs are proposed.

10. Location, availability and compatibility of utility service for the use shall be satisfactory to ensure health and safety.

All utilities are available to the property. No new utility service is required.

11. Refuse and service areas for the use shall not adversely affect automotive and pedestrian safety and convenience, traffic flow and control, or access in case of fire or catastrophe.

There is an existing designated refuse area on the Applicants' property, a feature supported by Public Works, so there is no need for refuse on the street, absent abnormal

circumstances. Use of the proposed tennis courts will have no adverse affect on the Emerald Beach Way ingress/egress easement located on Applicants' property or on the SMM Realty property over which the Applicants have an ingress/egress easement because use is only for Applicants' family and guests and the use as tennis courts will not create any additional demand for refuse and service areas. As a result, safety, convenience, traffic flow and control and access for Town emergency services will be unaffected.

12. In all districts except the C-OP1 district, and also with the exception of hotel, motel and timeshare uses, the proposed special exception use will not attract the principal portion of its customers/clients from off-island locations. The Applicants shall submit evidence satisfactory to the town council that not less than 50 percent of the customers of the proposed use will be town persons. Evidence submitted in support of this contention shall include credible data or information suitable for review by the town to determine the credibility and the appropriateness of the Applicants' conclusion. The submittal shall include a description of the types of information used and the methodology employed to arrive at the conclusion. Information used shall include, but shall not be limited to, lists of customer/client addresses or certification thereof by an independent certified public accountant approved by the town, market studies prepared by independent professional firms, or data from similar operations under the control of the applicant. The town may in the future require the Applicants to demonstrate to the satisfaction of the town council that the special exception use is continuing to be town-serving.

This section does not apply to Applicants' request as the use is residential only.

13. If historic/specimen trees are located on the subject property, the location of said historic/specimen trees shall be identified on a signed and sealed survey. In addition, adequate landscaping, screening and barricade protection of historic/specimen trees shall be demonstrated to be provided as required in this chapter.

No historic/specimen trees exist in the proposed location of the tennis courts.

14. The proposed use will not place a greater burden than would be caused by a permitted use on municipal police services due to increased traffic or on fire protection services due to the existence of or increased potential for fire/safety code violations.

No increased traffic or fire protection services will result from the use as tennis courts. In fact, the use as private tennis courts will reduce the potential burden on municipal police or fire services as compared to the demand that would result if the property were developed as a new single family residence, swimming pool and accessory structure, which are all permitted under the Zoning Code.

EXHIBIT D - REQUEST FOR VARIANCE

N/A

CRITERIA FOR AUTHORIZING A VARIANCE

The Town Council must find the application in conformance with a number of criteria. Please address each of the criteria completely in order to provide the Council with sufficient information to make a determination on your application.

1. List the special conditions and circumstances peculiar to the land, structure or building which are not applicable to other lands, structures or buildings in the same zoning district.
2. Indicate how the special conditions and circumstances do not result from the actions of the applicant.
3. Demonstrate that the granting of the variance will not confer on the Applicants any special privilege that is denied by this ordinance to other lands, buildings or structures in the same zoning district.
4. Demonstrate how literal interpretation of this ordinance would deprive the Applicants of rights commonly enjoyed by other properties in the same zoning district under the terms of this ordinance and would work unnecessary and undue hardship on the applicant.
5. Demonstrate that the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.
6. For granting of a variance to sections 134-387, or 134-390 through 134-392, pertaining to the regulation of nonconforming uses, the following additional findings must be demonstrated pertaining to the nonconforming use for which the variance is requested:
 - a. It is the continuance of a unique hotel or residential use that has, for at least 15 years proven compatible with the surrounding uses; and
 - b. Neither rezoning to a district which would allow the use, nor inclusion of the subject use as a permitted or special exception use in the district would act to achieve the preservation of the subject use without opening the possibility of the incursion of uses incompatible with the immediately surrounding area and, further, such variance shall
 1. Be granted only for the continuation of the same hotel or residential use; and,
 2. Require the Applicants to submit a declaration of use limiting the utilization of the property for which the variance was granted to the same use as that existing at the time the variance was granted.
7. Show how the granting of the variance will be in harmony with the general intent and purpose of this chapter, and such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

Z-18-00162

Zoning Case Number

EXHIBIT E - SITE HISTORY

Please provide a detailed history of all zoning-related requests applicable to this property processed on or after January 1, 1970, in chronological order, including but not limited to variances, special exceptions, site plan reviews, and existing agreements.

Parcel 1:

- 10/12/93:** Variance #55-93. Town Council approved the following variances:
- a) Establish the point of measurement for building height at elevation 22.5 feet in lieu of elevation 7.5 feet as required;
 - b) Allow kitchen facilities in the guest house and staff residence with the provision that the owner execute a typical kitchen removal agreement;
 - c) Allow a building height of 27'6" in lieu of 25 feet allowed. The overall building height will be 35 feet as allowed; and
 - d) Allow entrance walls, gateposts and gates to be constructed as shown, but no more than 8 feet for walls and 14 feet for gates and gateposts.

Parcel 2:

- 1/85:** The Town changed the name of Woods Rd. to Emerald Beach Way
- 6/19/07:** SPR #10-2007. Town Council approved the site plan for the construction of a 13,789 sq. ft. single family residence.

Both Parcels:

- 12/29/16** Unity of Title Agreement recorded, which requires that 1236 S. Ocean Blvd. and the property formerly known as 200 Emerald Beach Way be unified in title as one single parcel as long as the Unity is in effect.

Z-18-00162

Zoning Case Number

EXHIBIT F – PARKING STATEMENT

Please provide a detailed parking statement which includes details of all available off-street parking, including information regarding the number of parking spaces designated for service use (for example: lawn service, pool service, etc.), staff/employee use, etc.

COMMERCIAL PROPERTIES MUST:

N/A

PROVIDE NUMBER OF OFF-STREET PARKING SPACES AVAILABLE
FOR EMPLOYEES ON THE SUBJECT PROPERTY: _____

PROVIDE NUMBER OF EMPLOYEES/STAFF PER SHIFT: _____

INDICATE LOCATION WHERE EMPLOYEES PARK OFF SITE: _____

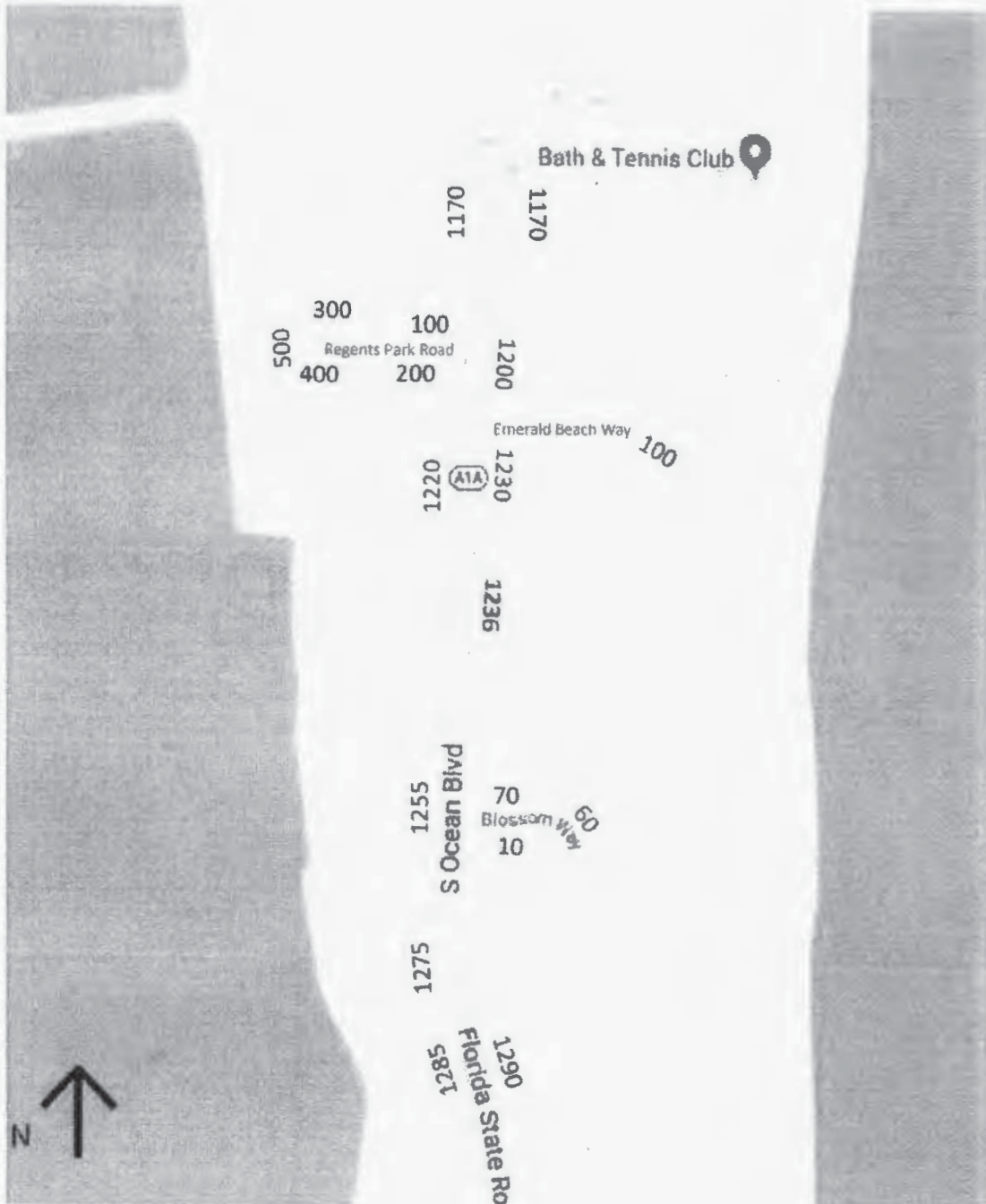
RESIDENTIAL PROPERTIES MUST:

PROVIDE NUMBER OF OFF-STREET PARKING SPACES AVAILABLE ON THE SUBJECT
PROPERTY: 0 off-street parking spaces are needed or used.

PROVIDE NUMBER OF EMPLOYEES/STAFF PER SHIFT: 5

INDICATE LOCATION WHERE EMPLOYEES/STAFF PARK OFF-SITE: Service driveway.
The proposed plan includes a new parking area for staff, which will also be used
for staff parking.

1236 S. Ocean Blvd.



Z-18-00162 Termination
Zoning Case Number

1236 S. Ocean Blvd.
Property Address

AFFIDAVIT OF NOTICE MAILING

STATE OF FLORIDA

COUNTY OF PALM BEACH

Before me this day personally appeared M. Timothy Hanlon who, being duly sworn deposes and says:

1. He/she is the owner, or the owner's authorized agent, of the real property legally described in Exhibit A contained within the Zoning Application Case number as referenced above, and;
2. The accompanying Property Owners List is to the best of his/her knowledge a complete and accurate list of all property owners' mailing addresses and property control numbers dated no more than 90 days prior to the Town Council hearing at which the subject application will be heard. The list of property owners is based on the latest official tax records for the subject property and all other property within three hundred (300) feet of the real property wholly or in part as described in Exhibit A, and;
3. Each envelope, along with any required certified mail receipts and return receipts, was prepared for mailing using the labels provided by the Property Appraiser's Office, and;
4. Each envelope included the zoning case # and Town of Palm Beach, Planning, Zoning and Building Department, PO Box 2029, Palm Beach, FL 33480 as the return address, and;
5. Each envelope contained the complete application along with any other documentation as outlined in the Zoning Application Procedures; and;
6. Each envelope bears a postmark date which was no later than 4 days after the submittal deadline; postmark date: 12/13/18, in compliance with all applicable legal NOTICE REQUIREMENTS.
7. Failure to submit this affidavit (along with validated certified mail receipts) to the Zoning Administrator a MAXIMUM OF FIVE (5) DAYS AFTER THE SUBMITTAL DEADLINE date will result in the deferral of the project.

FURTHER AFFIANT SAYETH NOT.

SIGNATURE OF AFFIANT: M. Timothy Hanlon

PRINTED NAME OF AFFIANT: M. Timothy Hanlon

Sworn to and subscribed before me this 13th day of November, 20 18

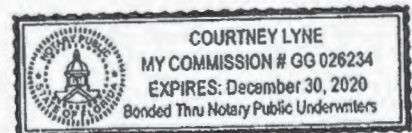
Courtney Lyne
SIGNATURE OF NOTARY PUBLIC

Print, Type or Stamp Commissioned Name of Notary Public: Courtney Lyne

Affiant is personally known to Notary Public X OR Affiant produced Identification _____ and if so,
Type of Identification Produced: _____

Rev 6/15/2017

Date stamp when received by PZB:



RECEIVED
By Kelly Churney at 3:04 pm, Dec 13, 2018

NOTICE OF APPLICATION WITHDRAWAL

December 13, 2018

Re: 1236 South Ocean Boulevard

Application Z-18-00162 has been withdrawn based on the Town's determination that no special exception or site plan approval is required for the Applicant's tennis courts. ARCOM approval is still required.

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

100 EMERALD BEACH WAY LC

Case No. _____

Plaintiff,

v.

JOHN THORNTON, MARGARET
THORNTON, and TOWN OF PALM BEACH,

Defendants.

_____ /

COMPLAINT

Plaintiff, 100 EMERALD BEACH WAY LC ("100 Emerald" or "Plaintiff"), by and through its undersigned counsel and pursuant to the Florida Rules of Civil Procedure, hereby sues Defendants, JOHN and MARGARET THORNTON (the "Thorntons") and nominal Defendant, TOWN OF PALM BEACH (the "Town"), and alleges as follows:

NATURE OF ACTION

1. This is an action for declaratory and injunctive relief.

PARTIES, JURISDICTION, AND VENUE

2. Plaintiff, 100 Emerald, is a Florida Limited Liability Company that owns property in Palm Beach, Florida.
3. The Town of Palm Beach is a municipal corporation of the State of Florida.
4. Upon information and belief, John Thornton resides in the Town of Palm Beach, Palm Beach County, Florida and has an ownership interest in the property containing the Thorntons' residence at 1236 South Ocean Boulevard and the unpermitted tennis court lot located at 200 Emerald Beach Way in the Town of Palm Beach.

5. Upon information and belief, Margaret Thornton resides in the Town of Palm Beach, Palm Beach County, Florida and has an ownership interest in the property containing the Thorntons' residence at 1236 South Ocean Boulevard and the unpermitted tennis court lot located at 200 Emerald Beach Way in the Town of Palm Beach.

6. This Court has jurisdiction pursuant to Article V, Florida Constitution (1968), Florida Rule of Civil Procedure 1.630, and Chapter 86, Florida Statutes.

7. Venue is proper in Palm Beach County because the property that is the subject of this matter is located in Palm Beach County, Florida and the causes of action contained herein accrued in Palm Beach County, Florida.

8. All conditions precedent to maintain this cause of action have accrued, have been waived, or have been otherwise excused.

GENERAL ALLEGATIONS

9. Plaintiff, 100 Emerald is a Florida Limited Liability Company that owns a home and property located at 100 Emerald Beach Way in the Town of Palm Beach, Florida (the "100 Emerald Home").

10. The 100 Emerald Home is located in a small cul-de-sac that provides access to three (3) lots: (A) the 100 Emerald Home; (B) 1230 South Ocean Boulevard, a single-family home; and (C) a property called Lot 2.

11. Lot 2 is located between the 100 Emerald Home and 1230 South Ocean Boulevard.

12. Lot 2 was intended to be developed into a single-family house when the area was platted.

13. The Thorntons own Lot 2 and an oceanfront home directly to the South of the 100 Emerald Home, known as 1236 South Ocean Boulevard.

14. The 100 Emerald Home, Lot 2, 1230 South Ocean Boulevard and 1236 South Ocean Boulevard are located in the R-AA, Large Estate Residential zoning district and an area designated as Single-Family under the Town's Comprehensive Plan.

15. On May 24, 2017, Defendant Margaret Thornton filed an Application for Project Review for a Major Project by the Architectural Commission of the Town of Palm Beach ("ARCOM") which sought approval for development of a tennis court and canopy (the "Tennis Complex") on Lot 2. The Application did not include elevations and did not demonstrate that any fence or wall would be contiguous to the Tennis Complex; did not identify the height or nature of fencing or other barrier around the Tennis Complex; and, did not identify the height of the landscaping that was intended to be used to buffer the Tennis Complex.

16. On June 27, 2017, 100 Emerald submitted a letter of objection to the Application. The Objection sets forth numerous ground why ARCOM should have denied the Application.

17. On June 28, 2017, ARCOM held a hearing on the Application, at the conclusion of which ARCOM unanimously approved the Application over 100 Emerald's objections.

18. ARCOM made no findings that Defendant Margaret Thornton had met the criteria for approval.

19. On July 7, 2017, 100 Emerald timely appealed ARCOM's decision to grant the Application to allow the development of the Tennis Complex on Lot 2.

20. The Town Council held a hearing on the Appeal on August 9, 2017.

21. After the presentations were completed, the Town Council voted to deny the Appeal, without findings.

22. On August 16, 2017, John Page, Director of the Town's Planning, Zoning & Building Department, sent 100 Emerald's counsel a letter informing 100 Emerald of the Town

Council's decision to deny the Appeal.

23. On September 15, 2017, 100 Emerald timely filed a Petition for Issuance of Writ of Certiorari in the matter styled *100 Emerald Beach Way, LC v. Palm Beach Town Council and Margaret B. Thornton*, Palm Beach County Case No. 502017CA010274XXXXMB, Fifteenth Judicial Circuit (Civil Appellate Division), seeking that the Court quash the August 16, 2017 decision of the Town Council to deny the Appeal and reverse ARCOM's June 28, 2017 approval of the Application.

24. Sometime after the Town Council's denial of this appeal, the Thorntons completed construction of the Tennis Complex on Lot 2. The construction of the Tennis Complex on Lot 2 is now complete.

25. On August 30, 2018, the Fifteenth Judicial Circuit (in its appellate capacity), granted 100 Emerald's Petition for Writ of Certiorari, finding that:

Upon review of the Petition for Writ of Certiorari, we find that the Town Council failed to rely on competent, substantial evidence when it denied [100 Emerald's] appeal from the Town Architectural Committee. The Town Architectural Committee did not make findings sufficient to ensure that Respondent Thornton's 'proposed development [would be] in conformity with the standards of this Code and other applicable ordinances insofar as the location and appearance of the buildings and structures are involved.' See Res. App. at 7. Specifically, there was no finding by the Town Architectural Committee or Town Council, or evidence in the record, to suggest that Respondent Thornton's proposed development would comply with section 134-1759. See Resp. App. at 16. Because the Town Council's failure to rely on competent, substantial evidence is sufficient cause to grant the Petition, we issue no opinion regarding the remaining arguments on appeal. We GRANT the Petition for Writ of Certiorari and QUASH the decision of the Town Council.

See Exhibit 1.

26. Both Defendant Margaret Thornton and the Town Council each filed a Motion for Rehearing on September 14, 2018. On November 1, 2018, this Court denied both Motions for Rehearing.

27. On November 5, 2018, this Court issued a Mandate commanding such further proceedings be had in accordance with its August 30, 2018 Opinion. *See* Exhibit 2.

28. As adjudicated by this Court, the Thorntons built the Tennis Complex on Lot 2 without first obtaining proper permitting for the structure.

29. Chapter 18, Section 18-233 of the Town of Palm Beach Code of Ordinances adopts the Florida Building Code which requires building permits to construct a building or structure. The Town of Palm Beach requires all structures constructed without building permits to be taken down.

30. Either because the Thorntons built the Tennis Complex on Lot 2 without first obtaining proper permitting for its construction or any such permit has been rendered null and void by this Court's August 30, 2018 decision, it must be taken down.

31. The Thorntons' construction of an unpermitted tennis court seems par for the course. Mr. Thornton has a long and unfortunate history of questionable tactics. According to the New York Times Bestseller, *Money and Power*, Mr. Thornton is quoted as saying the following regarding pitching a potential client: "If we do not get this mandate, I will personally slit the throats of all my team and drink their blood." William Cohan, *Money and Power*, 417 (First Anchor Books ed., Random House, Inc., 2012). A former colleague said Mr. Thornton "has a huge number of enemies...he knocks people about." *Id.*

COUNT I – DECLARATORY ACTION

32. Plaintiff restates and realleges paragraphs 1 through 31 as if fully set forth herein.

33. In accordance with Fla. Stat. § 86.011, this Court has the authority to declare rights, status, and other equitable or legal relations whether or not further relief is or could be

claimed. The Court has the authority to render declaratory judgments on the existence or nonexistence of: (a) any immunity, power, privilege, or right; or of (b) any fact upon which the existence or nonexistence of such immunity, power, privilege, or right does or may depend, whether such immunity, power, privilege or right now exists or will arise in the future.

34. As described above, there is a bona fide, actual, and present practical need for a declaration regarding whether the Tennis Complex on Lot 2, which was either constructed without building permits in violation of Chapter 18, Section 18-233 of the Town of Palm Beach Code of Ordinances and the Florida Building Code or any such permit has been rendered null and void by this Court's August 30, 2018 decision, must be demolished immediately. Such declaration deals with present and ascertainable facts, as detailed above. 100 Emerald's rights, arising from its ownership of the neighboring 100 Emerald Home, are dependent upon the facts detailed above and the law applicable to such facts.

35. 100 Emerald, the Thornton and the Town Council have an actual, present, adverse, and antagonistic interest in the subject matter hereof, either in fact or law. The antagonistic and adverse interests are, or will be, before the Court by proper process. Moreover, the relief sought herein by 100 Emerald is not merely the giving of legal advice by the Court to questions propounded by curiosity.

36. Under the facts outlined above, 100 Emerald is entitled to a declaration that the Tennis Complex on Lot 2 must be demolished immediately because it constitutes unauthorized structures either built without the permits required under the Town of Palm Beach Code of Ordinances and the Florida Building Code or built pursuant to a permit that has been rendered null and void by this Court's August 30, 2018 decision.

WHEREFORE, 100 Emerald prays that this Court enter a declaratory judgment declaring that: (a) the Tennis Complex on Lot 2 was constructed either without building permits in violation of Chapter 18, Section 18-233 of the Town of Palm Beach Code of Ordinances and the Florida Building Code or constructed pursuant to a permit that has been rendered null and void by this Court's August 30, 2018 decision; (b) the Tennis Complex on Lot 2 must be demolished immediately; and (c) providing for such other relief as this Court deems just and proper.

COUNT II – INJUNCTIVE RELIEF

37. Plaintiff restates and realleges paragraphs 1 through 31 as if fully set forth herein.

38. As described above, the Tennis Complex which borders the 100 Emerald Home, was constructed either without building permits or constructed pursuant to a permit that has been rendered null and void by this Court's August 30, 2018 decision, and must therefore be demolished pursuant to the Town of Palm Beach Code of Ordinances and the Florida Building Code.

39. To date, the unpermitted Tennis Complex continue to remain on Lot 2. Therefore, 100 Emerald requires a court order instructing the Thorntons and, if necessary the Town Council, to take immediate action to demolish this unpermitted structure.

40. 100 Emerald has no adequate remedy at law because its harm is caused by the continued existence of the unpermitted Tennis Complex on Lot 2, which borders the 100 Emerald Home.

41. 100 Emerald has a substantial likelihood of success on the merits because this Court has already quashed the August 16, 2017 decision of the Town Council to deny Plaintiff's Appeal and reversed ARCOM's June 28, 2017 approval of the Application, thereby

rendering any permit issued to the Thorntons to construct the Tennis Complex null and void.

42. Unless the Court issues an order instructing the Thorntons and, if necessary the Town Council, to take immediate action to demolish the unpermitted Tennis Complex, 100 Emerald will suffer irreparable injury as the owner of the 100 Emerald Home, which borders Lot 2 where this unpermitted Tennis Complex unlawfully remains.

43. Moreover, injunctive relief serves the public interest by requiring that unauthorized structures (either built without permits in violation of the Town of Palm Beach Code of Ordinances and the Florida Building Code or pursuant to a permit which has been rendered null and void by this Court), be taken down.

WHEREFORE, 100 Emerald prays that this Court enter an order: (a) commanding the Thorntons to immediately demolish and otherwise remove the unpermitted Tennis Complex located on Lot 2; (b) commanding the Town Council to take any action that is necessary to effectuate the demolition and removal of the unpermitted Tennis Complex on Lot 2; and (c) for such other relief this Court deems just and proper.

Date: November 20, 2018

LEVINE KELLOGG LEHMAN
SCHNEIDER + GROSSMAN LLP
Counsel For 100 Emerald Beach Way LC
201 South Biscayne Blvd., 22nd Floor
Miami, Florida 33131
Telephone: 305.403.8788
Facsimile: 305.403.8780

By: /s/ Jeffrey C. Schneider, P.A.
Jeffrey C. Schneider, P.A.
Florida Bar No. 933244
Primary Email: jcs@lklsg.com
Secondary Email: lv@lklsg.com
Jezabel P. Lima
Florida Bar No. 519431
Primary Email: jl@lklsg.com
Secondary Email: ah@lklsg.com

Exhibit 1

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION (CIVIL): AY
CASE NO.: 502017CA010274XXXXMB

100 EMERALD BEACH WAY,
Petitioner,

v.

THE PALM BEACH TOWN COUNCIL
AND MARGARET B. THORNTON,
Respondents.

Opinion filed: AUG 30 2018

Petition for Writ of Certiorari from the Town of Palm Beach Town Council.

For Petitioner: Robert Jeffrey Hauser
415 South Olive Avenue
West Palm Beach, Florida 33401
hauser@pankauskilawfirm.com
courtfilings@phfloirida.com

For Respondents: Karl Sanders
505 South Flagler Drive, Suite 1100
West Palm Beach, Florida 33401
ksanders@jonesfoster.com

Santo DiGangi
303 Banyan Boulevard, Suite 400
West Palm Beach, Florida 33401
sdigangi@lawcllc.com

PER CURIAM.

Upon review of the Petition for Writ of Certiorari, we find that the Town Council failed to rely on competent, substantial evidence when it denied Petitioner's appeal from the Town Architectural Committee. The Town Architectural Committee did not make findings sufficient to ensure that Respondent Thornton's "proposed development [would be] in conformity with the standards of this Code and other applicable ordinances insofar as the location and appearance of

the buildings and structures are involved.” *See* Resp. App. at 7. Specifically, there was no finding by the Town Architectural Committee or Town Council, or evidence in the record, to suggest that Respondent Thornton’s proposed development would comply with section 134-1759. *See* Resp. App. at 16. Because the Town Council’s failure to rely on competent, substantial evidence is sufficient cause to grant the Petition, we issue no opinion regarding the remaining arguments on appeal. We **GRANT** the Petition for Writ of Certiorari and **QUASH** the decision of the Town Council.

SASSER, GOODMAN, CURLEY JJ. concur.




CONCURRING:	DISSENTING:	CONCURRING SPECIALLY:
	With/Without Opinion	With/Without Opinion
		
DATE: J.	J.	J.
		
DATE: J.	J.	J.
		
DATE: J.	J.	J.

Exhibit 2

M A N D A T E

F R O M

CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT, IN AND FOR
PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION

This cause having been brought to this Court by appeal, and after due consideration the Court having issued its opinion;

YOU ARE HEREBY COMMANDED that such further proceedings be had in said Cause in accordance with the opinion of this Court, and with the rules of procedure and Laws of the State of Florida.

WITNESS THE HONORABLE JUDGE MEENU SASSER Presiding Judge of the Appellate Division (Civil) of the Fifteenth Judicial Circuit and seal of the said Court at West Palm Beach, Florida on this day Monday, November 5, 2018.

CIRCUIT APPEAL CASE NO.; 502017CA010274XXXXMB AY

Style: 100 EMERALD BEACH WAY V THE PALM BEACH TOWN COUNCIL AND MARGARET B. THORNTON



SHARON R. BOCK, CLERK &
COMPTROLLER
Palm Beach County, Florida

By: Catherine Markisen, Deputy Clerk

CC:

ROBERT JEFFREY HAUSER hauser@pankauskilawfirm.com, courtfilings@phflorida.com

KARL SANDERS ksanders@jonesfoster.com

SANTO DIGANGI sdigangi@lawclc.com

FILED
NOV 05 2018
SHARON R. BOCK
CLERK & COMPTROLLER
CIRCUIT CIVIL DIVISION

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION (CIVIL): AY
CASE NO.: 502017CA010274XXXXMB

100 EMERALD BEACH WAY,
Petitioner,

v.

THE PALM BEACH TOWN COUNCIL
AND MARGARET B. THORNTON,
Respondents.

Opinion filed: AUG 30 2018

Petition for Writ of Certiorari from the Town of Palm Beach Town Council.

For Petitioner: Robert Jeffrey Hauser
415 South Olive Avenue
West Palm Beach, Florida 33401
hauser@pankauskilawfirm.com
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For Respondents: Karl Sanders
505 South Flagler Drive, Suite 1100
West Palm Beach, Florida 33401
ksanders@jonesfoster.com

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303 Banyan Boulevard, Suite 400
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sdigangi@lawclc.com

PER CURIAM.

Upon review of the Petition for Writ of Certiorari, we find that the Town Council failed to rely on competent, substantial evidence when it denied Petitioner's appeal from the Town Architectural Committee. The Town Architectural Committee did not make findings sufficient to ensure that Respondent Thornton's "proposed development [would be] in conformity with the standards of this Code and other applicable ordinances insofar as the location and appearance of

the buildings and structures are involved." *See* Resp. App. at 7. Specifically, there was no finding by the Town Architectural Committee or Town Council, or evidence in the record, to suggest that Respondent Thornton's proposed development would comply with section 134-1759. *See* Resp. App. at 16. Because the Town Council's failure to rely on competent, substantial evidence is sufficient cause to grant the Petition, we issue no opinion regarding the remaining arguments on appeal. We **GRANT** the Petition for Writ of Certiorari and **QUASH** the decision of the Town Council.

SASSER, GOODMAN, CURLEY JJ. concur.

APPELLATE DIVISION (CIVIL): AY
CASE NO.: 502017CA010274XXXXMB

Opinion/Decision filed: AUG 30 2018

**Petition for Writ of Certiorari from the
Town of Palm Beach Town Council**

Date of Appeal: September 15, 2017

AFFIRMED/REVERSED/OTHER: GRANT PETITION

~~CONCURRING~~

DISSENTING:

With/Without Opinion

1) CONCURRING SPECIALLY:

) With/Without Opinion

DATE: _____

J.

J.

J.

DATE:

J.

J.

J.

DATE:

J.

J.

J.



I

	Address		# of Courts	Acreage	Ratio land to court
	1236 S Ocean Blvd	Subject Property	2	6.2	3.1:1
1	70 Blossom Way	Adjacent property To the south	1	1.4	1.4:1
2	1200 S Ocean Blvd	Adjacent property To the north	1	3.6	3.6:1
3	10 Blossom Way	south	1	1.6	1.6:1
4	1300 S Ocean Blvd	south	1	5.1	5.1:1
5	1415 S Ocean Blvd	south	1	4.3	4.3:1
6	1520 S Ocean Blvd	south	1	1.8	1.8:1
7	1600 S Ocean Blvd	south		3.0	3.0:1
8	1616 S Ocean Blvd	south	1	1.9	1.9:1
9	1676 S Ocean Blvd	south	1	1.7	1.7:1
10	1744 S Ocean Blvd	south	1	1.9	1.9:1
11	1768 S Ocean Blvd	south	1	3.0	3.0:1
12	1820 S Ocean Blvd	south	1	3.3	3.3:1
13	1860 S Ocean Blvd	south	1	4.1	4.1:1
14	1930 S Ocean Blvd	south	1	3.0	3.0:1
15	1950 S Ocean Blvd	south	1	2.0	2.0:1
16	174 Via Del Lago	north	1	3.0	3.0:1
17	150 Via Bellaria	north	1	1.2	1.2:1
18	105 Clarendon Ave	north	1	2.0	2.0:1
19	129 Clarendon Ave	north	1	0.9	0.9:1
20	860 S Ocean Blvd	north	1	1.7	1.7:1
21	195 Via Del Mar	north	1	1.6	1.6:1
22	780 S Ocean Blvd	north	1	3.2	3.2:1
23	720 S Ocean Blvd	north	1	1.5	1.5:1
24	710 S County Blvd	north	1	1.3	1.3:1
25	130 Banyan Blvd	north	1	1.0	1.0:1
26	134 El Vedado Rd	north	1	1.2	1.2:1
27	335 El Vedado Rd	north	1	0.7	0.7:1
28	231 El Vedado Rd	north	1	1.0	1.0:1
29	300 Brillo Way	north	1	1.1	1.1:1
30	101 Via Marina	north	1	1.4	1.4:1

Acreage totals are based on the Palm Beach County Property Appraiser's website.

1236 S. Ocean Blvd.



70 Blossom way



1200
S Ocean
Blvd





CFN 20160458337

DR BK 28800 PG 0135

RECORDED 12/29/2016 15:57:34

Palm Beach County, Florida

Sharon R. Bock, CLERK & COMPTROLLER

Pgs 0135 - 138; (4pgs)

This instrument prepared by
M. TIMOTHY HANLON, ESQ.
Alley, Maass, Rogers & Lindsay, P.A.
340 Royal Poinciana Way, Suite 321
Palm Beach, Florida 33480

UNITY OF TITLE AGREEMENT

THIS UNITY OF TITLE AGREEMENT ("Agreement") is made and entered into as of this 22nd day of December, 2016, by and between JOHN L. THORNTON and MARGARET B. THORNTON ("Owner") and the TOWN OF PALM BEACH, a municipal corporation existing under the laws of the State of Florida ("Town").

RECITALS

WHEREAS, Owner is the fee simple title holder of the following described property situated, lying and being in the Town of Palm Beach, Palm Beach County, Florida (the "Property" or "Properties"):

Parcel 1:

Being that part of the South 300 feet of the North 649 feet of Government Lot 1 in Section 2, Township 44 South Range 43 East, Palm Beach County, Florida, lying between the waters of the Atlantic Ocean and the center line of Ocean Boulevard. Subject to the right-of-way of Ocean Boulevard.

Parcel Identification Number: 50-43-44-02-00-001-0051; and

Parcel 2:

Lot 2, REPLAT OF THE REPLAT OF THE EMERALD, according to the Plat thereof, recorded in Plat Book 45, Page 177, of the Public Records of Palm Beach County, Florida.

Parcel Identification Number: 50-43-44-02-09-000-0020; and

WHEREAS, the Properties are physically contiguous and Owner is seeking a permit to join both Properties together as a single residence; and

WHEREAS, it is the desire of the Owner, in consideration of the receipt of such permit to create this Unity of Title, unifying the Properties into one single parcel so that the zoning requirements and other requirements of the Town will be met; and

WHEREAS, there are no mortgages or other encumbrances of record on the Property and all real estate taxes for the year 2016 and previous years have been paid.

NOW, THEREFORE, in consideration of Ten and 00/100 (\$10.00) Dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Owner and the Town agree as follows:

1. The Properties shall be considered as a single parcel of land.

No portion of said single parcel of land shall be sold, transferred, devised, leased or assigned separately from the whole of the Property, except upon prior written approval of the Owner and the Town.

3. In the event a request is made in the future that this Unity of Title be released, should the two parcels otherwise be independently in compliance with the Town's comprehensive plan, zoning ordinance and the regulations of the Town, the Town shall, upon written request by the Owner, their successors or assigns, execute a recordable termination of this Unity of Title.

4. This Agreement shall be a covenant running with the Properties and shall be binding upon the Owner, their successors and assigns, and shall constitute notice to all persons whomsoever of the terms and provisions herein set forth.

5. This Agreement shall be recorded in the public records of Palm Beach County, Florida.

IN WITNESS WHEREOF the parties have executed and entered into this Agreement as of the date set forth above.

Signed, sealed and delivered
In the presence of:

OWNER:

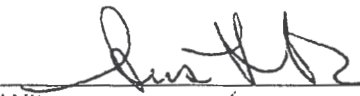



John L. Thornton

Witness
Print Name: SUSIE F. ROJAS

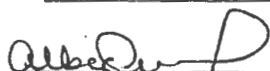


Witness
Print Name: ALBERTO DUMIT




Margaret B. Thornton

Print Name: SUSIE F. ROJAS



Witness
Print Name: ALBERTO DUMIT

This

Cheryl Kleer

Witness

Print Name: *Cheryl Kleer*

Antonette M. Fabrizio

Witness

Print Name: *Antonette M. Fabrizio*

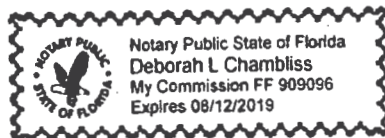
RECOMMEND APPROVAL:

12/22/16
Paul Castro
Paul Castro, AICP
Zoning Administrator

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 8th day of Dec., 2016, by JOHN L. THORNTON and MARGARET B. THORNTON, who are personally known to me or who have produced _____ as identification.



TOWN:

TOWN OF PALM BEACH

Thomas G. Bradford

By:

Thomas G. Bradford
Town Manager

ATTEST:

Susan A. Owens

Susan A. Owens
Town Clerk

APPROVED AS TO LEGAL FORM AND
SUFFICIENCY:

John C. Randolph

John C. Randolph
Town Attorney

)
) SS:
)

Deborah L. Chambliss

Signature of Notary Public

Deborah L. Chambliss

Printed Name of Notary Public

Commission Number

STATE OF FLORIDA

COUNTY OF PALM BEACH

SS:

The foregoing instrument was acknowledged before me this 28th day of December, 2016, by Thomas G. Bradford, the Town Manager of the TOWN OF PALM BEACH, a municipal corporation existing under the laws of the State of Florida, on behalf of the corporation, who is personally known to me or who has produced _____ as identification.



Kathleen Dominguez
Signature of Notary Public

Kathleen Dominguez
Printed Name of Notary Public
FF 995620
Commission Number

STATE OF FLORIDA

COUNTY OF PALM BEACH

SS:

The foregoing instrument was acknowledged before me this 28th day of December, 2016, by SUSAN A. OWENS, the Town Clerk of the TOWN OF PALM BEACH, a municipal corporation existing under the laws of the State of Florida, on behalf of the corporation, who is personally known to me or who has produced _____ as identification.



Kathleen Dominguez
Signature of Notary Public

Kathleen Dominguez
Printed Name of Notary Public
FF 995620
Commission Number

**THOMAS MAOLI
85 ROXITICUS ROAD
FAR HILLS, NEW JERSEY 07931**

November 19, 2018

John Lindgren
Architectural Commission
Town of Palm Beach
360 S. County Rd.
Palm Beach, FL 33480

**Re: Margaret Thornton Palm Beach
Tennis Court Application**

Dear John,

Please be advised that I reside at 1230 South Ocean Boulevard, Palm Beach. I am aware of Mrs. Thornton's application to the town to construct a new tennis court on her property.

I support the new tennis court and think it can only bring value to the area.

If you have any questions, please do not hesitate to contact me

Sincerely,

Thomas Maoli



Architectural Commission
Town of Palm Beach
360 South County Road
Palm Beach, Florida 33480

Town Council of Palm Beach
360 South County Road
Palm Beach, Florida, 33480

January 18, 2019

Dear Sirs and Madams:

The Thorntons' proposed tennis courts are very much in harmony with our neighborhood. The Thorntons' six acre estate is well screened by high hedges on all sides. The plan is spacious, high quality and very much designed in the same style as the rest of their property. The parking area is small and well screened.

By using the land for one grass tennis court and one hard court there will be more open and green space as well as less density, noise and congestion than if used as a single family residence with substantial house and swimming pool.

As a former owner and chairman of the Los Angeles Dodgers, I am delighted to know that we have such a fine family of tennis players as permanent residents in Palm Beach.

I very much support this project.

Sincerely,

A handwritten signature in dark ink, appearing to read "Frank H. McCourt Jr.", with a stylized flourish at the end.

Frank H. McCourt Jr.

		Sq. footage	Parking area per acre
1236 SOB 6.2 acres	Motor court*	2,544	
	Parking area in front of garages	2,000	
	Total pre-addition	4,544	732
	Parking by tennis court (40'x65')	2,600	
	New total	7,144	1,152
Jacobs 100 EBW 1.9 acres	Motor court	3,240	
	Parking area in front of garages	1,700	
	Total	4,940	2,600
	With area of fountain (254 sq. ft)	4,686	2,466
Madli 1230 SOB 1.0 acres	Motor court	4,750	4,750
	Other parking area		

* If space is measured with planters, square footage is reduced by 288, to 2,256

1/5

ACTION: APPROVED.

- f. SITE PLAN REVIEW #9-2007 WITH VARIANCE (MODIFYING SITE PLAN REVIEW #3-2007) The application of Cheryl Minikes, relative to property described as lengthy legal description on file; commonly known as 324 Cherry Lane; located in the R-B Zoning District. A request for modification to a previously approved site plan (SPR#3-2007) to reduce the size of the house by four feet to allow four feet of planting on the north property line of the property. A request for variance to allow a retaining wall that varies in height for the driveway down ramp to be a maximum height of 12 feet at its highest point in lieu of the 7 foot maximum allowed.

ACTION: APPROVED.

- g. SITE PLAN REVIEW #10-2007 The application of 200 Emerald Beach Way, Inc., William Elias, President, relative to property described as Lot 2, REPLAT OF THE REPLAT OF THE EMERALD, according to the Plat thereof, recorded in Plat Book 45, page (s) 177, of the Public Records of Palm Beach County, Florida; commonly known as 200 Emerald Beach Way; located in the R-AA Zoning District. Request for site plan approval for a new 13,789 square foot single family home, on an existing platted lot that is less than the minimum area required by the R-AA zoning district.

ACTION: APPROVED.

- h. SITE PLAN REVIEW #11-2007 The application of Jeffrey E. Giangrande, as Trustee, relative to the property described East one-half (1/2) of Lot 41, SINGER ADDITION of the Town of Palm Beach, according to the Plat thereof, recorded in Plat Book 8, Page 81, of the Public Records of Palm Beach County, Florida; commonly known as 115 Gulfstream Road; located in the R-B Zoning District. Request for site plan approval to permit construction of a two-story 4,275 square foot residence on a lot that is 75' wide in lieu of 100' minimum required.

- f. SITE PLAN REVIEW #9-2007 WITH VARIANCE (MODIFYING SITE PLAN REVIEW #3-2007) The application of Cheryl Minikes, relative to property described as lengthy legal description on file; commonly known as 324 Cherry Lane; located in the R-B Zoning District. A request for modification to a previously approved site plan (SPR#3-2007) to reduce the size of the house by four feet to allow four feet of planting on the north property line of the property. A request for variance to allow a retaining wall that varies in height for the driveway down ramp to be a maximum height of 12 feet at its highest point in lieu of the 7 foot maximum allowed.

Ex-parte communication was declared by President Pro Tem Coleman, Council Member Brooks, and Council Member Markin with Attorney Maura Ziska.

Attorney Ziska, on behalf of Mr. and Mrs. Minikes, provided an overview of the request.

Staff Comments: Zoning Administrator Castro made the following comments: the Architectural Commission recommended approval and that the variance would not cause a negative architectural impact on the subject property; a variance was needed for the retaining wall; the applicant met with the neighbors to the north, as there was some concern relative to the structural integrity of the wall; the neighbor had been satisfied, subject to obtaining the proper engineering, which was required for a building permit; the width of the house had been reduced in order to provide a wider landscaped strip to the north to buffer from the neighbor.

Motion made by President Pro Tem Coleman, seconded by Council Member Brooks to approve Site Plan Review #9-2007 with Variance (Modifying Site Plan Review #3-2007). On roll call, the motion carried unanimously.

- g. SITE PLAN REVIEW #10-2007 The application of 200 Emerald Beach Way, Inc., William Elias, President, relative to property described as Lot 2, REPLAT OF THE REPLAT OF THE EMERALD, according to the Plat thereof, recorded in Plat Book 45, page (s) 177, of the Public Records of Palm Beach County, Florida; commonly known as 200 Emerald Beach Way; located in the R-AA Zoning District. Request for site plan approval for a new 13,789 square foot single family home, on an existing platted lot that is less than the minimum area required by the R-AA zoning district.

Attorney Ron Kolins, on behalf of William Elias, provided an overview of the request.

Staff Comments: Zoning Administrator Castro made the following comments: there was an existing 10' utility easement across the rear of the property; the site met all of the lot yard bulk requirements at this location; staff's concerns were existing Areca palms across the back, in which the Public Works Department recommended removal and that no landscape material be within the 10' wide utility easement; an easement would need to be provided for undergrounding if necessary in the future; the applicant provided a location for a generator.

Attorney Kolins indicated that the applicant was in agreement with all of staff's recommendations, as stated by Mr. Castro.

Motion made by Council Member Brooks, seconded by Council Member Markin to approve Site Plan Review #10-2007. On roll call, the motion carried unanimously.

- h. SITE PLAN REVIEW #11-2007 The application of Jeffrey E. Giangrande, as Trustee, relative to the property described East one-half (1/2) of Lot 41, SINGER ADDITION of the Town of Palm Beach, according to the Plat thereof, recorded in Plat Book 8, Page 81, of the Public Records of Palm Beach County, Florida; commonly known as 115 Gulfstream Road; located in the R-B Zoning District. Request for site plan approval to permit construction of a two-story 4,275 square foot residence on a lot that is 75' wide in lieu of 100' minimum required.

Ex-parte communication was declared by Council Member Brooks with Attorney Tim Hanlon and he said that he had walked the property.

Attorney Hanlon, on behalf of Jeffrey Giangrande, as Trustee, provided an overview of the request.

Staff Comments: Zoning Administrator Castro stated that staff's request was that landscape material in the rear utility easement be removed; a utility easement would be dedicated to the Town for undergrounding in the future; a landscape staging area be provided on the front of their property in order to keep trimmings off the street.

Mr. Hanlon noted that the applicant was in agreement with staff's recommendations.

Motion made by Council Member Markin, seconded by Council Member Brooks to approve Site Plan Review #11-2007. On roll call, the motion carried unanimously.

July 10, 2007

B48-07 /SPR10-07 New Residence

Address: 200 Emerald Beach Way
Applicant: 200 Emerald Beach Way, Inc., William Elias, Pres.
Architect: Island Designs
Project Description: New 13,789 s.f. two-story Mediterranean Revival Style Residence.

Mr. Wheelock declared a Conflict of Interest and passed the gavel to Vice Chairman Feldkamp. He then left the dias during the presentation. Mr. Bennett, Ms. Diver, Mr. Feldkamp and Mr. Youchak said they met with the architect and the building contractor. Mr. Zukov said he met with the architect. Mr. Karakul was voting relative to the project.

The Design Architect Eugene Pandula introduced Associate Architect John Bellamy. Mr. Pandula read the demolition report which stated that the house was designed by Architect John Gosman in 1984. The house has no historical value and is not consistent with the surrounding neighborhood.

**MOTION BY MR. SMITH TO APPROVE DEMOLITION WITH THE PROVISION TO SOD OR SEED AND IRRIGATE THE LOT WITHIN 15 DAYS.
MOTION SECONDED BY MR. ZUKOV.
MOTION CARRIED UNANIMOUSLY.**

Architect Pandula proposed a new residence that will be 13,900 s.f. in a simple Mediterranean Revival style. He stated that this lot is undersized and that the Town Council has reviewed and approved the site plan variance.

Landscape Architect Cris Betancourt, with Morgan Wheelock & Associates, presented the preliminary landscaping plans.

**MOTION BY MR. ZUKOV TO APPROVE THE PROJECT WITH THE PROVISION TO LOWER THE ROOF.
MOTION SECONDED BY MR. STRAWBRIDGE.**

**SUBSTITUTE MOTION BY MR. KARAKUL TO APPROVE THE PROJECT WITH THE PROVISION TO LOWER THE ROOF AND CHANGE THE WINDOWS IN TERMS OF MULLION SIZE AND SCALE.
MOTION SECONDED BY MR. SMITH.
MOTION CARRIED UNANIMOUSLY.**

Note: This project will remain on the July agenda for review of the window changes.

Vice Chairman Feldkamp passed the gavel to Chairman Wheelock.

Aug 14, 2007

This project was deferred from the May meeting for restudy and deferred from the June meeting at the architect's request.

Mr. Wheelock said that he met with the owner and the architect and went to the site. Mr. Feldkamp said he met with the architect and went to the site. Mr. Strawbridge declared a Conflict of Interest because he has real estate dealings with the owner. He then left the dias during the discussion of this project.

Architect Richard Leja presented elevation drawings of the proposed changes and the previously approved elevations. Responding to Mr. Feldkamp's comment that the west elevation was very plain, Mr. Leja presented another revision of that elevation.

Mr. Wheelock suggested simple rectangular windows with a heavy stucco frame rather than the long slit windows which, he said, were difficult on this building. In addition, he felt that quoins do not belong on this building.

Mr. Zukov suggested creating a vertical piece by adding lites between the two windows.

**MOTION BY MR. FELDKAMP TO DEFER THE PROJECT FOR RESTUDY.
MOTION SECONDED BY MR. ZUKOV.
MOTION CARRIED UNANIMOUSLY.**

**AMENDED MOTION BY MR. FELDKAMP TO DEFER THE PROJECT TO THE
AUGUST MEETING.
MOTION SECONDED BY MR. YOUCHAK.
MOTION CARRIED UNANIMOUSLY.**

B48-07 /SPR10-07 New Residence

Address: 200 Emerald Beach Way
Applicant: 200 Emerald Beach Way, Inc., William Elias, Pres.
Architect: Island Designs
Project Description: New 13,789 s.f. two-story Mediterranean Revival Style Residence.

This project was approved at the June meeting, but remains on the agenda for review of the window changes.

Mr. Zukov said he met with the architect. Mr. Wheelock declared a Conflict of Interest as the owner is a client. He passed the gavel to Vice-Chairman Feldkamp and left the dias during the presentation.

Design Architect Eugene Pandula presented modifications to the window proportions. He indicated that the main entrance and tower features were presented as overlay drawings last month. Since that presentation, the tower was lowered to meet the vertical angle of vision from the street and the roof form was changed from a 6/12 pitch to a 4½/12 pitch.

100 Emerald Beach Way



1230 S. Ocean Blvd.



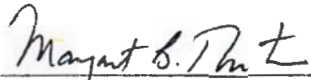
DECLARATION OF MARGARET B. THORNTON

MARGARET B. THORNTON, one of the Applicants, states as follows:

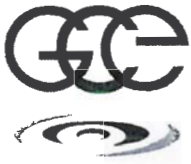
1. Through Application B-046-2017 (Revised), my husband, John L. Thornton, and I are seeking approval from the Architectural Commission of the Town of Palm Beach for the construction of two tennis courts and a small parking area on our property at 1236 South Ocean Boulevard, Palm Beach, Florida.

2. I hereby represent to ARCOM that only our family members and invited guests will be permitted to use these tennis courts. My husband and I have no intention to allow, and we will not allow, the courts to be hired out to, let by, or used by anyone other than our family members and invited guests.

Executed this 22nd day of January, 2019 in Palm Beach, Florida, under penalties of perjury.



(Margaret B. Thornton)



GRUBER CONSULTING ENGINEERS

LANDSCAPE/DRAINAGE PLAN CONFLICT STATEMENT

To: John Lindgren
Planning Administrator
Town of Palm Beach

From: Chad M. Gruber, P.E.

Re: Proposed Tennis Court Addition
1236 South Ocean Blvd.
Palm Beach, FL

Date: May 20, 2017

John -

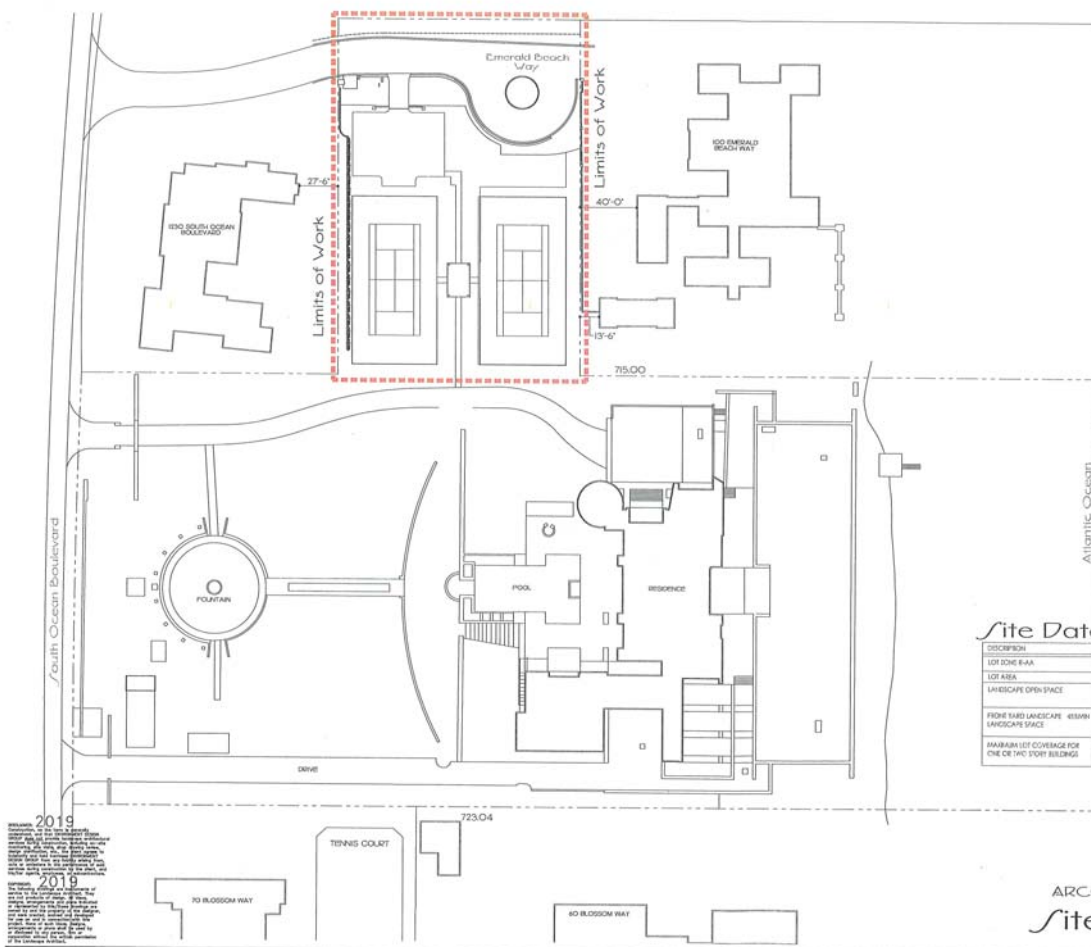
I have reviewed the landscape plan prepared by Environment Design Group for the referenced project received on 5/19/17 and compared it with the latest conceptual drainage plan produced by this office dated 5/20/17. There do not appear to be any conflicts between the proposed landscape material and the storm piping and exfiltration trenches.

Please feel free to contact me if you have any questions.

Sincerely,

Chad M. Gruber, P.E.
Florida P.E. No. 57466

Cc: Environment Design Group
File



Site Data

DESCRIPTION	REQUIRED	PROPOSED
LOT ZONE R-AM	60,000 SQ. FT. MINIMUM	250,000 SQ. FT.
LANDSCAPE OPEN SPACE	MINIMUM 55%	143,253 SQ. FT. PROPOSED
FRONT YARD LANDSCAPE (MINIMUM LANDSCAPE SPACE)	MINIMUM 45%	8,815 SQ. FT. PROPOSED
PAVEMENT (LET COVERAGE FOR ONE OF TWO (2) BUILDINGS)	MINIMUM 25%	95,115 SQ. FT. PROPOSED

LANDSCAPE OPEN SPACE
INCLUDES 7,250 S.F.
GRASS TENNIS COURT* 172,453 S.F. (66.23)

E. FAVOSCHNEAT
Landscape Architect
1000 N. Ocean Blvd., Suite 100
Palm Beach, FL 33480
Phone: 561.833.1111
Fax: 561.833.1112
www.e Favoschneat.com

Private Residence
1256 Youth Ocean Boulevard
Palm Beach



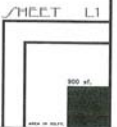
JOB NUMBER: 17018.00 LA
OWNER: Private
DATE: 05.18.2017
ARCOM SUBMITTAL: 05.24.2017
REVISION: 11.14.2018
ARCOM SUBMITTAL: 11.14.2018
ARCOM SUBMITTAL: 03.25.2019

ARCOM #B-046-2017

Site Plan

SCALE IN FEET 0' 30' 60' 90'

ARCOM #B-046-2017
1-800-452-4770
www.arcom.com

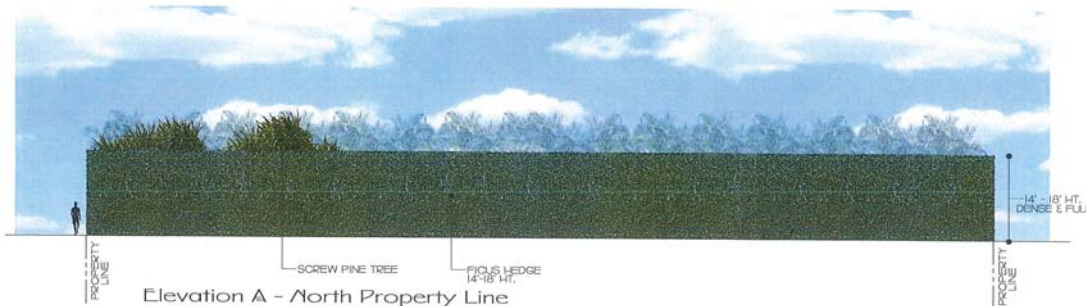


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SHEET L2

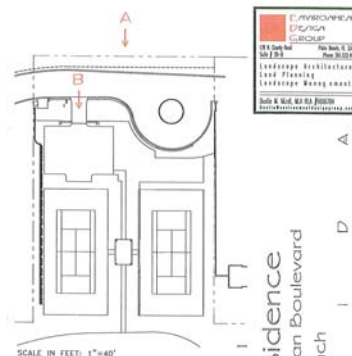
256 sq.



Elevation A - North Property Line



Elevation B - South side of Emerald Beach Way / Additional Landscape screening / Double Buffer



E. ANDERSON/REYES
LANDSCAPE
DESIGN GROUP
 124 S. Palm Ave.
 Suite 100
 Palm Beach, FL 33480
 Phone: 561.833.1111
 Email: eanderson@eandersonreyes.com
 Website: www.eandersonreyes.com

Private Residence
 1256 South Ocean Boulevard
 Palm Beach

JOB NUMBER: 170119-001 LA
 DRAWN BY: E. Anderson
 DATE: 11.14.2019
 ARCOM SUBMITTAL: 11.14.2019
 ARCOM SUBMITTAL: 03.05.2019

2019
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2019
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18700-432-4770
 18700-432-4770

ARCOM #B-046-2017
Buffer Elevations

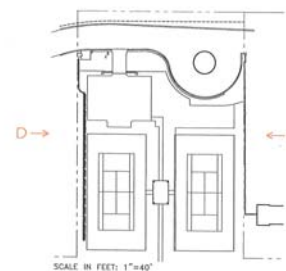
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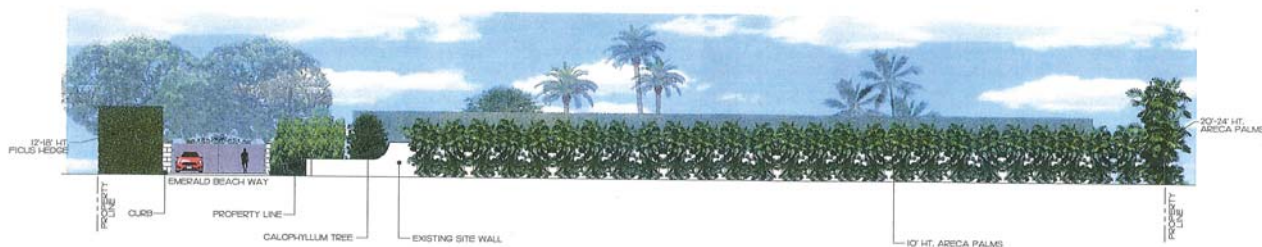
ENVIRONMENT
DESIGN
GROUP
104 Oak Hill Ave. Suite 100
San Jose, CA 95128
Phone: (408) 261-1000
Fax: (408) 261-1001
www.environmentdesigngroup.com

Private Residence
1256 Youth Ocean Boulevard
Palm Beach

JOB NUMBER: 17018.00 LA
SHEET NO: 15
DATE: 11.14.2018
ARCOM SUBMITAL: 03.09.2019



Elevation C - East Property Line

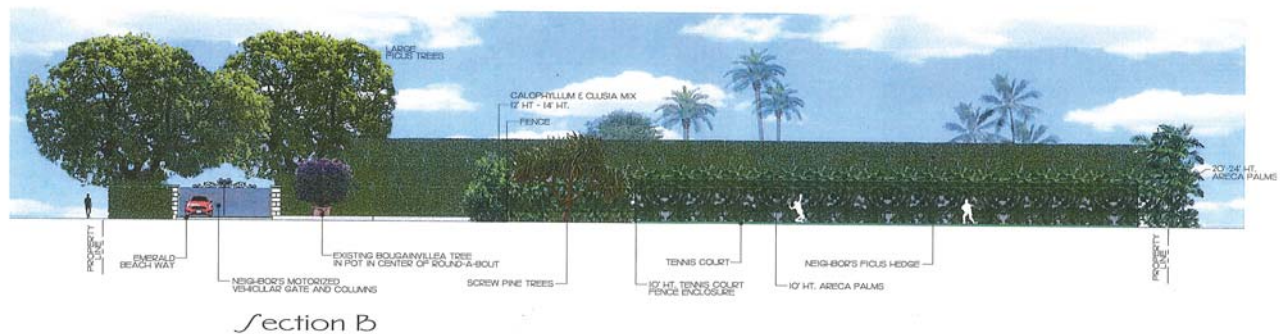
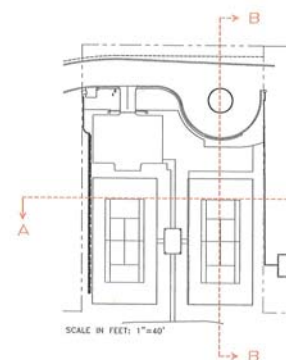


Elevation D - West Property Line

2019
104 Oak Hill Ave. Suite 100
San Jose, CA 95128
Phone: (408) 261-1000
Fax: (408) 261-1001
www.environmentdesigngroup.com

ARCOM #B-046-2017
Buffer Elevations
SCALE IN FEET 0' 10' 20' 30'





ENVIRONMENTAL DESIGN GROUP
100 N. County Street
July 2, 2014
Phone: 360.832.4444

Peace Street, St. Paul
Phone: 360.832.4444

Landscape Architecture
Land Planning
Landscape Management

David W. Wood, AIA, LEED AP
David@environmentaldesigngroup.com

Private Residence
1236 South Ocean Boulevard
Palm Beach

JOB NUMBER: 17019.00 LA
 DRAWN BY: Justin P. Moore
 DATE: 11.14.2018
 ARCON SUBMITAL: 11.16.2018
 ARCON SUBMITAL: 03.05.2019

[illegible]

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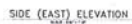
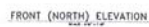
Buffer Sections

SCALE IN FEET 0' 10' 20' 30'

100 sq. ft.

area of sheet



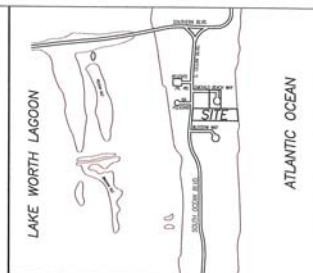
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A-3

**BOUNDARY SURVEY FOR:
JOHN L. THORNTON AND MARGARET B. THORNTON,
HUSBAND AND WIFE**

John L. Thornton and Margaret B. Thornton, husband and wife

The undersigned surveyor assumes no responsibility or liability for any other purpose or for any other party other than stated above.



VICINITY SKETCH N.T.S.

[illegible]

PROPERTY ADDRESS:
200 Emerald Beach Way and 1270 South Ocean Boulevard
Ocala Beach, FL 32669

LEGAL DESCRIPTION

Lot 2. REPEAT OF THE REPEAT OF ETERNAL, according to the Plat thereof, on file in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, recorded in Plat Book 45, Page 177.

TOGETHER WITH

Being that part of the South 300 feet of the North 649 feet of Government Lot 1 in Section 2, Township 44 South, Range 43 East, Palm Beach County, Florida, lying between the waters of the Atlantic Ocean and the center line of Ocean Boulevard. Subject to the right-of-way of Ocean Boulevard.

B-046-2017

FLOOD ZONE:
This property is located in Flood Zones B, C and VE (IL 1b) according to F.I.R.M. (Flood Insurance Rate Map) No. 12022D 0002C, dated September 30, 1994.

Author's address:

- [illegible]

I HEREBY ATTEST that the survey shown hereto conforms to the Standards of Practice set forth by the Florida Board of Professional Surveyors and Mappers adopted in Rule SJ-17, Florida Administrative Code pursuant to Section 472.027.

DATE OF LAST FIELD SURVEY: 6/10/2017

1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 26

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TITLE POLICY REVIEW						
CLASS	CLASS / NUMBER	PROJECT / SUBJECT	DATE / DATE TO RUN			
ISSUED BY	NAME / LOCATION	EXT. / SERIAL				
SERIAL NO.	DOCUMENT	DESCRIPTION	AFFECTS AND NOT PLOTED	AFFECTS AND NOT PLOTED	DOES NOT AFFECT	NOT AFFECT MATTERS
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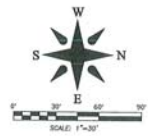
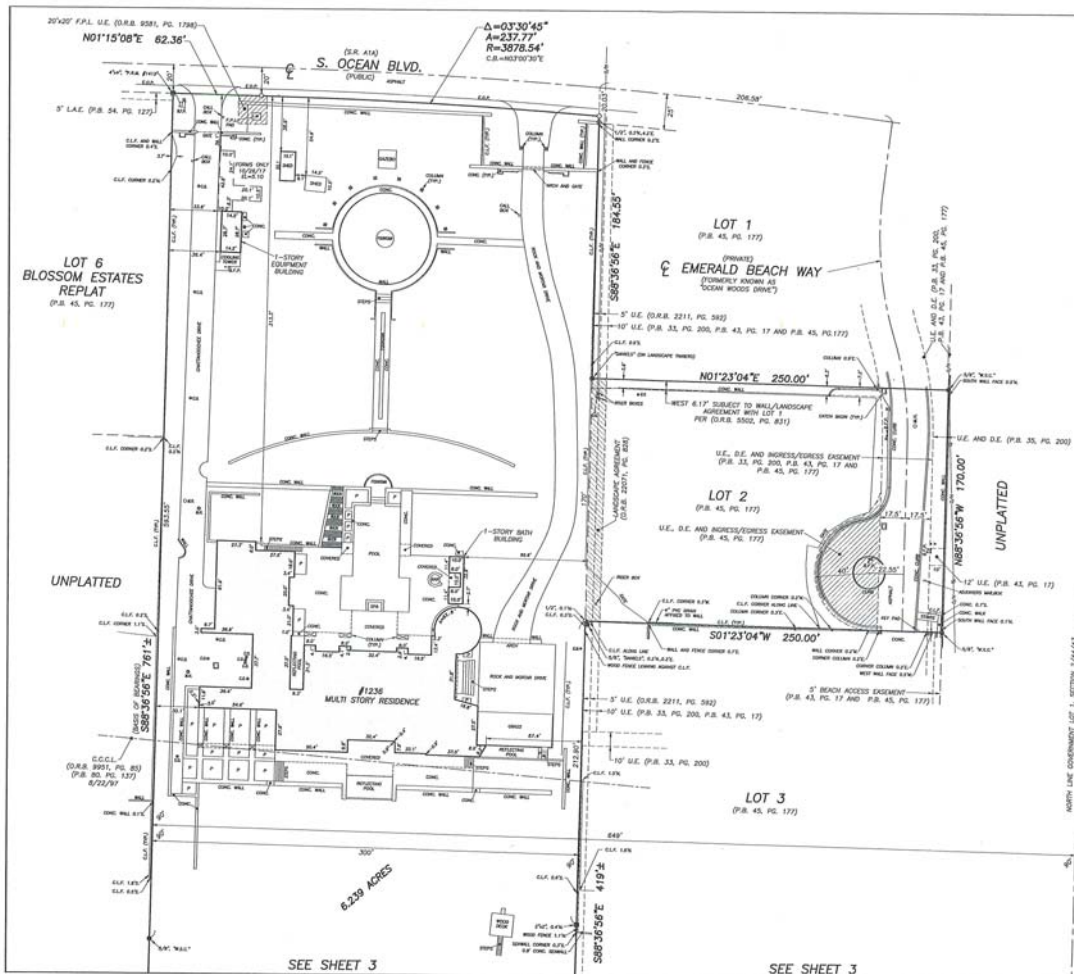
10/26/17 FORWARDED THE TO BLM/USL 04-1403.17 P203/P21

BOUNDARY SURVEY FOR:

JOHN L. THORNTON AND MARGARET B. THORNTON,
HUSBAND AND WIFE

 **WALLACE SURVEYING**
CITY: GASTROPHILIA, MISSISSIPPI
P.O. BOX 100, GASTROPHILIA, MISSISSIPPI 39024-0100

FILE#	SL#	REV BY	04-1403.17	PA	8/20/17	SS
DATE	WJ	DATE	06/15/17	PLS NO	04-1403.17	
CNTR	CW	DATE	04/15/17	0007	3	RE



B-046-2017

BOUNDARY SURVEY FOR:

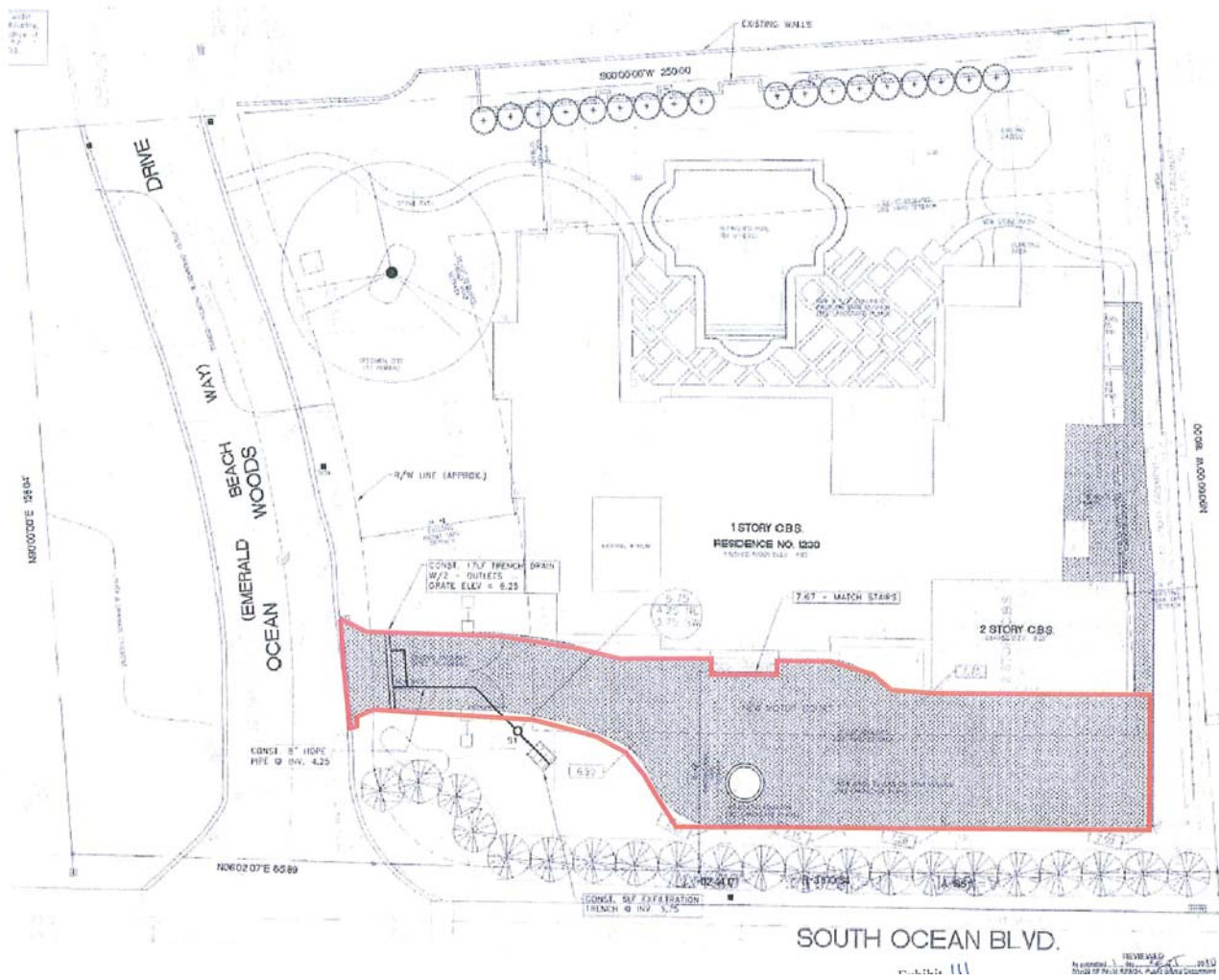
JOHN L. THORNTON AND MARGARET B. THORNTON, HUSBAND AND WIFE

WALLACE SURVEYS

DATE	04-14-2017	BY	WJS
REVISION	05-10-17	BY	WJS
DATE	04-14-2017	BY	WJS
REVISION	05-10-17	BY	WJS

SEE SHEET 3

SEE SHEET 3



J







K

ARTICLE IX. - OFF-STREET PARKING AND LOADING^[14]

Footnotes:

--- (14) ---

Cross reference— Parking lots, § 22-431 et seq.; parking, stopping and standing generally, § 118-86 et seq.

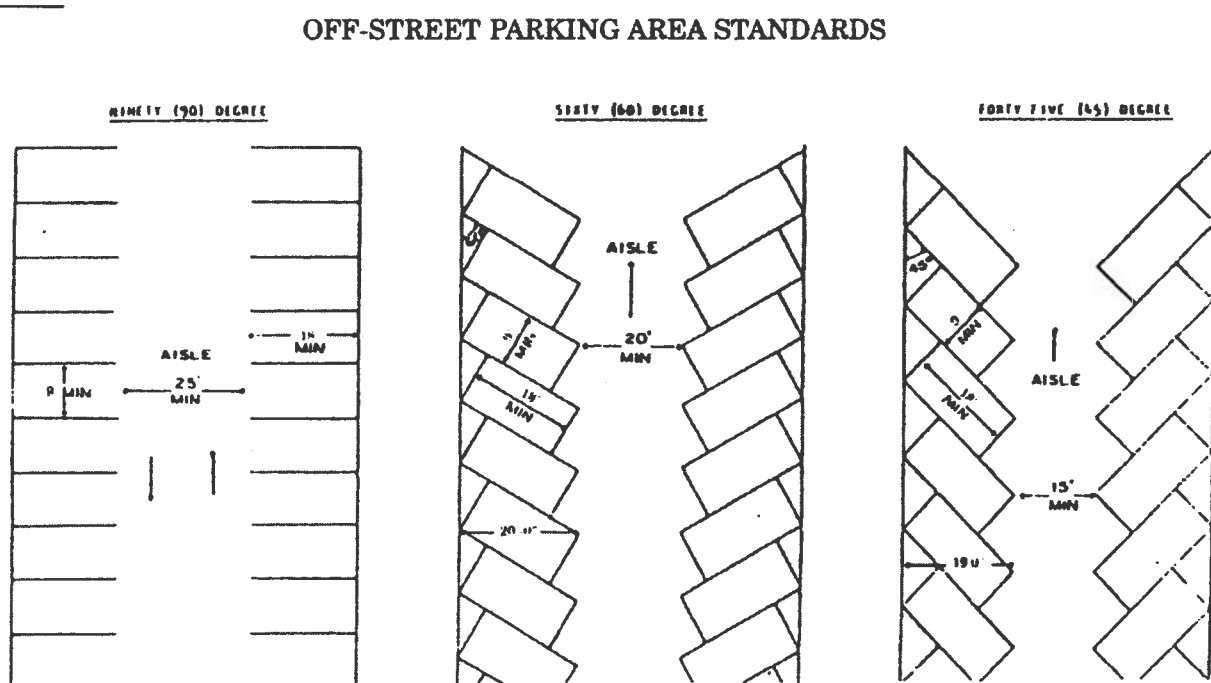
DIVISION 1. - GENERALLY

Secs. 134-2146—134-2170. - Reserved.

DIVISION 2. - OFF-STREET PARKING

Sec. 134-2171. - Illustration.

- (a) The following illustration is designed solely to illustrate the requirements for aisles in off-street parking areas as regulated in this division. In design of elevated or depressed parking structures, the maximum slope of floors or ramps shall not exceed 12-percent grade. The turning radius dimension for approach drive aisleways shall not be less than 30 feet.



Off-Street Parking Area Standards

- (b) Additional regulations governing setbacks, minimum dimensions for parking spaces, and other requirements are covered in subdivision II of division 7 of article VIII of this chapter, division 9 of article VIII of this chapter, and in this article.

(Ord. No. 2-74, attachment two, 3-26-74; Ord. No. 3-77, § 17, 3-29-77; Ord. No. 1-86, § 4(b), 2-10-86)

Sec. 134-2172. - Size of spaces and access.

An off-street automobile parking space shall consist of a parking space having minimum dimensions of nine feet in width and 18 feet in length for the parking of each automobile, exclusive of access drives or aisles thereto. Minimum width of an access drive shall be ten feet for one-way traffic. Minimum width of an aisle designed and intended for the maneuvering into a 90 degree parking space shall be 25 feet; 20 feet into a 60 degree parking space; and 15 feet into a 45 degree parking space. Minimum width of an aisle designed and intended for the maneuvering of an automobile into a parking space shall be in conformance with the illustration set forth in section 134-2171. The parking plan must be so arranged that each automobile may be placed and removed from the parking space assigned thereto and taken to and from the property without the necessity of moving any other automobile to complete the maneuver.

(Ord. No. 2-74, § 6.21(A.1), 3-26-74; Ord. No. 1-84, § 4(d), 3-1-84; Ord. No. 1-86, § 4(a), 2-10-86; Ord. No. 26-10, § 26, 12-15-10)

Sec. 134-2173. - Street and sidewalk areas.

Street and/or sidewalk areas shall not be used for off-street parking purposes as defined in this article. Individual ingress and egress drives extending across the public sidewalks and curbs and connecting the off-street parking spaces to the public street areas shall not exceed a maximum of 30 feet. The design, number and placement of such drives shall be subject to the approval of the superintendent of public works before being installed.

(Ord. No. 2-74, § 6.21(A.2), 3-26-74; Ord. No. 1-84, § 4(d), 3-1-84)

Sec. 134-2174. - Requirements for construction.

All parking lots or off-street parking areas or areas used for off-street parking, whether for profit or gratis, with the exception of temporary parking for special events such as private parties, shall be surfaced with suitable paving. Those areas serving multifamily or commercial areas shall be provided with adequate stormwater drainage to meet paving and drainage specifications approved by the town engineer and shall be provided with proper landscaping and irrigation facilities as provided in this chapter. The illustration in section 134-2171 shall be used as a minimum guideline for parking lot design.

(Ord. No. 2-74, § 6.21(A.3), 3-26-74; Ord. No. 1-84, § 4(d), 3-1-84)

Sec. 134-2175. - Number of parking spaces required—Generally.

(a) Under this division, the following shall be provided:

- (1) At the time of the erection of any building or structure, minimum off-street parking facilities shall be required with adequate provisions for ingress and egress, in accordance with sections 134-2172 through 134-2174 and the schedule of off-street parking requirements, as prescribed in section 134-2176.
- (2) At the time any building or structure is enlarged or increased in capacity by adding dwelling units, guestrooms, floor area or seats, minimum off-street parking facilities with adequate provisions for ingress and egress shall be required, in accordance with section 134-2 and sections 134-2172 through 134-2174 and the schedule of off-street parking requirements, as prescribed in section 134-2176.
- (3) Except as provided in subsection (f), at the time any use or occupancy of an existing building is changed to a new use or occupancy having differing off-street parking requirements, the parking requirement for the new use or occupancy shall be computed on the basis of the schedule of

off-street parking requirements in the section 134-2176. This requirement shall be compared to the requirements of the existing use or occupancy, and, if the total number of spaces required under the new use or occupancy exceeds that of the existing use or occupancy, the difference shall constitute that number of additional off-street parking spaces to be provided, with adequate provisions for ingress and egress, in accordance with sections 134-2172 and the schedule of off-street parking requirements as prescribed in section 134-2176.

- (b) Except as provided in subsection (f), a use, building or structure, lawfully in existence at the effective date of this division, which shall be made nonconforming on the effective date of the ordinance from which this division derives or any applicable amendment thereto, may be continued even though off-street parking may not be provided in full compliance with this division, but the degree of nonconformity due to a deficiency in providing the required off-street parking spaces may not be increased, either by reducing the number of parking spaces which are provided on the effective date of the ordinance from which this chapter is derived or by changing the use or occupancy of an existing building to a use or occupancy which increases the requirement for off-street parking. For existing buildings or establishments therein which are nonconforming with respect to the current parking requirements, and which involve only those uses requiring one space per 200 or 250 square of gross leasable area, whichever is applicable, and which may be required under this chapter to provide additional parking spaces as a result of a change in use, such establishments shall be required only to provide that number of spaces over and above the number of spaces that would have been required at one space per 200 or 250 square feet of floor area gross leasable area, whichever is applicable.
- (c) Continued availability of required number of off-street parking spaces. After providing for the proper number of required off-street parking spaces so as to permit a principal use of property to be established as set forth in the schedule of off-street parking contained in section 134-2176, such required off-street parking shall continue to be available in undiminished number for sole use as an integral part of the continuance of the principal use(s) unless meeting the shared parking as provided for in sections 134-2177, 134-2178 and 134-2182. If for any reason such required off-street parking is not available at all times in connection with the principal use, such principal use shall be discontinued until such time as the proper number of required off-street parking spaces shall again be made available for use in connection with the principal use.
- (d) The principle of equivalency for evaluating off-street parking in existing uses is as follows:
 - (1) Definition of principle of equivalency as applied to the schedule of off-street parking requirements. The principal of equivalency, as it relates to the schedule of off-street parking requirements, shall be defined as an automobile parking space required by section 134-2176 for establishing an inventory of automobile parking spaces for a conforming or nonconforming use of an existing building, or structure or use, for the purpose of determining the net off-street parking requirement for the establishment of a proposed new use to be permitted in the building, or structure or use.
 - (2) In evaluating off-street parking for existing uses, the principle of equivalency shall be applied when the use or occupancy of an existing building is being changed to a new use or occupancy having a differing off-street parking requirement for the purpose of establishing compliance with this chapter.
 - (3) The following floor area equivalencies may be used as a minimum guide in the application of the schedule of off-street parking requirements:
 - a. One permanent seat equals six square feet of floor area in seating areas of occupancies requiring seating.
 - b. One moveable seat equals 15 square feet of floor area in seating areas of occupancies requiring seating.
 - c. The remainder of areas external to actual seating areas shall provide required parking according to the schedule of applicable parking requirements.
 - d. One school student equals 20 square feet of floor area.

- (e) For the purpose of this section, a landmarked commercially zoned building is exempt from providing additional required off-street parking if increased occupancy or use is created by interior building improvements which create more gross leasable area. However, all other provisions of subsections (a) through (d) apply.
- (f) In the 200 Block of Peruvian Avenue and Bradley Place in the C-TS zoning district, existing buildings or establishments therein which are nonconforming with respect to the current parking requirements, and which involve only those uses requiring one space per 200 or 250 square feet of gross leasable area, whichever is applicable, shall not be required to provide additional parking spaces as a result of a change from a use which alters the parking ratio from one space per 250 square feet to a use which requires one space for every 200 square feet of gross leasable area.

(Ord. No. 2-74, § 6.21(C), 3-26-74; Ord. No. 1-99, § 2, 4-5-99; Ord. No. 1-00, § 8, 2-22-00; Ord. No. 1-04, § 37, 3-9-04; Ord. No. 5-09, § 30, 4-15-09; Ord. No. 5-2011, § 5, 3-9-11; Ord. No. 25-2015, § 3, 11-12-15)

Sec. 134-2176. - Same—Schedule.

The schedule of off-street parking required by this division shall be as follows:

Use		Spaces Required Per Unit
(1)	Single-family dwellings	Two per dwelling unit of 3,000 feet of floor area or less, plus one additional space per each 3,000 square feet or portion thereof of floor area above 3,000 square feet.
	Two-family dwellings and townhouses	Two per dwelling unit, plus one additional per each five family dwelling units or portion thereof. Any unit larger than 3,000 square feet shall provide three parking spaces plus one additional per each five dwelling units or portion thereof.
(2)	Multifamily dwellings (three units or more), number of units and required parking spaces as follows:	
	a. Three	Eight
	b. Four	11
	c. Five	13
	d. Six or more units	Two per dwelling unit plus one per five units or portion thereof
(3)	Houses of worship, theaters and	One per four permanent seats in the main auditorium.

	auditoriums	
(4)	Social, swimming, golf, tennis and yacht clubs	One per four members.
(5)	Retail, commercial and personal service establishments and banks and financial institutions, excluding brokerage and trust companies	One per 200 square feet of gross leasable area (GLA)
(6)	Hotels, condo-hotels, motels, motor inns and timesharing uses	One and three-fourths per unit with two or fewer rooms, and 2.75 per unit with more than two rooms; plus one for each 2.5 seats of conference capacity including auditorium, ballroom, banquet facilities, convention hall, gymnasium, meeting rooms, or other similar places of assembly.
(7)	Libraries, museums and nonprofit cultural centers	One per 500 square feet
(8)	Medical or dental offices or clinics	One per 250 square feet of gross leasable area (GLA)
(9)	Restaurants, nightclubs or other eating places	One for each three proposed fixed seats, and/or one for each 45 square feet of floor area in the proposed public seating area not having fixed seats, plus one for each 300 square feet of floor area in the remainder of the floor area
(10)	Reserved	
(11)	Schools (public or private):	
	a. Grades one—six	One per 14 students
	b. Grades seven—nine	One per nine students
	c. Grades ten—12	One per three students
(12)	Accessory commercial retail and service uses in hotels and condo	One per 250 square feet except for a restaurant, nightclub, bar, or other entry place which shall require the same as subsection (9) of this section, and except for conference facilities and

	hotels	similar places of assembly which shall require the same as subsection (6) of this section
(13)	Office, professional and business service establishments, institutions, institutions, and brokerage and trust companies	One per 250 square feet of gross leasable area (GLA)
(14)	Group home and foster care facilities	One space per each four resident occupants or fraction thereof, plus one per each employee in the largest work shift, with a minimum of two parking spaces
(15)	Required off-street parking exception for commercial parking garages in the C-WA zoning district	Number of required parking spaces attributed to uses on a commercial property within a parking garage in the C-WA district may be reduced by a maximum of 15 percent in order to provide off-site supplemental parking for other off-site commercial uses in the same district. The application can only be approved if the property owner provides evidence satisfactory to the town at the time of application and on an annual renewal basis that said parking exception will not negatively impact the parking of all on-site uses. Those off-site commercial uses in the C-WA district that are allowed to share the parking garage shall not be allowed to use said shared parking as a basis to develop or redevelop property, or expand or intensify the use of property. (See footnote 1 for requirements in granting an exception)

Footnote 1: An off-street parking exception application may be approved or denied by the director of planning, zoning and building or designee after 15 days of a legal notice being published in a newspaper of general circulation in Palm Beach or West Palm Beach with a summary of the request for such off-street parking exception. Said notice shall be paid by the applicant and shall not be part of the application fee. Any approval or denial of an application for an exception to the off-street parking requirements in subsection (15) of this section may be appealed to the town council based on sections 134-141—134-145 of the Code. There shall be no fee associated with this type of an administrative appeal.

(Ord. No. 2-74, § 6.21(C), 3-26-74; Ord. No. 1-84, § 4(d), 3-1-84; Ord. No. 1-92, § 4(a), 2-3-92; Ord. No. 1-94, § 4(a), (e), 2-7-94; Ord. No. 1-95, § 2(a), 1-23-95; Ord. No. 1-96, § 10, 2-5-96; Ord. No. 1-97, § 3, 2-17-97; Ord. No. 1-99, § 27, 4-5-99; Ord. No. 1-00, § 9, 2-22-00; Ord. No. 1-01, § 7, 2-19-01; Ord. No. 1-04, § 11, 3-9-04; Ord. No. 5-09, § 24, 4-15-09; Ord. No. 7-09, § 7, 5-13-09; Ord. No. 25-2015, § 4, 11-12-15)

Sec. 134-2177. - Location of parking spaces.

Parking spaces for all uses or structures which are provided as required parking in conformance with the schedule of off-street parking and other applicable sections shall be located on the same lot and shall have the same district classification as the principal use or structure they are intended to serve, except as specifically excepted as follows:

- (1) The town council may permit, as a special exception, the establishment of such required off-street parking facilities for commercial uses within 500 feet of the premises, as measured along the nearest public or permanent private pedestrian walkway they are intended to serve when:
 - a. Practical difficulties prevent the placing of the facilities on the same lot as the premises they are designed to serve;
 - b. The proposed location is located within the same zoning district as the principal use it is designated to serve;
 - c. The owner of the parking area shall enter into a written agreement with the town, with enforcement running to the town, providing that the land comprising the parking area shall never be disposed of except in conjunction with the sale of the building which the parking area serves so long as the facilities are required; and
 - d. The owner agrees to bear the expense of recording the agreement and agrees that the agreement shall bind his heirs, successors and assigns. The written agreement shall be voided by the town if other off-street facilities are provided in accordance with this chapter.
- (2) The town council may permit, as a special exception, the establishment of supplemental off-street facilities which are in addition to those facilities required in accordance with the schedule of off-street parking for a permitted or approved special exception use. Such supplemental off-street parking facilities may be permitted only after the required parking for the principal use involved has been provided in full at current standards as contained in the schedule. This additional parking may be supplemental parking located on the same lot or supplemental off-site parking located on a directly adjoining lot or a lot which would be directly adjoining except for the location of a street or public way; provided, however, that all other provisions for special exceptions as set forth in sections 134-227 through 134-233 are complied with and, further, that the granting of such supplemental on-site or supplemental off-site parking is not construed as permission to expand, enlarge, alter, renovate, or modify the use of structure except in accordance with the requirements of this chapter.
- (3) The town council may permit, as a special exception, the establishment of required off-street parking facilities for commercial uses in zoning districts differing from the district of the principal uses of structures they are intended to serve if the following conditions are met:
 - a. The owner of the parking area shall enter into a written agreement with the town with enforcement running to the town providing that the land comprising the parking area shall never be disposed of except in conjunction with the sale of the buildings with which the parking area serves so long as the facilities are required.
 - b. The owner of the parking area shall agree to bear the expense of recording the agreement, and agrees that the agreement shall bind his heirs, successors and assigns. The written agreement shall be voided by the town if other off-street facilities are provided in accordance with this chapter.
 - c. The parking area shall have been used as a parking area for the entirety of each of the five calendar years immediately preceding the application for special exception.
 - d. The parking area shall abut the property on which is situated the principal structure for which it is to furnish the required off-street parking.

- e. The provisions for special exceptions as set forth in sections 134-227 through 134-233 are complied with.
- f. The said parking area shall be located at ground level or below ground level and shall not be located within any structure above ground.

(Ord. No. 2-74, § 6.21(D), 3-26-74; Ord. No. 1-85, § 4(a), 2-11-85; Ord. No. 1-99, § 28, 4-5-99; Ord. No. 25-2015, § 5, 11-12-15)

Editor's note— Ord. No. 25-2015 § 8, adopted November 12, 2015 provided that the amendment to section 134-2177 contained in § 5 of said ordinance shall sunset on December 13, 2017, whereupon section 134-2177 as it existed prior to adoption of said ordinance shall remain in full force and effect.

Sec. 134-2178. - Collective use.

As provided for in this division, two or more owners or operators of buildings or uses of the same type of zoning classification requiring off-street parking facilities may make collective provision for such facilities, provided that the total of such parking spaces, when combined or used together, shall not be less than the sum of the requirements computed separately, and provided that the combined facility is compatible with the zoning uses being served.

(Ord. No. 2-74, § 6.21(E), 3-26-74; Ord. No. 25-2015, § 6, 11-12-15)

Sec. 134-2179. - Utilization of yards.

- (a) *Underground facilities in sub-basements.* Underground facilities in sub-basements. Provided the ground level at the lowest point of the public sidewalk abutting the property or the public street, if there is no public sidewalk, is maintained, required off-street parking facilities may be located in a sub-basement under required yards. Roofs of such sub-basements shall be sodded, landscaped and maintained, and there shall be no visible evidence of such underground facility from a public street or sidewalk. No such underground facility shall be closer than five feet to any property line.
- (b) *Residential districts.* In the R-AA, R-A, R-B, R-C, R-D(1) and R-D(2) zoning districts, one and two-family dwellings shall provide the required parking set forth in section 134-2176. The following number of those required off-street parking spaces shall be located in an enclosed garage:
 - (1) Lots which are 75 feet or more in width shall provide two parking spaces.
 - (2) Lots under 75 feet in width shall provide one parking space, however, lots 50 feet or less in width shall not be required to provide any of the required off-street parking spaces in a garage.

All required and supplemental parking spaces shall be designed so that both required and supplemental parking spaces are nine feet wide by 18 feet deep and have a minimum eight-foot free and clear drive aisle width into each space.

Supplemental off-street parking for one-family and two-family development may be permitted in any setback area or yard area. All such supplemental parking spaces not located within an enclosed garage structure shall require effective screening by hedges and/or a wall permitted by this Code not less than six feet in height, which shall be placed between said off-street parking and any street and/or interior lot lines.

- (c) *Townhouse development in certain residential districts.* In the R-C, R-D(1), and R-D(2) districts, required parking (except guest spaces) for all town house development shall be located within a garage. Supplemental parking may be permitted in any setback area or yard area provided, however, that all such supplemental space, not located within a structure, shall require effective

screening by hedges and/or walls permitted by this Code not less than six feet in height, which shall be placed between the off-street parking and any street and/or interior lot lines.

- (d) *Application of requirements for the parking.* The foregoing requirement for garage or screened parking applies only to new construction, redevelopment or major remodeling involving more than 50 percent of the existing cubic content of the structure.
- (e) *Multifamily development.* In all districts where permitted, multifamily development of less than five dwelling units shall provide all required parking (excluding guest spaces) within a garage. For all other multifamily development and in all districts for all other permitted or approved special exception uses, required front, street and street rear yards may not be used for off-street parking, but all other yards may be used for such purposes. If a side or rear yard or nonrequired front, street side or street rear yard is used for parking purposes, it shall be effectively screened with hedges or walls or a combination thereof placed at the appropriate building line between the off-street parking and any street. Such screening shall not be less than six feet high and shall laterally extend across the entire building line which separates the parking area from the street except for the access way.
- (f) *Other permitted and special exception uses.* In all districts for all other permitted or approved special exception uses, required front, street side, and street rear yards may not be use for off-street parking, but all other yards may be used for such purposes. In addition, no required or supplemental off-street parking shall be located closer than 15 feet from a front, street side, or street rear property line. Required or supplemental off-street parking shall be effectively screened with hedges or walls or a combination thereof placed at the appropriate building line between the off-street parking and any street. Such screening shall not be less than six feet high and shall extend across the entire building line which separates the parking areas from the street except for the access way. Such screening shall also be required along the interior lot lines and shall not be less than four feet in height and shall not encroach upon the rear easement line. The height of said required screening shall be measured as set forth in section 134-1666 et seq. Each parking space shall have an adequate and substantial wheel stop or curb, not less than six inches in height, located at least four feet from the abutting side or rear property line and not less than two feet from required landscaping. Such two-foot setback may be part of the nine-foot by 18-foot parking space. Further, all required interior landscaping not already protected by wheel stops shall be protected by a curb, a minimum of six inches in height, around the perimeter of such landscaped area to prevent damage by vehicles maneuvering within the parking area. Such curbing must be so designed as not to prevent the drainage of water from the paved area into the landscaped area. In addition to the screening requirements in this subsection, the interior of the parking area must have suitable landscaping, including the provision of shade trees, such landscaped area to be not less than ten percent of the parking and drive aisle area. The total devoted to landscaping, comprising both the screening and the interior landscaping, must be at least 15 percent of the parking and drive aisle area. A site plan showing the landscaping and the irrigation facilities for the landscaping must be submitted.

(Ord. No. 2-74, § 6.21(F), 3-26-74; Ord. No. 7-82, § 5(b), 3-31-82; Ord. No. 1-84, § 4(d), 3-1-84; Ord. No. 1-89, § 4(a), 2-6-89; Ord. No. 1-94, § 4(d), 2-7-94; Ord. No. 1-97, § 8, 2-17-97; Ord. No. 1-98, §§ 10, 12, 2-9-98; Ord. No. 2-05, § 6, 5-10-05; Ord. No. 1-06, § 4, 3-14-06; Ord. No. 16-09, § 1, 11-12-09; Ord. No. 26-10, § 27, 12-15-10)

Sec. 134-2180. - Approval of plan for ingress, egress and landscaping.

The plan for ingress and egress to and from any lot or parcel of land is subject to the approval of the director of public works. No landscaping associated with parking or ingress and egress, curbs or sidewalks shall be cut or altered in any manner without a permit from the director of public works. In addition, all lots or parcels of land are further regulated by the town's right-of-way manual as adopted by reference in section 106-4 of the Code of Ordinances.

(Ord. No. 2-74, § 6.21(G), 3-26-74; Ord. No. 1-04, § 27, 3-9-04)

Sec. 134-2181. - Utilization of structures.

When off-street parking facilities are located within a structure, the following conditions and restrictions shall apply:

- (1) The structure shall conform to all lot, yard and bulk requirements of the district in which it is located except as follows: In the R-C, R-D(1) and R-D(2) districts, when multifamily development of five or more units includes all required off-street parking, other than required guest spaces, in parking located underground or wholly under the building, using the town's minimum base flood elevation as the starting point, the first eight feet of such understory parking shall not count towards allowable building height, and maximum allowable building coverage may be increased by five percent.
- (2) The parking facilities shall be designed so as to conform to all other town ordinances and all other sections of this chapter.
- (3) All nonstructural portions of the exterior elevations, except for vehicular ingress and egress areas, shall, in addition to any required safety provisions, be screened by a sight block of at least 50 percent solidity for the total areas between deck levels, such sight blockage to be determined by elevation. A solid wall for 50 percent of the distance between deck levels will not be acceptable.
- (4) The town council may permit as a special exception the establishment of required off-street parking facilities for commercial and multifamily uses on the roof of a building. When parking facilities are located on the roof of a structure, a four-foot high balustrade sight block wall shall be provided having at least 25 percent but no more than 50 percent solidity. The area between the top of the balustrade wall and the underside of any overstructure shall be open, providing at least three feet and six inches of vertical clearance. Further, a horizontally installed sight block framework having at least ten percent but not more than 25 percent solidity shall be installed to cover such rooftop parking. Such horizontal sight block framework shall cover the entire roof deck including ramps and shall be no higher above the roof deck parking spaces than necessary to provide a seven-foot six-inch headroom clearance. The definition for height of a building in section 134-2 shall apply except that the top story shall be determined as the story immediately below the rooftop parking deck of such structure. Landscaping for all facades shall be provided at each parking level to aid the sight block and shall be subject to the review and approval of the architectural commission.
- (5) The parking structure or portions of a building devoted to automobile parking uses must be sight screened from public view by approved landscaping; provided, however, that enclosed garage areas of a building shall conform to the same architectural appearance as the remainder of the building. Automobile parking structures detached from the principal structure shall be compatible in appearance to the principal structure and shall comply with lot, yard, and bulk regulations applicable to the principal structure.

(Ord. No. 2-74, § 6.21(H), 3-26-74; Ord. No. 4-75, §§ 2, 3, 3-24-75; Ord. No. 3-76, § 4, 3-23-76; Ord. No. 3-77, §§ 7, 8, 3-29-77; Ord. No. 5-78, § 12, 3-31-78; Ord. No. 4-80, § 6, 3-31-80; Ord. No. 6-81, § 5(a), 3-31-81; Ord. No. 7-82, § 5(a), (b), 3-31-82; Ord. No. 1-85, § 4(b), 2-11-85; Ord. No. 1-86, § 4(a), (c), 2-10-86; Ord. No. 1-89, § 4(b), 2-6-89; Ord. No. 1-92, § 4(a), 2-3-92; Ord. No. 1-94, § 4(b), 2-7-94; Ord. No. 1-96, § 9, 2-5-96; Ord. No. 1-98, § 12, 2-9-98)

Sec. 134-2182. - Shared parking in c-ts, c-wa and c-opi commercial zoning districts.

- (a) *Special exception.* Although there is no entitlement to shared parking, arrangements for shared parking may be allowed in the CT-S, C-WA and C-OPI commercial zoning districts, subject to the review and approval of a special exception as set forth under sections 134-227 through 134-233 and under the circumstances provided in this section.

- (b) *On-site shared parking.* When a new use is proposed to occupy existing floor space and the new use would require a greater number of parking spaces than required by the former use, the new use may request sharing of on-site parking to meet the town's off-street parking requirements, provided:
- (1) A traffic planner or traffic engineer clearly establishes to the town council, at the applicant's expense, that:
 - a. All uses utilizing the existing parking facilities will primarily utilize these parking spaces at different times of the day, week, month or year;
 - b. The sharing of such parking spaces will not result in conflicting or overlapping usage of the parking facilities; and
 - c. The available parking will be adequate to serve the needs of the proposed use.
 - (2) If the building official determines that professional advice and/or consultation is required to review the applicant's parking findings, the expense of such professional advice shall be borne by the applicant.
 - (3) The applicant provides to the town, at the applicant's expense, a recorded three-party agreement, including the town as one of the parties, with enforcement running to the town, guaranteeing the continuing availability of the shared parking spaces during the period of operation of the applicant's use. The term of the agreement shall approximate the life of the building or use for which the shared parking spaces fulfill the town's off-street parking requirement. If the shared parking ever ceases to be available or becomes inadequate due to a change in the uses' respective schedules of operation that results in conflicting or overlapping usage, the proposed use shall be required to obtain a new occupancy permit and provide proof that sufficient parking will be provided or shall be required to immediately reduce the intensity of the use served to the extent that it will be conforming to the town's off-street parking requirements.
- (c) *Supplemental off-site shared parking.* A conforming use may lease to another existing conforming use the former's required or supplemental parking spaces for use by patrons or employees of the latter, provided:
- (1) The area to be used for off-site shared parking shall be in the C-TS, C-WA, C-PC or C-OPI zoning district, and, except for shared parking within a parking garage or underground/underbuilding parking area, any area used for off-site shared parking shall be accessible only to and used by parking attendants and shall have controlled access in the form of gates or other barriers acceptable to the town that can be accessed and used only by parking attendants.
 - (2) Off-site shared parking shall be located no more than 500 feet from the use the off-site shared parking is intended to serve.
 - (3) The applicant shall provide evidence which shall prove to the satisfaction of the town council that the off-site shared parking use shall not increase noise, light or traffic impacts upon neighboring residential districts.
 - (4) A traffic planner or traffic engineer establishes to the satisfaction of the town council, at the applicant's expense, that all other establishments using the existing parking spaces will primarily utilize these spaces at different times of the day, week, month or year from that of the applicant's use, and that the sharing of such parking spaces will not result in conflicting or overlapping usage of the parking facilities.
 - (5) If the director of planning, zoning and building department should determine that professional advice and/or consultant is required to review the applicant's parking findings, the expense of such professional advice shall be borne by the applicant pursuant to sections 134-171 and 134-172.
 - (6) Off-site shared parking shall only be supplemental, and such parking shall not be used to meet required parking for new construction or expansion or addition to existing floor area.

- (7) The town may impose such additional conditions that it deems necessary to minimize noise, light and traffic impacts upon neighboring residential districts.
- (8) The approval shall initially be limited to a period of six months, whereupon a subsequent review shall be made at a public hearing of the town council at which the interim approval may be renewed, modified or revoked.

(Ord. No. 1-96, § 1(6.21(I)), 2-5-96; Ord. No. 1-97, § 7, 2-17-97; Ord. No. 1-98, § 11, 2-9-98; Ord. No. 4-10, § 2, 2-10-10; Ord. No. 25-2015, § 7, 11-12-15)

Editor's note— Ord. No.25-2015 § 8, adopted November 12, 2015 provided that the amendment to section 134-2182 contained in § 7 of said ordinance shall sunset on December 13, 2017, whereupon section 134-2182 as it existed prior to adoption of said ordinance shall remain in full force and effect.

Secs. 134-2183—134-2210. - Reserved.

Editor's note— Ord. No. 25-2015 § 8, adopted November 12, 2015 provided that the sunset provision would expire on December 13, 2017, repealing § 134-2183, and reinstating §§ 134-2, 134-38, 134-2177 and 134-2182, as existed prior to adoption of said ordinance.

DIVISION 3. - OFF-STREET LOADING

Sec. 134-2211. - Number and dimensions of berths for commercial uses.

- (a) In any zoning district, in connection with every building or building group or part thereof erected and having a gross floor area of 4,000 square feet or more, which is to be occupied by commercial uses or other uses similarly requiring the receipt or distribution by vehicles of material or merchandise, there shall be provided and maintained, on the same lot with such building, off-street loading or unloading berths in a number not less than the following:

Square Feet	Number of Berths
4,000—25,000	1
25,001—40,000	2
40,001—60,000	3
Each additional 25,000	1

- (b) The loading berth required in each instance shall be not less than 12 feet in width, 25 feet in length, and 14 feet in height, and may occupy all or any part of any required yard except for a required front yard, provided, however, that the loading berth shall be screened from the street or public way.

(Ord. No. 2-74, § 6.22, 3-26-74)

Secs. 134-2212—134-2235. - Reserved.

DIVISION 4. - PARKING LOTS

Sec. 134-2236. - Site plan review.

Applications for public or private parking lots, either as a special exception use or as required off-street parking, shall require site plan review in accordance with article III of this chapter. The material submitted with the application shall include the location, number and size of spaces; type of surfacing material and method of drainage; size and location of access drives and maneuvering aisles; and location and type of screening and landscaping in accordance with this chapter and other applicable town ordinances, together with any other elements as may be deemed essential by the building official.

(Ord. No. 2-74, § 6.26, 3-26-74; Ord. No. 5-78, § 12, 3-31-78; Ord. No. 4-80, § 6, 3-31-80)

Sec. 134-2237. - Alternate guidelines for operation as principal use of land.

For a public or private parking lot which is to be operated as the principal and sole use on the parcel of land, the following may be utilized as alternate guidelines in reviewing the site plan:

- (1) *Size and access.* An off-street parking space shall have minimum dimensions of nine feet in width and 18 feet in length for the parking of each automobile, exclusive of access drives or aisles thereto. Minimum width of an access drive shall be ten feet for one-way traffic. Minimum width of an aisle designed and intended for the maneuvering into a 90 degree parking space shall be 25 feet; 20 feet into 60 degree parking space; and 15 feet into a 45 degree parking space (see illustration in section 134-2171). Individual ingress and egress drives extending across the public sidewalks and curbs and connecting the parking lot to the public street areas shall not exceed a maximum of 30 feet. The design, number and placement of such drives are to be subject to the approval of the director of public works before being installed.
- (2) *Tandem parking.* Tandem parking may be permitted on a parking lot with a full-time attendant, provided that not more than two cars may be parked in tandem at each parking space location.
- (3) *Location of spaces.* Required front, street side or street rear yards may not be used for off-street parking, but all other areas, exclusive of easements, may be used for such purposes, providing parking lot paving shall not extend closer than four feet to any abutting side or rear property line.
- (4) *Landscaping.* Screening shall be provided in accordance with division 2 of this article.

(Ord. No. 2-74, § 6.26, 3-26-74; Ord. No. 5-78, § 12, 3-31-78; Ord. No. 4-80, § 6, 3-31-80; Ord. No. 26-10, § 28, 12-15-10)

Secs. 134-2238—134-2265. - Reserved.