

TOWN OF CUTLER BAY

Mayor Paul S. Vrooman
Vice Mayor Edward P. MacDougall
Councilmember Timothy J. Meerbott
Councilmember Ernest N. Sochin
Councilmember Peggy R. Bell

Town Manager Steven J. Alexander
Interim Town Attorney Mitchell Bierman
Interim Town Attorney Chad Friedman
Town Clerk Erika Gonzalez-Santamaria

In accordance with the American with Disabilities Act of 1990, persons needing special accommodation, a sign language interpreter or hearing impaired to participate in this proceeding should contact the Town Clerk at (305) 234-4262 for assistance no later than four (4) days prior to the meeting.

TOWN COUNCIL MEETING AGENDA

Wednesday, February 21, 2007

7:00 PM

Cutler Ridge Park
10100 SW 200th Street
Cutler Bay, Florida 33189

- I. CALL TO ORDER, ROLL CALL, PLEDGE OF ALLEGIANCE**
- II. INVOCATION**
- III. PROCLAMATIONS, AWARDS, PRESENTATIONS**
 - A. Proclamation for Mr. Jose Fuentes – South Florida Water Management District
 - B. Presentation by Jorge Jaramillo - Biscayne Bay Coastal Wetlands Projects
- IV. APPROVAL OF MINUTES**
 - A. January 17, 2007 (Regular Council Meeting)
- V. ADDITIONS, DELETIONS, AND DEFERRALS (Voice Vote)**
- VI. TOWN MANAGER'S REPORT**
- VII. TOWN ATTORNEY'S REPORT**
- VIII. BOARD AND COMMITTEE REPORTS**
- IX. CONSENT AGENDA (ANY ITEM SHALL BE REMOVED FROM THE CONSENT AGENDA FOR DISCUSSION OR SEPARATE VOTE IF REQUESTED BY A COUNCILMEMBER) [Voice Vote]**

TAB 1

A. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, DESIGNATING ADMINISTRATORS; AUTHORIZING ADMINISTRATORS TO ACT IN RELATION TO FUNDS HELD AT THE STATE BOARD OF ADMINISTRATION; PROVIDING FOR CONTINUATION OF THE AUTHORIZATION; AND PROVIDING FOR AN EFFECTIVE DATE.

TAB 2

B. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, SUPPORTING PASSAGE OF A PROPOSED HOUSE AND SENATE BILL TO BE HEARD BEFORE THE FLORIDA LEGISLATURE, RELATING TO THE PRESERVATION OLD CUTLER ROAD AS A HISTORIC HIGHWAY; AND PROVIDING FOR AN EFFECTIVE DATE.

TAB 3

C. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RECOMMENDING TO THE MIAMI-DADE COUNTY PUBLIC WORKS DEPARTMENT TO REMOVE SW 87 AVENUE "ROAD WIDENING" PROJECT APPROVED BY THE PEOPLE'S TRANSPORTATION PLAN (PTP) AND REALLOCATE APPROVED FUNDS TO OLD CUTLER ROAD AND CARIBBEAN BOULEVARD ROADWAY IMPROVEMENTS; AND PROVIDING FOR AN EFFECTIVE DATE.

TAB 4

RESOLUTIONS FOR DISCUSSION

**X. QUASI-JUDICIAL CONSENT AGENDA (ANY ITEM MAY BE REMOVED FROM THE CONSENT AGENDA IF REQUESTED BY A MEMBER OF THE TOWN COUNCIL, THE TOWN STAFF, THE APPLICANT, OR ANY AFFECTED PARTY)
[Voice Vote]**

XI. QUASI-JUDICIAL HEARINGS (Roll Call Vote)

ALL PERSONS ADDRESSING THE TOWN COUNCIL SHALL BE SWORN-IN PRIOR TO GIVING TESTIMONY AND MAY BE SUBJECT TO CROSS EXAMINATION. ALL PERSONS ADDRESSING THE TOWN COUNCIL SHALL STATE THEIR NAME AND ADDRESS FOR THE RECORD.

A. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING A REQUEST BY FLAMINGO HOMES INVESTMENT GROUP TO WAIVE 15 FEET OF THE ZONED RIGHT-OF-WAY FOR PROPERTY LOCATED AT THE SOUTHWEST CORNER OF S.W. 213 STREET AND OLD CUTLER ROAD (FOLIO# 36-6008-005-0610); AND PROVIDING FOR AN EFFECTIVE DATE.

TAB 5

B. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING A REQUEST BY FLAMINGO HOMES INVESTMENT GROUP TO WAIVE 15 FEET OF THE ZONED RIGHT-OF-WAY FOR PROPERTY GENERALLY

TAB 6

LOCATED SOUTHWEST OF THE INTERSECTION OF S.W. 213 STREET AND OLD CUTLER ROAD (FOLIO# 36-6008-005-0600); AND PROVIDING FOR AN EFFECTIVE DATE.

XII. PUBLIC HEARINGS

A. RESOLUTIONS (Voice Vote)

B. ORDINANCES (Roll Call Vote)

1. FIRST READING

a. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING CHAPTER 33, "ZONING", ARTICLE I, "IN GENERAL," SECTION 33-20(e), "BOAT STORAGE", OF THE TOWN'S CODE OF ORDINANCES, BY ALLOWING STORAGE OF TWO BOATS IN CERTAIN ZONING DISTRICTS WITHIN THE TOWN; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS AND PROVIDING FOR AN EFFECTIVE DATE.

TAB 7

b. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, CREATING NONRESIDENTIAL DESIGN STANDARDS AND REGULATIONS; PROVIDING FOR EXEMPTIONS; PROVIDING FOR NONCONFORMING STRUCTURES; AND PROVIDING FOR AN EFFECTIVE DATE.

TAB 8

c. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, IMPLEMENTING THE PROVISIONS OF SECTION 286.0115, FLORIDA STATUTES, TO ESTABLISH A PROCEDURE GOVERNING EX PARTE COMMUNICATIONS WITH LOCAL PUBLIC OFFICIALS CONCERNING QUASI-JUDICIAL MATTERS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE TOWN CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

TAB 9

d. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA , AMENDING CODE ENFORCEMENT PROCEDURES; CREATING ENHANCED PENALTIES FOR VIOLATIONS OF THE SIGN ORDINANCE; PROVIDING FOR

TAB 10

SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

2. SECOND READING

- a. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING ARTICLE I "IN GENERAL," SECTION 33-11 "FENCES, WALLS, BUS SHELTERS AND HEDGES" OF THE TOWN CODE OF ORDINANCES, TO PROVIDE THAT ALL FENCES BE ERECTED WITH THE FINISHED SIDE OUTWARD; PROVIDING THAT CHAIN LINK FENCES SHALL NOT BE LOCATED BEYOND THE FRONT FAÇADE OF THE BUILDING OR 25 FEET FROM THE FRONT PROPERTY LINE, WHICHEVER IS GREATER, AND SHALL BE PERMITTED ONLY ALONG INTERIOR SIDE PROPERTY LINES AND REAR PROPERTY LINES THAT ARE NOT ADJACENT TO A RIGHT-OF-WAY; AND PROVIDING FOR AN EFFECTIVE DATE.

TAB 11

XIII. PUBLIC COMMENTS

XIV. MAYOR AND COUNCIL MEMBER COMMENTS

XV. OTHER BUSINESS

XVI. NEXT MEETING ANNOUNCEMENT AND ADJOURNMENT

- A. Regular Town Council Meeting
Wednesday, March 21, 2007, 7:00 P.M.
Cutler Ridge Park

PURSUANT TO FLORIDA STATUTES 286.0105, THE TOWN HEREBY ADVISES THE PUBLIC THAT IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THIS COUNCIL WITH RESPECT TO ANY MATTER CONSIDERED AT ITS MEETING OR HEARING, HE OR SHE WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT FOR SUCH PURPOSE, THE AFFECTED PERSON MAY 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. THIS NOTICE DOES NOT CONSTITUTE CONSENT BY THE TOWN FOR THE INTRODUCTION OR ADMISSION OF OTHERWISE INADMISSIBLE OR IRRELEVANT EVIDENCE, NOR DOES IT AUTHORIZE CHALLENGES OR APPEALS NOT OTHERWISE ALLOWED BY LAW.

**TOWN OF CUTLER BAY
TOWN COUNCIL MEETING
MINUTES**

Wednesday, January 17, 2007

7:00 PM

South Dade Government Center
10710 SW 211 Street, Room 203
Cutler Bay, Florida 33189

I. CALL TO ORDER/ROLL CALL OF MEMBERS: The meeting was called to order by the mayor at 7:20 PM. Present were the following:

Councilmember Peggy R. Bell
Councilmember Timothy J. Meerbott
Councilmember Ernest N. Sochin
Vice Mayor Edward P. MacDougall
Mayor Paul S. Vrooman

Town Manager Steven J. Alexander
Interim Town Attorney Mitchell Bierman
Interim Town Attorney Chad Friedman
Town Clerk Erika Gonzalez-Santamaria

Mayor Vrooman led the pledge of allegiance.

II. INVOCATION: Mayor Vrooman asked all to join him in a moment of silence.

III. PROCLAMATIONS, AWARDS, PRESENTATIONS:

IV. APPROVAL OF MINUTES:

- A.** Councilmember Bell made a motion approving the minutes of the meeting of December 20, 2006. The motion was seconded by Vice Mayor MacDougall and adopted by a unanimous 5-0 voice vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

V. ADDITIONS, DELETIONS, AND DEFFERALS:

- A.** A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AUTHORIZING THE TOWN MANAGER TO REJECT ALL PROPOSALS FOR RFP # 06-001 FOR COMPREHENSIVE LANDSCAPE/GROUNDS MAINTENANCE AND AUTHORIZING THE RE-ADVERTISEMENT OF THE REQUEST FOR PROPOSALS; AND PROVIDING FOR AN EFFECTIVE DATE.

The Town Manager requested that the Town Council consider adding resolution Item A. into the Consent Agenda as Item D.

Councilmember Sochin made a motion to approve the added item to the Consent Agenda as Item D. The motion was seconded by Councilmember Meerbott and approved by unanimous 5-0 voice vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

VI. TOWN MANAGER'S REPORT:

The Manager provided a brief report on his trip to Tallahassee with Councilmember Meerbott to meet with Legislators in reference to the home insurance issue. The Manager proceeded to introduce Executive Assistant, Yani Ramos who then handed out new Town identification to Council. The Town Manager then introduced the Public Works Director, Ralph Casals who continued to explain the new County trash pick-up system, which should take effect around March.

VII. TOWN ATTORNEY'S REPORT: None at this time.

VIII. BOARD AND COMMITTEE REPORTS:

IX. CONSENT AGENDA:

- A. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO CODIFICATION OF TOWN ORDINANCES; AUTHORIZING THE TOWN MANAGER TO ENTER INTO AN AGREEMENT FOR CODIFICATION SERVICES THROUGH MUNICIPAL CODE CORPORATION; WAIVING COMPETITIVE BIDDING PURSUANT TO SECTION 3.10 OF THE TOWN CHARTER; AND PROVIDING FOR AN EFFECTIVE DATE.
- B. A RESOLUTION OF THE TOWN OF CUTLER BAY, FLORIDA, ESTABLISHING THE CUTLER BAY TOWN FOUNDATION, INC.; AUTHORIZING THE TOWN MANAGER TO EXPEND BUDGETED FUNDS; AUTHORIZING TOWN OFFICIALS TO TAKE ALL NECESSARY STEPS TO CREATE THE CUTLER BAY TOWN FOUNDATION, INC.; AUTHORIZING THE MAYOR AND APPROPRIATE TOWN PERSONNEL TO EXECUTE REQUIRED DOCUMENTS; AND PROVIDING FOR AN EFFECTIVE DATE.
- C. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AUTHORIZING THE ISSUANCE OF A REQUEST FOR QUALIFICATIONS (RFQ) FOR PROFESSIONAL SERVICES: ARCHITECTURE, GENERAL CIVIL ENGINEERING, LANDSCAPE ARCHITECTURE AND TRANSPORTATION PLANNING & ENGINEERING; AND PROVIDING FOR AN EFFECTIVE DATE.
- D. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AUTHORIZING THE TOWN MANAGER TO REJECT ALL PROPOSALS FOR RFP # 06-001 FOR COMPREHENSIVE LANDSCAPE/GROUNDS MAINTENANCE AND AUTHORIZING THE RE-

ADVERTISEMENT OF THE REQUEST FOR PROPOSALS; AND PROVIDING FOR AN EFFECTIVE DATE.

Councilmember Bell pulled Item B from the Consent Agenda for discussion.

Councilmember Meerbott made a motion to approve the Consent Agenda as amended. The motion was seconded by Councilmember Bell and Resolutions 07-01, 07-03 – 07-04 was adopted by unanimous 5-0 voice vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

The Town Manager discussed Item B. Councilmember Bell made a motion to defer Item B to the March meeting, but later withdrew her motion after further discussion. Councilmember Meerbott made a motion to approve Item B without sample bylaws presented in the resolution. The motion was seconded Councilmember Sochin and Resolutions 07-02 was approved by unanimous 5-0 voice vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

RESOLUTIONS FOR DISCUSSION

X. QUASI-JUDICIAL CONSENT AGENDA PUBLIC HEARING: None at this time.

XI. QUASI-JUDICIAL HEARINGS: The following quasi-judicial hearing was held by Council.

All witnesses giving testimony were sworn-in by the clerk. The clerk read the following ordinance on second reading, by title:

- A. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, CREATING THE OLD CUTLER ROAD OVERLAY ZONING DISTRICT AND REGULATIONS; REZONING PROPERTIES ALONG OLD CUTLER ROAD FROM S.W. 184TH STREET SOUTH TO THE TOWN LIMITS, AS SHOWN ON EXHIBIT "A" AND LEGALLY DESCRIBED IN EXHIBIT "B," TO THE OLD CUTLER ROAD OVERLAY ZONING DISTRICT; AMENDING THE LIST OF PERMITTED, CONDITIONAL, AND PROHIBITED USES FOR PROPERTIES ALONG OLD CUTLER ROAD FROM S.W. 184TH STREET SOUTH TO THE TOWN LIMITS, AS SHOWN ON EXHIBIT "A" AND LEGALLY DESCRIBED IN EXHIBIT "B;" AND PROVIDING FOR AN EFFECTIVE DATE. (SECOND READING)**

Don O'Donilley, the Planning Director, gave an oral report and based on his memorandum on December 20, 2006, recommended approval of the ordinance.

The mayor opened the public hearing. Jaime Reyes, 9715 Southwest 215 Lane, Eduardo Verona, 9271 Marine Drive, Amy Roda, 9221 Neptune Drive, Eduardo Aragon, 9221 Marine Drive, Octavio Mendizabal, 21801 Southwest 98 Place, Rudy Castellano, representing Flamingo Investment, Richard Ramirez, Bill Meiklejohn, 9311 Sterling Drive, addressed the Council.

Councilmember Bell made a motion to approve the ordinance. The motion was seconded by Vice Mayor MacDougall and Ordinance 07-01 was approved by unanimous 5-0 roll call vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

XII. PUBLIC HEARINGS:

A. RESOLUTIONS: None at this time.

B. ORDINANCES:

1. FIRST READING: The clerk read the following ordinance, on first reading, by title:

- a. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING ARTICLE I "IN GENERAL," SECTION 33-11 "FENCES, WALLS, BUS SHELTERS AND HEDGES" OF THE TOWN CODE OF ORDINANCES, TO PROVIDE THAT ALL FENCES BE ERECTED WITH THE FINISHED SIDE OUTWARD; PROVIDING THAT CHAIN LINK FENCES SHALL NOT BE LOCATED BEYOND THE FRONT FAÇADE OF THE BUILDING OR 25 FEET FROM THE FRONT PROPERTY LINE, WHICHEVER IS GREATER, AND SHALL BE PERMITTED ONLY ALONG INTERIOR SIDE PROPERTY LINES AND REAR PROPERTY LINES THAT ARE NOT ADJACENT TO A RIGHT-OF-WAY; AND PROVIDING FOR AN EFFECTIVE DATE.

The Town Attorney gave a brief report on the ordinance to the Council.

Vice Mayor MacDougall made a motion to adopt the ordinance on first reading. The motion was seconded by Councilmember Bell and adopted by unanimous 4-1 roll call vote. The vote was as follows: Councilmembers Bell, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes; Councilmember Meerbott voting No.

This ordinance will be on second reading February 21, 2007.

2. SECOND READING: The clerk read the following ordinance, on second reading, by title:

- a. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA , CREATING

REGULATIONS RELATED TO LOBBYISTS AND PRINCIPALS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

Town Staff provided information on the ordinance.

The mayor opened the public hearing. Jaime Reyes, 9715 Southwest 215 Lane, addressed Council.

Councilmember Bell made a motion adopting the ordinance on second reading. The motion was seconded by Vice Mayor MacDougall and Ordinance 07-02 was approved by unanimous 5-0 roll call vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

- b. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, CREATING REGULATIONS RELATED TO DISCLOSURE OF PAYMENTS OR MATERIAL CONSIDERATION PAID OR REQUESTED BY PERSONS IN EXCHANGE FOR SUPPORT OR NON-OPPOSITION ON MATTERS UNDER CONSIDERATION BY THE TOWN COUNCIL; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

Town Staff provided information on the ordinance.

The mayor opened the public hearing. Jaime Reyes, 9715 Southwest 215 Lane, Alfie Sergio, 9261 Caribbean Boulevard, Beth Parrets, 19301 Holiday Road, Joy Cooper, 9365 Nassau Drive, Barbara Condon, 19641 Holiday Road, Tom Condon, 19641 Holiday Road, addressed the Council.

Councilmember Bell made a motion adopting the ordinance on second reading. The motion was seconded by Councilmember Sochin and Ordinance 07-03 was approved by unanimous 5-0 roll call vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

- c. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA CREATING SITE PLAN APPLICATION REQUIREMENTS AND PROCEDURES FOR SITE PLAN APPROVAL; AMENDING CHAPTER 33 "ZONING" OF THE TOWN CODE TO REQUIRE SITE PLAN APPROVAL BY THE TOWN COUNCIL AFTER A PUBLIC HEARING; PROVIDING FOR ORDINANCES IN CONFLICT, SEVERABILITY, AND AN EFFECTIVE DATE.

Don O'Donilley, the Planning Director, gave an oral report and based on his memorandum on January 11, 2007, recommended approval of the ordinance.

The mayor opened the public hearing. Beth Parrets, 19301 Holiday Road, addressed the Council.

Councilmember Sochin made a motion adopting the ordinance on second reading. The motion was seconded by Vice Mayor MacDougall and Ordinance 07-04 was approved by unanimous 5-0 roll call vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

- d. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA AMENDING SECTION 33-13 "UNUSUAL USES" OF CHAPTER 33 "ZONING" OF THE TOWN CODE; PROVIDING FOR REGULATIONS RELATING TO CIRCUSES OR CARNIVALS; PROVIDING FOR ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

Don O'Donilley, the Planning Director, gave an oral report and based on his memorandum on January 11, 2007, recommended approval of the ordinance.

The mayor opened the public hearing. There were no speakers.

Councilmember Meerbott made a motion adopting the ordinance on second reading. The motion was seconded by Councilmember Bell and Ordinance 07-05 was approved by unanimous 5-0 roll call vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

XIII. PUBLIC COMMENTS: The following individuals spoke: Jaime Reyes, 9715 Southwest 215 Lane, Amy Roda, 9221 Neptune Drive, Dave Bader, 8771 Southwest 200 Terrace, Alfie Sergio, 9261 Caribbean Boulevard, Beth Parrets, 19301 Holiday Road.

XIV. MAYOR AND COUNCIL MEMBER COMMENTS:

Councilmember Meerbott described his trip to Tallahassee with the Town Manager in reference to the home insurance rate increases. He proceeded to explain that he and the Manager met with many Legislators to discuss the state-wide issue.

Councilmember Sochin also expressed his gratitude concern with rising home insurance rates especially in South Florida. He would like to see special home insurance relief for senior citizens in the area to receive assistance. He briefly reported on ex parte communication.

Vice Mayor MacDougall commented on the home insurance increases and property tax issues. He also wanted to remind the public of all the soldiers fighting in the war in Iraq and their efforts in the war.

Councilmember Bell thanked Member Meerbott and the Town Manager for representing the Town during the Legislative Days in Tallahassee.

Mayor Vrooman discussed the Watershed issue and he wanted to express his gratitude to Member Meerbott and the Town Manager for their representation in Legislative Days in Tallahassee.

XV. OTHER BUSINESS: None at this time.

XVI. NEXT MEETING ANNOUNCEMENT AND ADJOURNMENT:

The next council meeting will be held on February 21, 2007, at the South Dade Regional Library.

The meeting was officially adjourned at 9:55 P.M.

Respectfully submitted:

*Erika Gonzalez-Santamaria, CMC
Town Clerk*

*Adopted by the Town Council on
this 21st day of February, 2007.*

Paul S. Vrooman, Mayor

PURSUANT TO FLORIDA STATUTES 286.0105, THE TOWN HEREBY ADVISES THE PUBLIC THAT IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THIS COUNCIL WITH RESPECT TO ANY MATTER CONSIDERED AT ITS MEETING OR HEARING, HE OR SHE WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT FOR SUCH PURPOSE, THE AFFECTED PERSON MAY NEED TO ENSURE THAT VERBATIM RECORD OF THE PROCEEDING IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED THIS NOTICE DOES NOT CONSTITUTE CONSENT BY THE TOWN FOR THE INTRODUCTION OR ADMISSION OF OTHERWISE INADMISSIBLE OR IRRELEVANT EVIDENCE, NOR DOES IT AUTHORIZE CHALLENGES OR APPEALS NOT OTHERWISE ALLOWED BY LAW.

RESOLUTION NO. 07- ____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, DESIGNATING ADMINISTRATORS; AUTHORIZING ADMINISTRATORS TO ACT IN RELATION TO FUNDS HELD AT THE STATE BOARD OF ADMINISTRATION; PROVIDING FOR CONTINUATION OF THE AUTHORIZATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, The Town of Cutler Bay (the "Town") from time to time has funds on hand in excess of current needs; and

WHEREAS, it is in the best interest of the Town and its inhabitants that funds be invested to return the highest yield consistent with proper safeguards.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. Designation of Administrators. That the Town Manager and/or his designee, as legal representatives of the Town, are hereby authorized to act as the administrators for funds held at the State Board of Administration.

Section 3. Administrators Authority. Administrators shall have the authority to establish an account on behalf of the Town, withdraw funds from or transmit funds to said account(s) at the State Board of Administration, establish funds transfer instructions, name designee(s), and initiate changes to this information via the Investment Pool Input Document.

Section 4. Authorization Continuing. This authorization shall be continuing in nature until revoked by the Town.

Section 5. Effective Date. This resolution shall take effect immediately upon adoption.

PASSED and ADOPTED this ____ day of _____, 2007.

PAUL S. VROOMAN, Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA, CMC
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS, SEROTA, HELFMAN, PASTORIZA,
COLE & BONISKE, P.A.
Interim Town Attorney

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman	_____
Vice Mayor Edwards P. MacDougall	_____
Councilmember Peggy R. Bell	_____
Councilmember Timothy J. Meerbott	_____
Councilmember Ernest N. Sochin	_____

RESOLUTION NO. 07-_____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, SUPPORTING PASSAGE OF A PROPOSED HOUSE AND SENATE BILL TO BE HEARD BEFORE THE FLORIDA LEGISLATURE, RELATING TO THE PRESERVATION OLD CUTLER ROAD AS A HISTORIC HIGHWAY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Cutler Bay (The "Town") finds that Old Cutler Road (The "Road") is a vital part of the community and designated by the State of Florida as an Historic Highway; and

WHEREAS, the Town Council supports the preserving and enhancing the historic and scenic value of the road and its surroundings while protecting bicyclist and pedestrians; and

WHEREAS, the proposed Bill (Exhibit "A") seeks to amend F.S. Section 74-400 to allow the use of public funds to include the erection of sidewalks, curbing and landscaping to enhance pedestrian access to the road; and

WHEREAS, the affected road section is located within the Town's limits specifically between Southwest 184 Street and Southwest 216 Street; and

WHEREAS, the Town Council overwhelmingly supports the continued efforts of both Honorable State Senator Larcenia J. Bullard and the Honorable State Representative Edward B. Bullard in introducing the proposed Bill before the Florida Legislature.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. Support. The Town of Cutler Bay Council hereby supports enactment of the proposed Bill and hereby requests that the State Legislature to amend F.S. Section 74-400.

Section 3. The Town clerk is directed to transmit a copy of this Resolution to all Senate and House members representing the Town of Cutler Bay.

Section 3. Effective Date. This resolution shall take effect immediately upon adoption.

PASSED and ADOPTED this ___ day of _____, 2007.

PAUL S. VROOMAN, Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA, CMC
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA
COLE & BONISKE, P.A.
Interim Town Attorney

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman _____

Vice Mayor Edwards P. MacDougall _____

Councilmember Peggy R. Bell _____

Councilmember Timothy J. Meerbott _____

Councilmember Ernest N. Sochin _____

EXHIBIT A

A BILL TO BE ENTITLED AND ACT RELATING TO OLD CUTLER ROAD; AUTHORIZING THE USE OF PUBLIC FUNDS FOR THE PURPOSES OF ALTERING THE ROAD FOR THE ERECTION OF SIDEWALKS, CURBING AND LANDSCAPING TO ENHANCE PEDESTRIAN ACCESS; PROVIDING AN EFFECTIVE DATE.

Chapter 74-400 is hereby amended and a new section 7 is added to read --

Section 1. As used in this act:

(1) "Road" means Old Cutler Road, including the portion thereon which now bears the name "Old Cutler Road" and which extends from Sunset Drive in the City of Coral Gables to U.S. Highway 1, near the Town of Goulds, the portion which overlaps LeJeune Road in the City of Coral Gables, the portion now known as Ingraham Highway in the City of Coral Gables and Coconut Grove; the portion which overlaps Douglas Road in Coconut Grove and the portion now known as Main Highway in Coconut Grove as far north and east as Franklin Avenue.

(2) "Division" means the division of archives, history and record management of the department of state.

(3) "Historic Easement" means any easement, restriction covenant or condition running with the land, designated to preserve, maintain or enhance all or part of the existing state of places of historic, architecture, archeological, or cultural significance.

Section 2. Old Cutler Road is hereby designated as a state historic highway. No state funds shall be expended by any public body or agency for any of the following purposes:

(1) To cut or remove any tree having a diameter at its thickest part in excess of six inches within thirty-five feet of either side of the paved surface of the road, or to engage in an activity which requires the removal without replacement of such a tree;

(2) To alter the physical dimensions or location of the road except for the addition of primary or secondary roads intersecting the limits of Old Cutler Road;

(3) To erect, demolish or significantly alter the appearance of any structure, including but not limited to, walls, fences, sidewalks and

(a) Bicycle paths, and recreational facilities the construction of which does not require the removal of any structure deemed worthy of preservation by the division. The division shall be consulted and official approval obtained before any work is begun.

(b) Erections, demolitions, alterations and restorations undertaken for the purpose of preserving or enhancing the historic or scenic value of the road and its surroundings. The division shall be consulted and official approval obtained before any work is begun.

Nothing in this section shall be construed to prevent the ordinary maintenance and repair of the road or structures, provided the physical dimensions and location of the road and the appearance of any structure are preserved, nor to prevent any work that is necessary for the public health or safety as determined by the agency having jurisdiction over the portion of the road involved. However, the preservation of the road shall take priority over considerations of traffic management, and the public safety shall not be construed to require alterations in the road when alternative means of promoting safety, including more restrictive traffic regulations, are available.

Section 3. No signs may be erected within three hundred feet of either side of the paved surface of the road, except the following:

- (1) Official road signs, including traffic control devices, erected by the department of transportation or by the city or county having jurisdiction over the portion of the road involved;
- (2) Signs not visible from the road;
- (3) Markers indicating points of historical interest erected or approved by the division;
- (4) Signs that do not exceed six square feet in area advertising the sale or lease of the property upon which they are located; or
- (5) Signs advertising only the name or nature of the business being conducted upon or the products, facilities, goods or services begin sold, supplied, or distributed upon or from the premises where the signs are located, if such signs do not exceed a total of thirty square feet in area for any one business;

The provisions of this section shall not supersede a more restrictive law, ordinance or regulation already in effect or taking effect after this act.

Section 4. The division is authorized to obtain by purchase, gift or devise historic easements in property situated along the road, whenever and to such extent that the division may determine appropriate for the preservation of the road or of any structure of historic significance along the road. To be considered worthy of protection by the division, property or the protected part thereof need not be of great historic, architectural, archeological, or cultural significance when considered by itself, provided that it makes a significant contribution to the area considered as a whole. Any restriction placed on the use of property situated on the road pursuant to this section shall be reported to the division to the tax assessor of Dade County and shall be taken into consideration when the property is assessed for tax purposes.

Section 5. The division shall provide for the erection of suitable markers on and along the road.

Section 6. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 7. Notwithstanding the provisions of this act, in the section of Old Cutler Road, between Southwest 184th Street and Southwest 216th Street, located within the municipal boundaries of the Town of Cutler Bay, the use of public funds is authorized for the for the following purposes:

(1) The alteration of the road to include the erection of sidewalks, curbing and landscaping to enhance pedestrian access to the road. The division shall be consulted and official approval obtained before any work is begun.

Section 8. This act shall take effect upon becoming a law.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RECOMMENDING TO THE MIAMI-DADE COUNTY PUBLIC WORKS DEPARTMENT TO REMOVE SW 87 AVENUE “ROAD WIDENING” PROJECT APPROVED BY THE PEOPLE’S TRANSPORTATION PLAN (PTP) AND REALLOCATE APPROVED FUNDS TO OLD CUTLER ROAD AND CARIBBEAN BOULEVARD ROADWAY IMPROVEMENTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the People’s Transportation Plan (PTP) was created to address mobility and accessibility issues in Miami-Dade County by implementing a comprehensive program of transportation improvements designed to enhance the movement and safety of people and goods on public transit and local roadways; and

WHEREAS, the half-penny transportation surtax enacted by the Miami-Dade County voters in 2002 provides the local funding source dedicated exclusively to implement the projects in the People’s Transportation Plan; and

WHEREAS, the Miami-Dade Board of County Commissioners created a Citizens' Independent Transportation Trust (CITT) with certain powers over the use and expenditure of the proceeds of the County Transit System Surtax (half-penny) approved by the electorate of Miami-Dade County; and

WHEREAS, the Miami-Dade County Public Works Department has provided a listing of all (PTP) projects within the Town’s limits That were approved prior to incorporation; and

WHEREAS, one of the approved projects is a road construction project for a section on SW 87 Avenue between SW 184 Street to SW 216 Street improvements which consists of widening SW 87 Avenue from its current two (2) lanes configuration to four (4) lanes; and

WHEREAS, the Town Council is requesting that the “Road Widening” project’s funds estimated at \$ 20,000,000 are reallocated for road improvements along Old Cutler Road and Caribbean Boulevard, both Miami-Dade County Roads.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. Support. The Town of Cutler Bay Council hereby supports the removal of SW 87 Avenue “Road Widening” project from the People’s Transportation Plan and the reallocation of funds towards Old Cutler Road and Caribbean Boulevard road improvements.

Section 3. The Town clerk is directed to transmit a copy of this Resolution to the Miami-Dade County Public Works Department.

Section 3. Effective Date. This resolution shall take effect immediately upon adoption.

PASSED and ADOPTED this ___ day of February 21, 2007.

PAUL S. VROOMAN, Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA, CMC
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA
COLE & BONISKE, P.A.
Interim Town Attorney

FINAL VOTE AT ADOPTION:

- Mayor Paul S. Vrooman _____
- Vice Mayor Edwards P. MacDougall _____
- Councilmember Peggy R. Bell _____
- Councilmember Timothy J. Meerbott _____
- Councilmember Ernest N. Sochin _____



MEMORANDUM

To: Steven Alexander, Town Manager

From: Don O'Donniley, AICP, Planning Director *DOR*

Date: February 21, 2007

Re: Application No. 2006-26
Waiver of Zoning Regulations (Variance from Required Right-of-Way
Dedication) Flamingo Homes Lot 16
(Folio No. 36-6008-005-0610)

REQUEST:

APPLICANT REQUEST

To waive the zoning regulations requiring Old Cutler Road to be 100' in width; to permit 35' of dedication (50' required) on the west side of Old Cutler Road.

LOCATION:

The southwest corner of S.W. 213 Street and Old Cutler Road.

BACKGROUND:

The applicant applied for the above referenced request with Miami-Dade County in Spring of 2006. Since that time all planning and zoning functions have been taken over by the Town.

Town staff has reviewed this application and met with the developer on numerous occasions.

Additionally, this application was held in abeyance due to the property location within the Old Cutler Road Charrette boundaries.

On January 17, 2007, the Town Council adopted the "Old Cutler Road Overlay District" which allows an alternate form of residential development along the southerly portion of Old Cutler Road. The applicant has complied with the new regulations by setting the residence closer to the front setback line and incorporating a forecourt wall in order to create a more pedestrian oriented streetscape.

RECOMMENDATION:

Approval with conditions under Section 33-311(A)(4)(b).

Please note that, if this tentative site plan is approved, the final site plan will be approved administratively as long as the following conditions are met.

CONDITIONS:

1. That a site plan be submitted to and meet with the approval of the Town of Cutler Bay upon the submittal of an application for a building permit; said plan to include, but not be limited to, location of structure or structures, exits and entrances, drainage, walls, fences, landscaping, and other requirements.
2. Final approval of the site plan shall be substantially in accordance with that submitted for the hearing entitled "Proposed Residence for Flamingo Homes Invest. Group," as prepared by Salazar & Associates, consisting of 3 sheets and dated 9/6/06. Except as may be specified by any zoning resolution applicable to the subject property, any future additions on the property which conform to Zoning Code requirements will not require further public hearing action.
3. That the use be established and maintained in accordance with the tentatively approved site plan.
4. That a current survey be submitted with the plans.
5. That a "forecourt wall" be incorporated into the construction drawings to visually screen the side entrance garage from Old Cutler Road.

My Home
Miami-Dade County, Florida



miamidade.gov

Property Information Map



Digital Orthophotography - 2006

0 — 56 ft

This map was created on 2/12/2007 11:24:28 AM for reference purposes only.

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Close

Summary Details:

Folio No.:	36-6008-005-0610
Property:	
Mailing Address:	FLAMINGO HOMES INVEST GRP INC
	3279 SW 141ST AVE MIAMI FL 33175-6768

Property Information:

Primary Zone:	0100 SINGLE FAMILY RESIDENCE
CLUC:	0081 VACANT LAND
Beds/Baths:	0/0
Floors:	0
Living Units:	0
Adj Sq Footage:	0
Lot Size:	7,500 SQ FT
Year Built:	0
Legal Description:	8 56 40 .17 AC LINCOLN CITY SEC G PB 48-75 LOT 16 BLK 63 LOT SIZE 75.000 X 100 COC 23737-3344 03 2005 6 F/A/U 30-6008-005- 0610

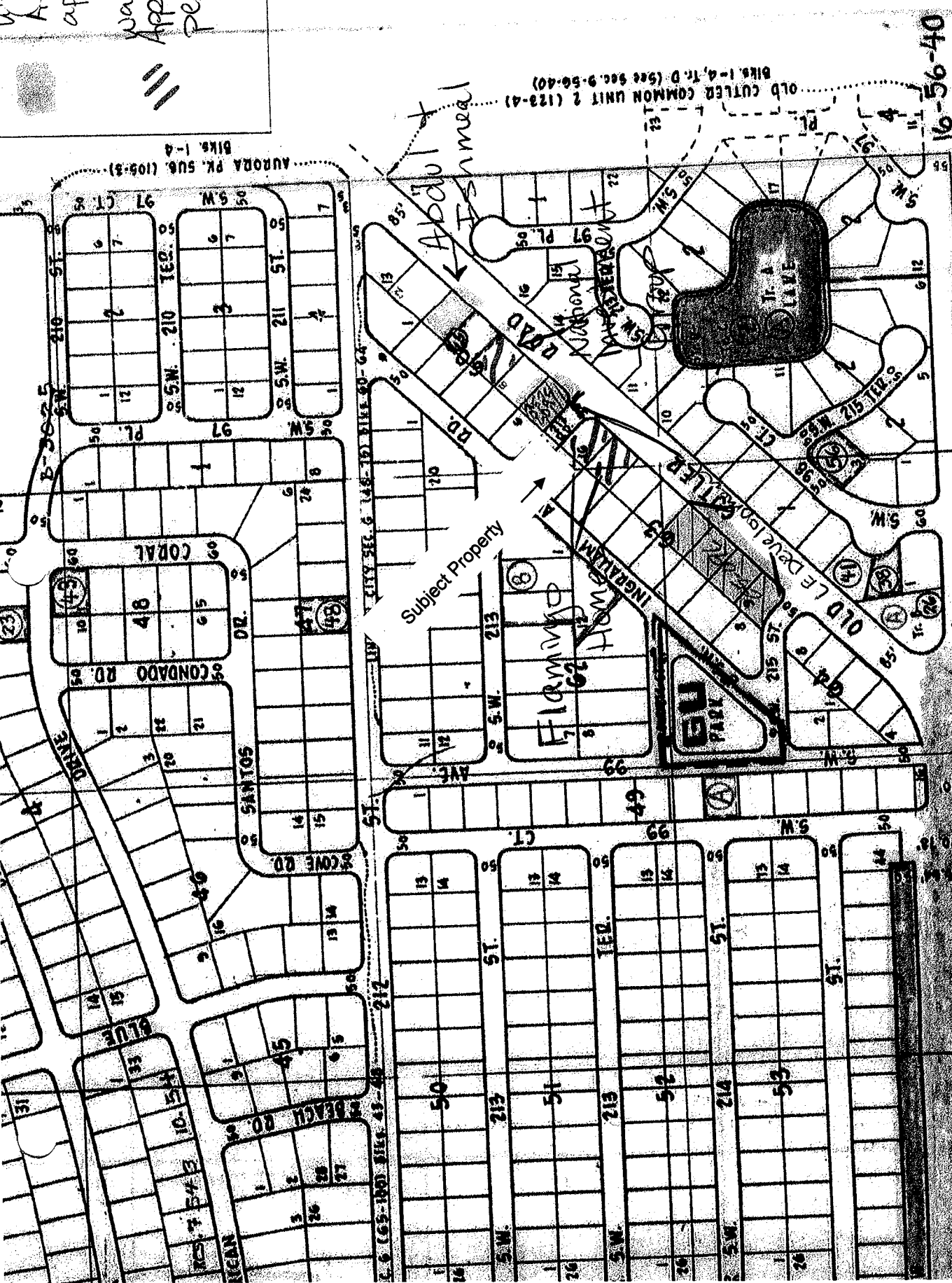
Sale Information:

Sale O/R:	24413-0717
Sale Date:	4/2006
Sale Amount:	\$92,000

Assessment Information:

Year:	2006
Land Value:	\$67,990
Building Value:	\$0
Market Value:	\$67,990
Assessed Value:	\$67,990
Total Exemptions:	\$0
Taxable Value:	\$67,990
Past Assessment:	30-6008-005-0610

Waiver
 Application
 Pending



16-56-40
 OLD CUTLER COMMON UNIT 1 (114-34)
 SAGA BAY SECT. FOURTEEN (98-98)
 BLOCKS 12 AND 4 (SEE 9-56-40) OLD CUTLER COMMON UNIT ONE
 (114-34) BLS. 1 & 2, TRS. 'A' THRU 'C'
 BILL. 1, 2, TRS. A-C
 16-56-40

OLD CUTLER COMMON UNIT 2 (123-4)
 BLS. 1-4, TR. D (SEE SEC. 9-56-40)

AURORA PK. SUB. (105-8)
 BLS. 1-4

Subject Property

Abdul Ismael

Fleming

National Warehouse

GU PART

OLD LE DEVELOP CUTLER

TR. A LIVE

MILL DR

16-56-40

RESOLUTION NO. 07-_____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING A REQUEST BY FLAMINGO HOMES INVESTMENT GROUP TO WAIVE 15 FEET OF THE ZONED RIGHT-OF-WAY FOR PROPERTY LOCATED AT THE SOUTHWEST CORNER OF S.W. 213 STREET AND OLD CUTLER ROAD (FOLIO# 36-6008-005-0610); AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Section 33-133 of the Town of Cutler Bay (the “Town”) Code of Ordinances (the “Code”), Old Cutler Road is required to have a 100 foot (50 feet on each side) zoned right-of-way; and

WHEREAS, pursuant to Section 33-311(A)(4)(b) of the Town Code, Flamingo Homes Investment Group (the “Applicant”) has requested that the Town Council waive 15 feet of the required 50 feet of zoned right-of-way on the west side of Old Cutler Road located at the southwest corner of S.W. 213th Street & Old Cutler Road; and

WHEREAS, Town Staff has reviewed the requirements of Section 33-311(A)(4)(b) of the Town Code and has recommended approval of this request with conditions; and

WHEREAS, public notice was provided in accordance with law; and

WHEREAS, the Town Council finds that this waiver of zoned right-of-way is consistent with the provisions of the Town’s Comprehensive Plan.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. Approval of Waiver of Zoned Right-of-Way. The Town Council hereby approves the request by the Applicant, subject to the conditions below, to waive 15 feet of the zoned right-of-way on the west side of Old Cutler Road located at the southwest corner of S.W. 213th Street & Old Cutler Road.

Section 3. Conditions. The approvals granted by this Resolution are subject to the Applicant’s compliance with the following conditions, to which the Applicant stipulated at the public hearing:

1. That a site plan be submitted to and meet with the approval of the Town of Cutler Bay upon the submittal of an application for a building permit; said plan shall include, but not be limited to, location of structure or structures,

exits and entrances, drainage, walls, fences, landscaping, and other requirements.

2. Final approval of the site plan shall be substantially in accordance with that submitted for the hearing entitled "Proposed Residence for Flamingo Homes Invest. Group," as prepared by Salazar & Associates, consisting of 3 sheets and dated 9/6/06.
3. That the use be established and maintained in accordance with the tentatively approved site plan.
4. That a current survey be submitted with the plans.
5. That a "forecourt wall" be incorporated into the construction drawings to visually screen the side entrance garage from Old Cutler Road.

Section 4. **Effective Date.** This Resolution shall be effective immediately upon adoption.

PASSED on first reading this _____ day of _____, 2007.

PAUL VROOMAN
Mayor

Attest: _____
ERIKA GONZALEZ SANTAMARIA, CMC
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA COLE & BONISKE, P.A.
Interim Town Attorney

FINAL VOTE AT ADOPTION:

Mayor Paul Vrooman _____

Vice Mayor Edward MacDougall _____

Council Member Timothy J. Meerbott _____

Council Member Ernest Sochin _____

Council Member Peggy Bell _____



MEMORANDUM

To: Steven Alexander, Town Manager

From: Don O'Donniley, AICP, Planning Director *DOO*

Date: February 21, 2007

Re: Application No. 2007-02
Waiver of Zoning Regulations (Variance from Required Right-of-Way
Dedication) Flamingo Homes Lot 15
(Folio No. 36-6008-005-0600)

APPLICANT REQUEST:

To waive the zoning regulations requiring Old Cutler Road to be 100' in width; to permit 35' of dedication (50' required) on the west side of Old Cutler Road.

LOCATION:

Southwesterly of the corner of S.W. 213 Street and Old Cutler Road.

BACKGROUND:

The applicant applied for the above referenced request with Miami-Dade County. Since that time all planning and zoning functions have been taken over by the Town.

Town staff has reviewed this application and met with the developer on numerous occasions.

Additionally, this application was held in abeyance due to the property location within the Old Cutler Road Charrette boundaries.

On January 17, 2007, the Town Council adopted the "Old Cutler Road Overlay District" which allows an alternate form of residential development along the southerly portion of Old Cutler Road. The applicant has complied with the new regulations by setting the residence closer to the front setback line and incorporating a forecourt wall in order to create a more pedestrian oriented streetscape.

RECOMMENDATION:

Approval with conditions under Section 33-311(A)(4)(b).

Please note that, if this tentative site plan is approved, the final site plan will be approved administratively as long as the following conditions are met.

CONDITIONS:

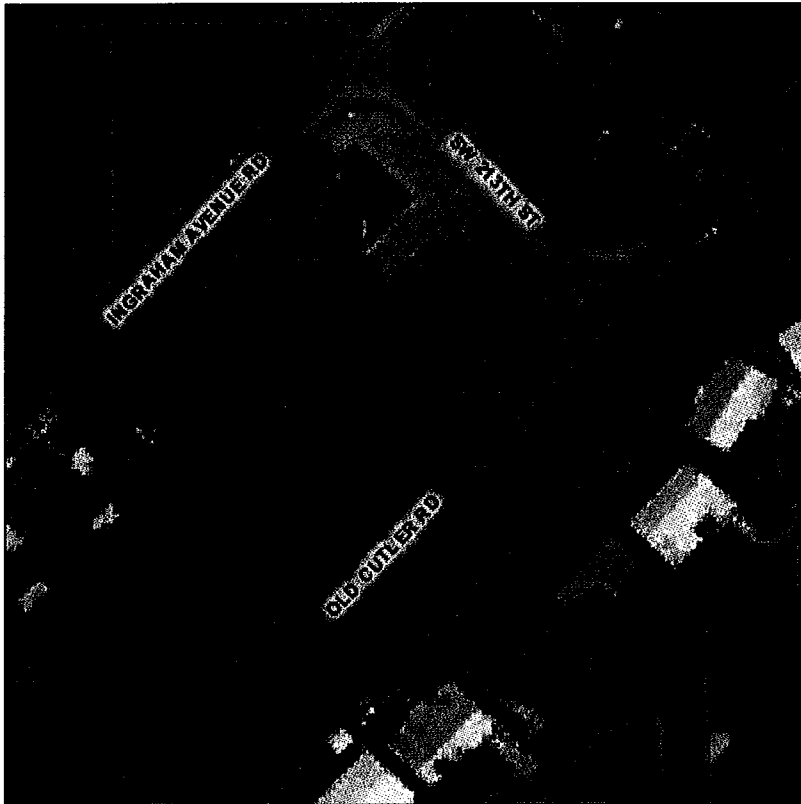
1. That a final site plan be submitted to and meet with the approval of the Town of Cutler Bay upon the submittal of an application for a building permit; said plan to include, but not be limited to, location of structure or structures, exits and entrances, drainage, walls, fences, landscaping, and other requirements.
2. Final approval of the site plan shall be substantially in accordance with that submitted for the hearing entitled "Proposed Residence for Flamingo Homes Invest. Group," as prepared by Salazar & Associates, consisting of 3 sheets and dated 9/6/06. Except as may be specified by any zoning resolution applicable to the subject property, any future additions on the property which conform to Zoning Code requirements will not require further public hearing action.
3. That the use be established and maintained in accordance with the tentatively approved site plan.
4. That a current survey be submitted with the plans.
5. That a "forecourt wall" be incorporated into the construction drawings to visually screen the garage from Old Cutler Road.

My Home
Miami-Dade County, Florida



miamidade.gov

Property Information Map



Digital Orthophotography - 2006

0 — 57 ft

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Close

Summary Details:

Folio No.:	36-6008-005-0600
Property:	
Mailing Address:	FLAMINGO HOMES INVEST GRP INC 3279 SW 141 AVE MIAMI FL 33175-6768

Property Information:

Primary Zone:	0100 SINGLE FAMILY RESIDENCE
CLUC:	0081 VACANT LAND
Beds/Baths:	0/0
Floors:	0
Living Units:	0
Adj Sq Footage:	0
Lot Size:	7,500 SQ FT
Year Built:	0
Legal Description:	8 56 40 . 17 AC LINCOLN CITY SEC G PB 48-75 LOT 15 BLK 63 LOT SIZE 75.000 X 100 F/A/U 30-6008-005-0600 COC 24691-0034 06 2006 1

Sale Information:

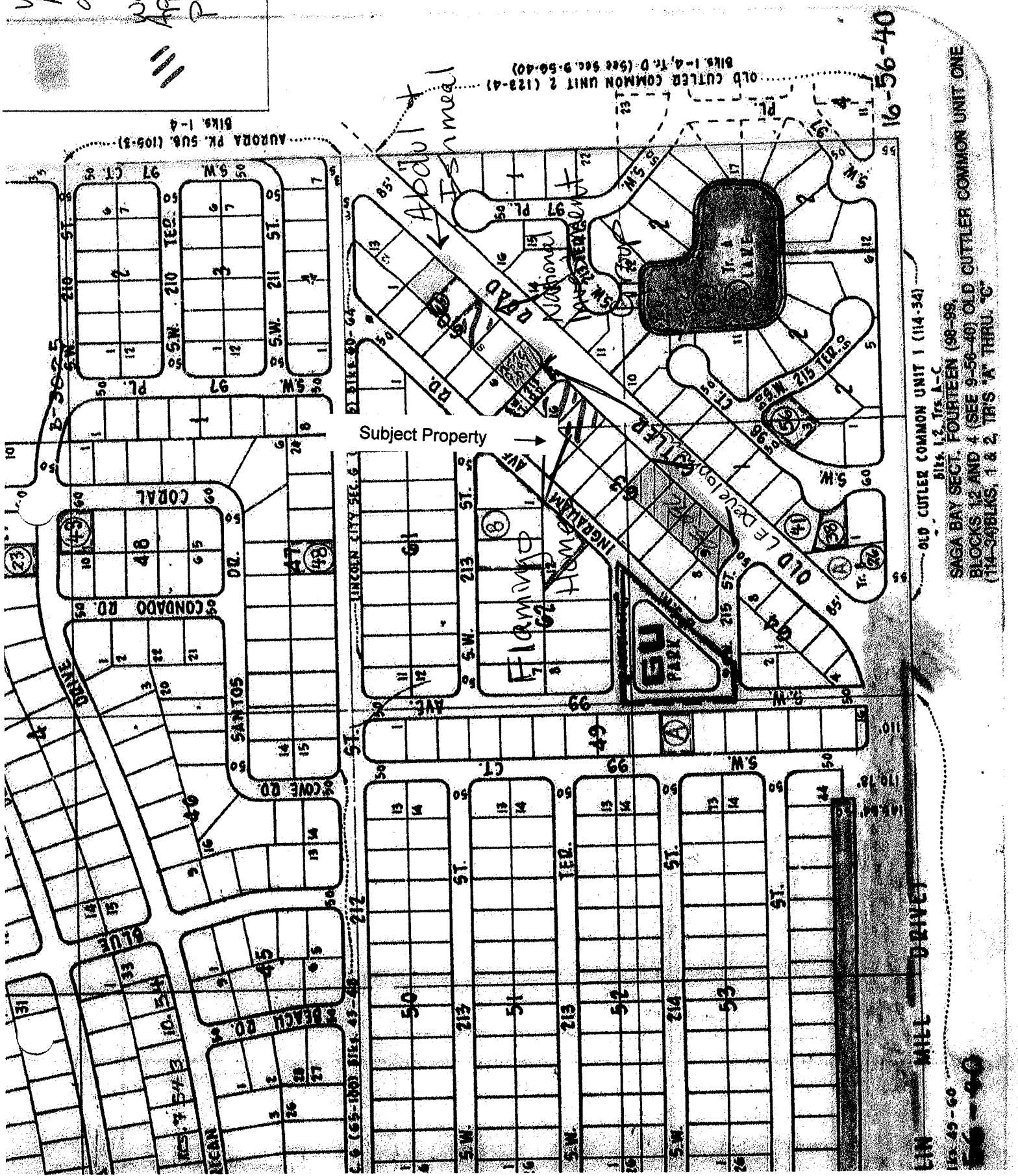
Sale O/R:	24691-0034
Sale Date:	6/2006
Sale Amount:	\$95,000

Assessment Information:

Year:	2006
Land Value:	\$67,990
Building Value:	\$0
Market Value:	\$67,990
Assessed Value:	\$67,990
Total Exemptions:	\$0
Taxable Value:	\$67,990
Past Assessment:	30-6008-005-0600

Waiver
 Already
 approved

Waiver
 Application
 Pending



AURORA PK. SUB. (105-3)
 Blks. 1-4

OLD CUTLER COMMON UNIT 2 (123-4)
 Blks. 1-4, Tr. D (See Sec. 9-56-40)

16-56-40

Subject Property →

OLD CUTLER COMMON UNIT 1 (114-34)
 Blks. 1, 2, Trs. A-C

SAGA BAY SECT. FOURTEEN (98-99)
 BLOCKS 12 AND 4 (SEE 9-56-40) OLD CUTLER COMMON UNIT ONE
 (114-34) BLS. 1 & 2, TRS. 'A' THRU 'C'

MILL DRIVE

16-56-40

RESOLUTION NO. 07-_____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING A REQUEST BY FLAMINGO HOMES INVESTMENT GROUP TO WAIVE 15 FEET OF THE ZONED RIGHT-OF-WAY FOR PROPERTY GENERALLY LOCATED SOUTHWEST OF THE INTERSECTION OF S.W. 213 STREET AND OLD CUTLER ROAD (FOLIO# 36-6008-005-0600); AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Section 33-133 of the Town of Cutler Bay (the “Town”) Code of Ordinances (the “Code”), Old Cutler Road is required to have a 100 foot (50 feet on each side) zoned right-of-way; and

WHEREAS, pursuant to Section 33-311(A)(4)(b) of the Town Code, Flamingo Homes Investment Group (the “Applicant”) has requested that the Town Council waive 15 feet of the required 50 feet of zoned right-of-way on the west side of Old Cutler Road generally located southwest of the intersection of S.W. 213th Street & Old Cutler Road; and

WHEREAS, Town Staff has reviewed the requirements of Section 33-311(A)(4)(b) of the Town Code and has recommended approval of this request with conditions; and

WHEREAS, public notice was provided in accordance with law; and

WHEREAS, the Town Council finds that this waiver of zoned right-of-way is consistent with the provisions of the Town’s Comprehensive Plan.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. Approval of Waiver of Zoned Right-of-Way. The Town Council hereby approves the request by the Applicant, subject to the conditions below, to waive 15 feet of the zoned right-of-way on the west side of Old Cutler Road generally located southwest of the intersection of S.W. 213th Street & Old Cutler Road.

Section 3. Conditions. The approvals granted by this Resolution are subject to the Applicant’s compliance with the following conditions, to which the Applicant stipulated at the public hearing:

1. That a final site plan be submitted to and meet with the approval of the Town of Cutler Bay upon the submittal of an application for a building permit; said plan shall include, but not be limited to, location of structure or structures, exits and entrances, drainage, walls, fences, landscaping, and other requirements.

2. Final approval of the site plan shall be substantially in accordance with that submitted for the hearing entitled "Proposed Residence for Flamingo Homes Invest. Group," as prepared by Salazar & Associates, consisting of 3 sheets and dated 9/6/06.
3. That the use be established and maintained in accordance with the tentatively approved site plan.
4. That a current survey be submitted with the plans.
5. That a "forecourt wall" be incorporated into the construction drawings to visually screen the garage from Old Cutler Road.

Section 4. **Effective Date.** This Resolution shall be effective immediately upon adoption.

PASSED on first reading this _____ day of _____, 2007.

 PAUL VROOMAN
 Mayor

Attest: _____
 ERIKA GONZALEZ SANTAMARIA, CMC
 Town Clerk

APPROVED AS TO FORM AND
 LEGAL SUFFICIENCY FOR THE
 SOLE USE OF THE TOWN OF CUTLER BAY:

 WEISS SEROTA HELFMAN PASTORIZA COLE & BONISKE, P.A.
 Interim Town Attorney

FINAL VOTE AT ADOPTION:

Mayor Paul Vrooman _____

Vice Mayor Edward MacDougall _____

Council Member Timothy J. Meerbott _____

Council Member Ernest Sochin _____

Council Member Peggy Bell _____

ORDINANCE NO. 07-

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING CHAPTER 33, "ZONING", ARTICLE I, "IN GENERAL," SECTION 33-20(e), "BOAT STORAGE", OF THE TOWN'S CODE OF ORDINANCES, BY ALLOWING STORAGE OF TWO BOATS IN CERTAIN ZONING DISTRICTS WITHIN THE TOWN; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Cutler Bay (the "Town") finds and determines that two boats should be allowed to be stored on premises in certain zoning districts; and

WHEREAS, the Town finds that these changes are consistent with the Miami-Dade County's Comprehensive Development Master Plan, which now functions as the Town's Comprehensive Plan.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above Recitals are true and correct and are incorporated herein by this reference.

Section 2. Amendment to Boat Storage Regulations. The boat storage regulations contained in Chapter 33, "Zoning," Article I, "In General," Section 33-20(e) "Boat storage" are hereby amended as follows:

* * *

(e) *Boat storage.* Boats of less than thirty-three (33) feet in length, not more than one hundred and two (102) inches in width and thirteen (13) feet six (6) inches in height, may be stored or temporarily parked in the RU, EU, AU and GU Zoning Districts subject to the following conditions:

- (1) The place of storage shall be to the rear of the front building line. Where the boat storage area is located between the residence and a side street property line, the boat shall be visually buffered by a six-foot wood privacy fence, masonry wall, trees or shrubs maintained to a height of six feet. The front building line referred to shall be that portion furthest from the street.
- (2) No more than ~~one~~ two boats may be stored or parked on any one (1) premise.¹
- (3) Boats and place of storage or temporary parking shall be kept in a clean, neat and presentable condition.

¹ Additions to existing text are indicated by underline; deletions are indicated by ~~strikethrough~~.

- (4) No major repairs or overhaul work shall be made or performed on the premises.
- (5) The boats shall not be used for living or sleeping quarters, and shall be placed on and secured to a transporting trailer.
- (6) The temporary parking of a boat in front of the front building line or in front of the side street building line for no more than 2 hours in any 24-hour period, while the boat is hitched to an operable motor vehicle with a valid permanent license tag, for the purposes of loading and unloading equipment and supplies shall be permitted, but under no circumstances shall a boat be parked in the public right-of-way, including the swale area of a right-of-way.

Section 3. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 4. Inclusion In The Code. It is the intention of the Town Council that the provisions of this Ordinance shall become and made a part of the Town of Cutler Bay Code; that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 5. Conflicts. Any and all Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

Section 6. Effective Date. This Ordinance shall be effective immediately upon adoption on second reading.

PASSED AND ADOPTED on first reading this _____ day of _____, 2007

PASSED AND ADOPTED on second reading this _____ day of _____, 2007.

PAUL S. VROOMAN, Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA, CMC
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA
COLE & BONISKE, P.A.
Interim Town Attorney

FINAL VOTE AT ADOPTION:

- Mayor Paul S. Vrooman _____
- Vice Mayor Edwards P. MacDougall _____
- Councilmember Peggy R. Bell _____
- Councilmember Timothy J. Meerbott _____
- Councilmember Ernest N. Sochin _____



MEMORANDUM

To: Steven Alexander, Town Manager

From: Don O'Donniley, Planning Director *DOD*

Date: February 21, 2006

Re: Ordinance governing the development and design of non-residential establishments

REQUEST

Staff has been requested to draft an ordinance that establishes new development standards for all non-residential development. The focus of the request is to assure compatible scale development within the Town and to establish a community which implements appropriate architectural standards.

BACKGROUND

The development standards submitted for adoption are reflective of the local identity and interests. The architectural standard proposed within the ordinance were developed to encourage architecture appropriate to South Florida and relate buildings to a pedestrian scale. Staff has researched other development codes from cities within Florida as well as the Nation. Our research found that many cities throughout the country have been concerned with these same issues and have implemented zoning ordinances to address them. The American Planning Association, which provides a clearinghouse of information on many planning issues, has developed a model ordinance which was used as an overall guideline to provide the framework for this ordinance.

The ordinance that has been drafted for the Town was not written with the intent of excluding any particular retail chain but to encourage design standards that are related to the local identity and scale of the existing neighborhoods. These development standards will encourage active and transparent street level uses, useable street furniture, shade trees and

internal pedestrian linkages to provide safe pedestrian zones through parking areas. The standards address undesirable conditions such as shopping carts strewn across parking lots, massive blank walls with no relation to the street; and large, uninviting parking lots in the front of buildings.

The non-residential establishment development standards are designed to allow creativity and choice for the developer. For example, the medium and large establishments are required to choose two features from a list of eight community amenities they can build. These standards will be among the first for the Town that will encourage green development practices such as green roofs and landscaping to provide a high level of stormwater filtration before the water enters the storm drainage system.

This ordinance sets a size cap on non-residential development. This ordinance will set the maximum size of a non-residential development in the Town at 50,000 square feet. Staff's initial research showed that many American cities have enacted local zoning ordinances that set a cap on store size such as, Ashland, Oregon with a cap of 45,000 square feet; Madison, Wisconsin at 100,000 square feet; and Damariscotta, Maine limits up to 35,000 square feet. While each of these examples have different size caps, each have chosen the appropriate size for their individual communities. As a reference to help for visualization of store size, a typical supermarket is 37,000 to 61,000 square feet, where a "supercenter" is typically 185,000 square feet. The three example communities have found that store size caps help to prevent the negative impacts of large retail establishments and help maintain the vitality of local business districts and protect the character of the community by ensuring development is in scale with the existing neighborhood.

Consistency with Adopted Plans

Staff has examined the relevant portions of the Comprehensive Development Master Plan for Miami-Dade County. In particular, the CDMP adopts special design criteria for charrette areas, which are set out within the CDMP. In keeping with that approach, the Town of Cutler Bay has adopted regulations for two chareette areas and has initiated a study of a third area as part of the ongoing development of the Town's own CDMP. In addition, the Town adopted a Strategic Plan that set out improvement of the visual elements within the town as a major goal. Staff finds the proposed development standards for non-residential development consistent with the current CDMP and the Strategic Plan.

Recommendation

Staff recommends adoption of the attached ordinance governing the development and design of non-residential establishments.

ORDINANCE NO. 2007- _____

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, CREATING NONRESIDENTIAL DESIGN STANDARDS AND REGULATIONS; PROVIDING FOR EXEMPTIONS; PROVIDING FOR NONCONFORMING STRUCTURES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Cutler Bay (the “Town”) desires to regulate the design and modify the site development standards applicable to nonresidential establishments within the Town; and

WHEREAS, these development standards are intended to encourage high quality aesthetically pleasing developments that produce a desirable relationship between buildings and the pedestrian; and

WHEREAS, the adoption of these standards will help to implement the Strategic Master Plan adopted by the Town Council; and

WHEREAS, such standards will assist in the protection of residential areas and neighborhoods from some of the negative impacts of nonresidential development by encouraging excellence in urban design and by improving the overall appearance of the Town; and

WHEREAS, public notice was provided in accordance with law; and

WHEREAS, this Ordinance was heard and recommended by the Town Council, in its capacity as the Town’s Local Planning Agency; and

WHEREAS, after due notice and hearing, the Town Council finds this Ordinance to be consistent with the Miami-Dade County Comprehensive Development Master Plan, which now functions as the Town’s Comprehensive Plan; and

WHEREAS, the Town Council finds these changes to be in the best interest and welfare of the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY AS FOLLOWS:

Section 1. Findings. The foregoing “Whereas” clauses are hereby ratified and incorporated as the legislative intent of this Ordinance.

Section 2. Nonresidential Establishment Regulations. The following nonresidential establishment regulations are hereby created as follows:

A. Definitions.

For purposes of this Ordinance, the following words and phrases shall have the meanings herein set forth:

Balcony or Balconies: shall mean a platform projecting from a wall of a building and surrounded by a railing or parapet.

Large nonresidential establishment: A nonresidential establishment, or any combination of nonresidential establishments in a single building or in separate but abutting buildings, occupying between forty thousand (40,000) and fifty thousand (50,000) gross square feet of floor area.

Medium nonresidential establishment: A nonresidential establishment, or any combination of nonresidential establishments in a single building or in separate but abutting buildings, occupying between twenty-five thousand (25,000) and forty thousand (40,000) gross square feet of floor area.

Nonresidential uses: Nonresidential uses are defined to include commercial retail, commercial services, office, similar uses and expressly excludes institutional, government and agricultural uses.

Pedestrian walkway shall mean a continuous way designated for pedestrians and separated from the through lanes for motor vehicles by space or barrier.

Small nonresidential establishment: A nonresidential establishment, or any combination of nonresidential establishments in a single building or in separate but abutting buildings, occupying less than twenty-five thousand (25,000) gross square feet of floor area.

Visible shall mean that the building can be seen while standing, walking, biking or driving on a public or private street that is located at the front, side or to the rear of the building. While driving, a motorist shall have a 20 degree range of view known as the "Cone of Vision." (See Figure 1).

B. Purpose.

These standards are intended to ensure that all nonresidential development is compatible with its surrounding area and contributes to the unique community character of the Town.

C. Nonresidential Establishment Regulations Generally.

All Small, Medium, and Large nonresidential establishments shall be subject to the following regulations:

1. **Façades and Exterior Walls.**

- a. Building bays. The building façades of all nonresidential establishments, which are Visible from adjoining properties, or public or private streets shall have articulation in the form of multiple building bays that are a maximum of thirty (30) feet in width. Bays shall be visually established by architectural features such as columns, ribs or pilasters, piers and fenestration pattern. (See Figure 2.).
- b. Exterior walls. No wall that faces a street or connecting Pedestrian walkway shall have a blank, uninterrupted length exceeding thirty (30) feet without including at least two (2) of the following: change in plane, change in texture or masonry pattern, windows, lattice work with vines, or an equivalent element that subdivides the wall into human scale proportions.

When actual doors and windows are not feasible because of the nature of the use of the building, side or rear walls that face Pedestrian walkways shall include false windows and door openings defined by frames; sills and lintels; or similarly proportioned modulations of the wall. All sides of the building shall include materials and design characteristics consistent with those on the front of the building.

- c. Base treatment. All façades shall have a recognizable "base" including, but not limited to:
 - (i) Thicker walls, ledges or sills;
 - (ii) Integrally textured materials such as stone or other masonry;
 - (iii) Integrally colored and patterned materials such as smooth-finished stone or tile;
 - (iv) Lighter or darker colored materials, mullions or panels; or
 - (v) Planters.
- d. Top treatment. All façades shall have a recognizable "top" including, but not limited to:

- (i) Cornice treatments, other than just colored "stripes" or "bands," with integrally textured materials such as stone or other masonry or differently colored materials;
- (ii) Sloping roof with overhangs and brackets; or
- (iii) Stepped parapets.

2. Roofs.

Roofs shall have no less than two (2) of the following features:

- a. Parapets concealing flat roofs and rooftop equipment such as HVAC units from public view. The average height of such parapets shall not exceed fifteen (15) percent of the height of the supporting wall and such parapets shall not at any point exceed one-third ($\frac{1}{3}$) of the height of the supporting wall. (See Figure 3.). Such parapets shall feature three-dimensional cornice treatment;
- b. Overhanging eaves, extending no less than three (3) feet past the supporting walls;
- c. Sloping roofs that do not exceed the average height of the supporting walls, with an average slope greater than or equal to one (1) foot of vertical rise for every three (3) feet of horizontal run and less than or equal to one (1) foot of vertical rise for every one (1) foot of horizontal run;
- d. Three (3) or more roof slope planes; or
- e. Green roofs or rooftop gardens.

3. Materials and colors.

- a. Predominant exterior building materials shall be high quality materials including, but not limited to, brick, sandstone, other native stone and tinted/textured concrete masonry units, stucco, and wood. Manmade substances such as plastic wood or false coral stone are prohibited.
- b. Façade colors shall be low reflectance, subtle, neutral or earth tone colors. The use of high-intensity colors, metallic colors, black or fluorescent colors shall be prohibited.
- c. Building trim and accent areas may feature brighter colors, including primary colors, but neon tubing shall not be an acceptable feature for building trim or accent areas.

4. Encroachments.

All nonresidential establishments shall have special architectural features, such as bay windows, decorative roofs, and entry features. Such features may project up to three (3) feet into rights-of-way, provided that they are not less than ten (10) feet above the sidewalk. Trellises, canopies, and fabric awnings may project up to five (5) feet into front setbacks and rights-of-way, provided that they are not less than ten (10) feet above the sidewalk. No such improvements shall encroach into alley rights-of-way.

5. Time for Delivery/Loading Operations.

No delivery, loading, trash removal or compaction, or other such operations shall be permitted between the hours of 10:00 p.m. and 7:00 a.m. within five hundred feet (500') of a residentially zoned parcel. Such areas shall be acoustically and visually screened. All dumpsters shall be located within an enclosure or otherwise hidden from all public views. The enclosure shall be constructed of a color and materials similar to the primary building(s). All enclosures shall include a gate with a self-locking latch.

6. Site Design and Relationship to Surrounding Community.

- a. Parking lot. The design of all lots shall safely and attractively serve all modes of travel, especially the pedestrian. Shade trees shall be provided in landscape islands to achieve a minimum shading of 50% of the parking lot. The interior width of landscape islands shall be a minimum of five (5) feet.
- b. Maximum size of parking area. No single surface parking area shall exceed 75 spaces unless divided into two or more sub-areas by a building, an internal landscaped pedestrian way, or an internal landscaped street. Parking lots shall be designed so that stormwater flows to the landscaped areas for retention and filtration in compliance with all stormwater mitigation criteria. Roof top parking is encouraged, if appropriately screened, as determined by the planning director.
- c. Parking garages. Parking garages are required to have street-fronting commercial space along all sides of the garage that front a street. In addition, to soften the bulk of the structure other details shall include, but not be limited to, grills, trellises and vine-climbing frames to provide space for clinging plants, and window framing.
- d. Outdoor storage and sales. Areas for outdoor storage and sales are permitted as extensions of the sales floor with free customer access, if incorporated into the building design and landscaping and permanently

defined and screened with walls or fences, made of materials and using colors comparable to the primary structure. Such areas shall be counted as part of the gross floor area of the Medium or Large nonresidential establishment. Outdoor storage in areas where customers are not allowed is prohibited, including storage sheds and containers. Outdoor storage of propane tanks may be allowed, with appropriate screening, as determined by the planning director.

- e. Stormwater management. Stormwater shall be directed into grass lined swales from sidewalks and rooftops to provide filtration before entering the storm drain system. The swales shall provide additional technologically advanced treatment functions for filtering out contaminants from stormwater before it enters the system. Additional treatments could include, but not limited to, a perforated drainage pipe surrounded by a fabric cocoon of clay pellets which accommodate the growth of bacteria. All areas of the site shall place emphasis on allowing as much groundwater percolation as possible.
- f. Pedestrian circulation. A safe and landscaped pedestrian circulation system shall be provided onsite which connects to public streets and neighborhoods. Sidewalks at least eight (8) feet in width shall be provided along all sides of the lot that abut a public street. Sidewalks, no less than eight (8) feet in width, shall be provided along the full length of the building along any façade featuring a customer entrance, and along any façade abutting public parking areas. Such sidewalks shall be located at least six (6) feet from the façade of the building to provide planting beds for foundation landscaping, except where features such as arcades or entryways are part of the façade. All internal Pedestrian walkways shall be distinguished from driving surfaces through the use of durable, low maintenance surface materials, such as pavers, bricks or scored concrete, to enhance pedestrian safety and comfort as well as the attractiveness of the Pedestrian walkways.
- g. Drive-through lane with limitation. No drive-through facility associated with a nonresidential establishment shall be less than eight (8) feet in width. Drive-through lanes cannot restrict or in anyway block any designated parking spaces. Pedestrian walkways shall be clearly separated from drive-through lanes. Each drive-through lane shall have the necessary stacking distance for four (4) cars, and shall be clearly curbed, marked, striped, or otherwise distinctly delineated for the entire length of the lane.
- h. Bike racks. All nonresidential developments shall provide bike racks which store no less than six (6) bicycles. The location of the racks shall be

indicated on the site plan. The design of such racks shall be of durable, long-lasting materials.

- i. Storage of shopping carts. Within all nonresidential establishments which provide shopping carts for use by patrons, one parking space per twenty-five (25) spaces shall be dedicated for the storage of shopping carts. The shopping cart storage area shall include durable fence materials in order to contain carts within the designated storage space.

7. Illumination prohibition.

Exterior-mounted exposed neon/fiber optic/rope L.E.D. lighting, illuminated translucent materials (except signs), illuminated striping or banding, and illuminated product displays on appurtenant structures (e.g., fuel dispensers) shall be prohibited.

8. Expansions.

If the expansion of a nonresidential establishment would result in the establishment becoming a different nonresidential establishment, as defined by this Ordinance, such establishment shall comply with the applicable standards governing such establishments.

D. Regulations for Small Nonresidential Establishments.

Small nonresidential establishments may be located as a stand alone building, but there shall be no off-street parking permitted in the front of a Small nonresidential establishment.

E. Regulations for Medium and Large Nonresidential Establishments.

1. Location.

All Medium and Large nonresidential establishments shall be located in shopping centers.

2. Entryways.

Each Medium and Large nonresidential establishment on a site shall have clearly defined, highly visible customer entrances featuring no less than three (3) of the following:

- a. Canopies or porticos;
- b. Overhangs;
- c. Recesses/projections;
- d. Arcades;

- e. Raised corniced parapets over the door;
- f. Peaked roof forms;
- g. Arches;
- h. Outdoor covered patios with built-in seating;
- i. Display windows;
- j. Architectural details such as tile work and moldings which are integrated into the building structure and design; or
- k. Integral planters or wing walls that incorporate landscaped areas and covered places for sitting.

3. Maximum number of parking spaces.

The total number of parking spaces for a Medium or Large nonresidential establishment and related establishments shall not exceed the minimum required by Chapter 33 of the Town Code by more than ten percent (10%). Reductions in the required parking may be considered based on the mix of uses. For a mixed use development, up to ten percent (10%) of the nonresidential requirement and up to seven percent (7%) of the residential requirement may be approved, with further reductions possible based on proximity to a high quality Pedestrian walkway and availability of public transit. A parking management plan must be submitted with the initial development application. The parking management plan must provide justification for any requested reduction in parking. The provisions of this section shall not apply to any property located within the Old Cutler Road Overlay Zoning District.

4. Off-street parking.

There shall be no off-street parking permitted between the front façade of a Medium or Large nonresidential establishment and the abutting street. However, no more than fifteen (15) percent of the off-street parking area for the lot, tract or area of land devoted to a Medium or Large nonresidential establishment may be located between the front façade of the Medium or Large nonresidential establishment and the abutting streets if such establishment provides: (1) at least five (5) of the entryway features provided above; and (2) at least five (5) of the central features and community space features provided below.

5. Central features and community space.

Each Medium or Large nonresidential establishment shall contribute to the establishment or enhancement of community and public spaces by providing at least two (2) of the following:

- a. Patio/seating area;

- b. Pedestrian plaza with benches;
- c. Green roof or green wall;
- d. Window shopping walkway;
- e. Outdoor playground area;
- f. Kiosk area;
- g. Water feature; or
- h. Clock tower or other such deliberately shaped area and/or focal feature or amenity, which in the judgment of the planning director adequately enhances such community and public spaces. Such areas may be combined into one or more locations, in order to create a larger amenity. Any such areas shall have direct access to the public sidewalk network and such feature shall not be constructed of materials that are inferior to the principal materials of the building and landscape. (See Figure 4.).

6. Outdoor seating/dining areas.

Where a Medium or Large nonresidential building provides an outdoor seating or dining area, the following regulations shall apply. The site plan shall include the layout of all tables, chairs, benches and other furniture; pedestrian ingress and egress; location of refuse containers; and other elements necessary to illustrate the proposed outdoor seating area or dining area. The applicant shall provide an indemnity agreement which is acceptable to the Town Attorney. This agreement will include specification of liability insurance provided. All outdoor seating and dining areas shall be kept in a neat and orderly appearance and shall be kept free from refuse and debris. The applicant shall be responsible for daily cleaning and sweeping of the outdoor seating or dining area and for the cleanliness and maintenance of any outdoor planters immediately adjacent to the area. Cleaning shall include twice-monthly pressure cleaning or other appropriate cleaning methods, as determined by the Town. Use of Town sidewalks for trash and garbage removal shall be prohibited.

Outdoor seating or dining areas shall not interfere with the free and unobstructed pedestrian or vehicular circulation of traffic, public access to any street intersections, crosswalks, public seating areas and conveniences, bus stops, alleys, service easements, handicap facilities or access to nonresidential establishments. The width and location of the sidewalk Pedestrian walkway shall be as follows:

- a. If there is seating on one side of the sidewalk, a minimum of five (5) feet of sidewalk must remain clear and unobstructed for Pedestrian walkway;
- b. If there is seating on two sides of the sidewalk, a minimum of six (6) feet of sidewalk between the two seating areas must remain clear and unobstructed for Pedestrian walkway; and
- c. All tables, chairs and umbrellas shall be located a minimum of 18 inches from the curb.

Tables, chairs, and all other furniture used in the operation of an outdoor seating or dining area shall not be anchored or restrained in any manner. Individual table umbrellas, planters, or other such non-stationary elements may be permitted within the outdoor seating or dining area, and where applicable, shall have a minimum clearance height of seven (7) feet above the sidewalk.

The maximum number of outdoor seating or dining shall not exceed fifty (50) percent of the number of indoor seats, except for restaurants with indoor seating of twenty-five (25) seats or less, which may have outdoor seating or dining not to exceed one hundred (100) percent of the number of indoor seats.

7. Public transit.

If a Medium or Large nonresidential establishment is located adjacent to an arterial street which is (or is planned to be) used as a transit route, it shall provide on-site accommodations for public transit access, such as Pedestrian walkways, a bus pullout and shelters.

8. Internal Pedestrian walkways.

Continuous internal Pedestrian walkways, no less than eight (8) feet in width, shall be provided from the public sidewalk or right-of-way to the principal customer entrance of all Medium and Large nonresidential establishments on the site. At a minimum, Pedestrian walkways shall connect focal points of pedestrian activity such as, but not limited to, transit stops, street crossings, building and store entry points, and shall feature adjoining landscaped areas that include trees, shrubs, benches, flower beds, ground covers, or other such materials for no less than fifty (50) percent of the length of the walkway. Such Pedestrian walkways shall provide weather protection features such as awnings or arcades within thirty (30) feet of all principal customer entrances.

9. Expansions.

No addition to an existing Medium or Large nonresidential establishment which would increase the gross square feet of floor area of such establishment by fifty (50) percent or more, and no addition to an existing building which would create a Large nonresidential

establishment and that would increase the gross square footage of floor area of such building by fifty (50) percent or more, shall be approved for construction or occupancy unless the entire Large nonresidential establishment affected by the new construction has been determined by the planning director to be in compliance with this Ordinance, the applicable general development standards, and the applicable district standards, whether the existing Large nonresidential establishment or building was approved under prior law or under this Ordinance.

F. Regulations for Nonresidential Establishments.

All Medium nonresidential establishment façades shall incorporate wall plane projections or recesses having a depth of at least three (3) percent of the length of the façade and extending at least twenty (20) percent of the length of the façade. No uninterrupted length of any façade shall exceed one hundred (100) horizontal feet. Ground floor façades that face public and private streets shall have arcades, display windows, entry areas, awnings, or other such features. The façade at the first floor level shall be detailed and glazed as storefront windows. The wood or metal armature of such storefronts shall be painted. Storefronts shall be directly accessible from sidewalks. Each storefront shall have windows and entry features, equal to 70 percent of its portion of the façade, between 2 and 8 feet from the ground. Storefronts shall have the mullion system, doorways, and signage integrally designed and painted. Balconies within a mixed use development shall have a depth of seven (7) feet and a proportionate width.

G. Regulations for Large Nonresidential Establishments.

1. Location.

Large nonresidential buildings shall be located in a group of more than four (4) nonresidential establishments located in a complex which is planned, developed, owned, or managed as a single unit with off-street parking provided on the property.

2. Maximum Size of Large Nonresidential Establishments.

Large nonresidential establishments shall not exceed fifty thousand (50,000) gross square feet. However, the total structure may exceed this size so long as no single nonresidential tenant exceeds this size. To determine whether an establishment has reached this maximum, the area of shared check stands, management, controlling ownership interest, and storage areas shall also be included.

3. Façade.

All Large nonresidential building façades shall include a repeating pattern that includes no less than three (3) of the following elements:

- a. Color change;

- b. Texture change;
- c. Material module change; or
- d. An expression of architectural or structural bays through a change in plane no less than twelve (12) inches in width, such as an offset, reveal or projecting rib. (See Figure 2.)

At least one (1) of elements a., b., or c. shall repeat horizontally. All elements shall repeat at intervals of no more than thirty (30) feet, either horizontally or vertically.

4. Exterior Customer Entrance.

Where additional stores will be located in the Large nonresidential establishment, each such store shall have at least one (1) exterior customer entrance, which shall conform to the above requirements.

H. Exemptions.

Nonresidential establishments located within the Urban Center District shall be exempt from the provisions of this Ordinance.

I. Nonconforming structures.

As of the effective date of this Ordinance, any structures, which are inconsistent with the provisions of this Ordinance, shall be considered legal nonconforming structures and shall be subject to the provisions of Section 33-35 of the Town Code.

Figure 1
Cone of Vision

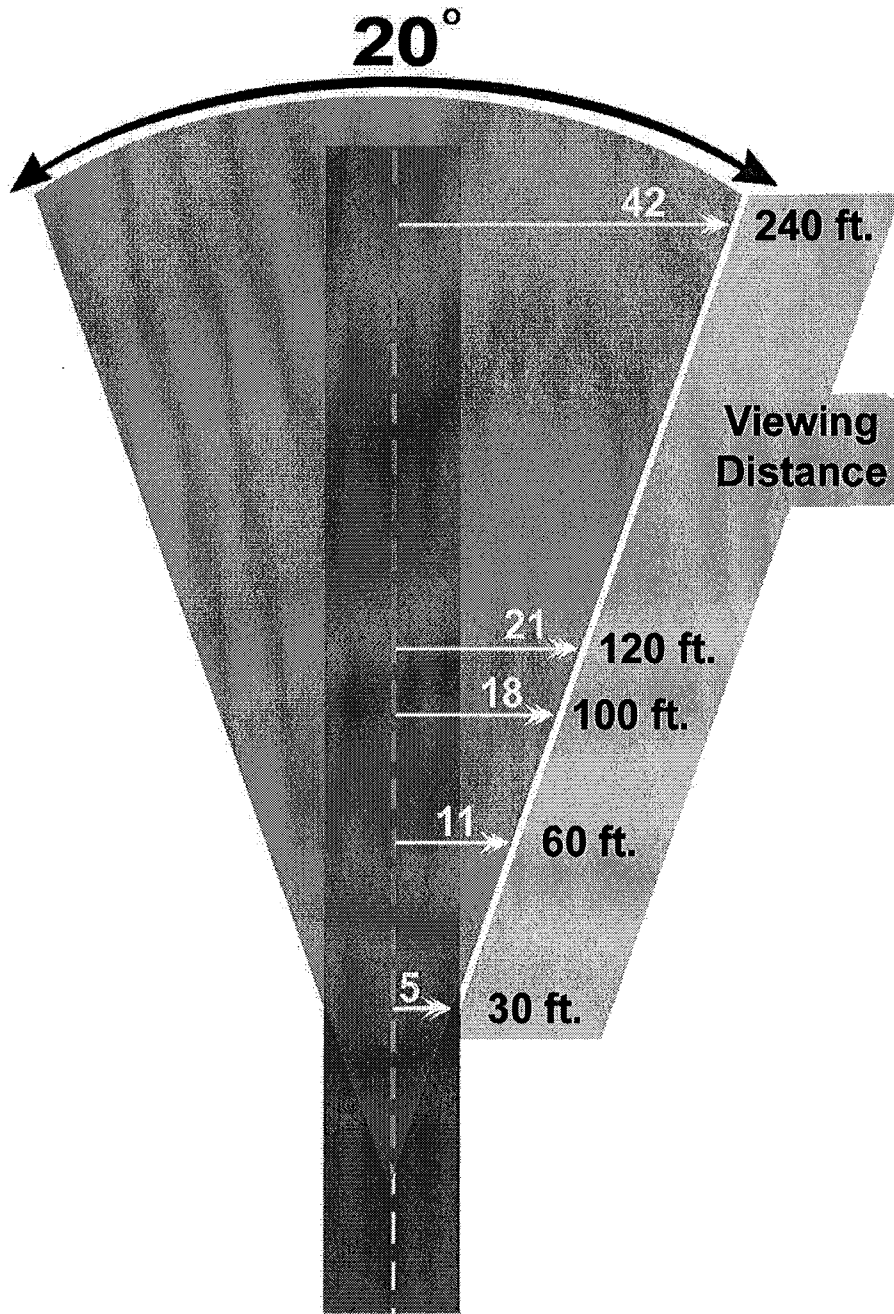
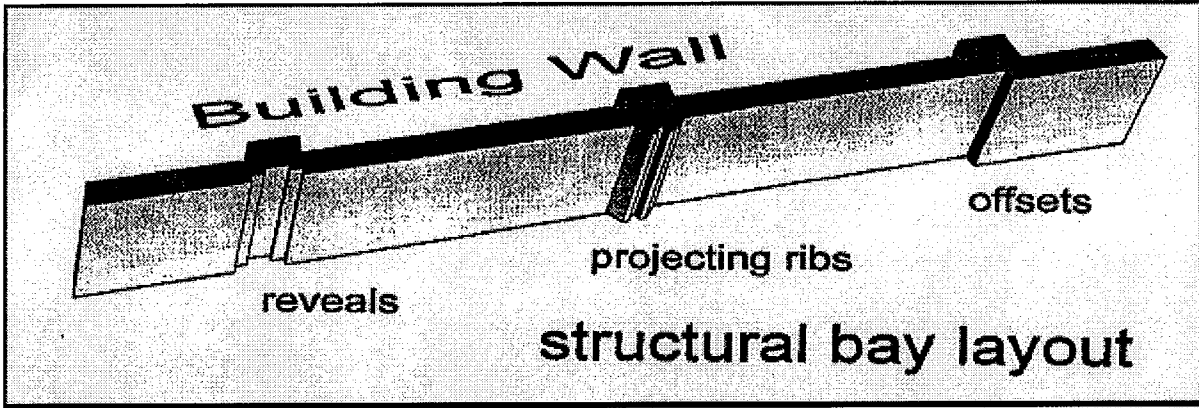


Figure 2
Expression of Architectural or Structural Bay



**Figure 3
Parapet Standards**

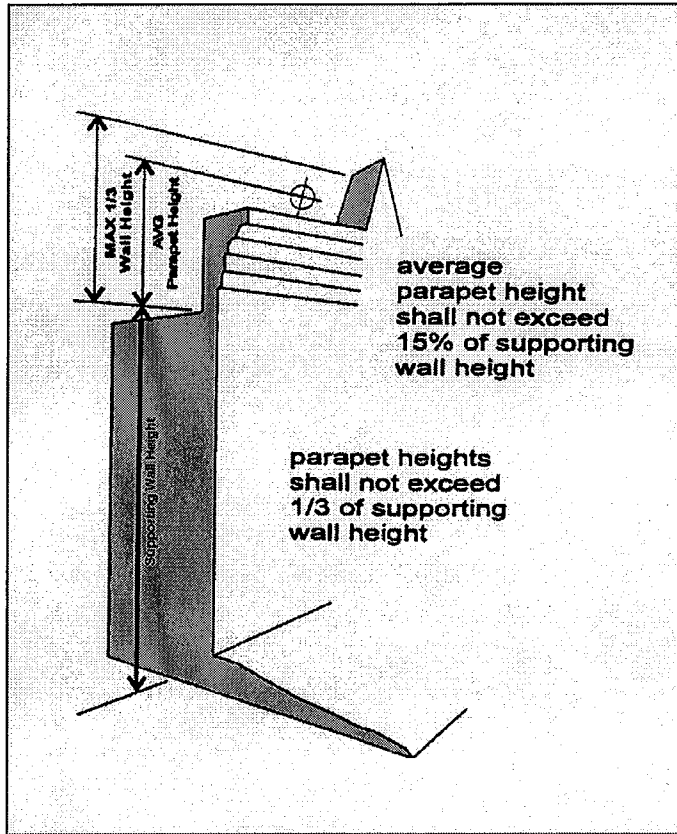
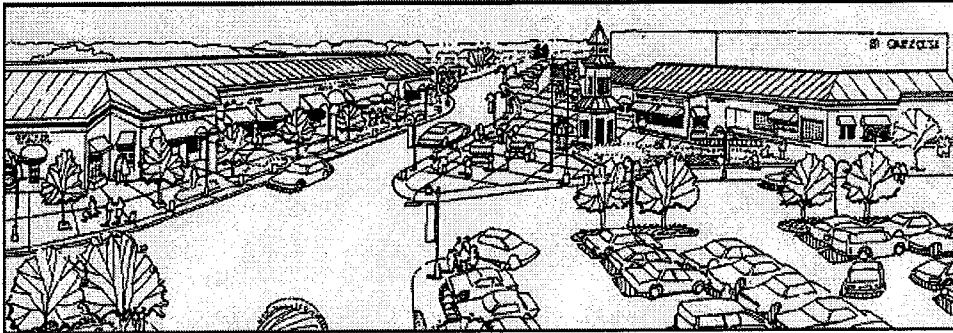


Figure 4
Center With Community Features



Section 3. Severability. If any section, clause, sentence, or phrase of this Ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, the holding shall not affect the validity of the remaining portions of this Ordinance.

Section 4. Conflict. All Sections or parts of Sections of the Code of Ordinances, all ordinances or parts of ordinances, and all Resolutions, or parts of Resolutions, in conflict with this Ordinance are repealed to the extent of such conflict.

Section 5. Effective Date. This Ordinance shall be effective immediately upon adoption on second reading.

PASSED on first reading this _____ day of _____, 2007.

PASSED AND ADOPTED on second reading this _____ day of _____, 2007.

PAUL VROOMAN
Mayor

Attest: _____
ERIKA GONZALEZ SANTAMARIA, CMC
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA COLE & BONISKE, P.A.
Interim Town Attorney

FINAL VOTE AT ADOPTION:

Mayor Paul Vrooman _____

Vice Mayor Edward MacDougall _____

Council Member Timothy J. Meerbott _____

Council Member Ernest Sochin _____

Council Member Peggy Bell



Office of the Town Attorney

Mitchell A. Bierman
Town Attorney

Chad S. Friedman
Town Attorney

MEMORANDUM

To: The Honorable Mayor and Town Council

From: Mitchell Bierman, Town Attorney

Date: February 15, 2007

Re: Ex-Parte Communications on Quasi-Judicial Land Use Matters

We have prepared the attached ordinance addressing disclosure of ex-parte communications regarding quasi-judicial proceedings and land use matters. An explanation follows.

I. QUASI-JUDICIAL BOARDS AND PROCEEDINGS FOR LAND USE MATTERS

The Town's Local Planning Agency ("LPA") and, in certain situations, the Town Council are considered to be quasi-judicial boards of the Town. This means that the LPA and the Town Council will be conducting quasi-judicial proceedings. As Councilmembers, you are most familiar with legislative decision making, in which you are asked to create a general rule or policy to govern the conduct of those within the Town. In contrast, a quasi-judicial proceeding is one that determines the rights of some individual person or business by applying that legislative rule of Town-wide application to the particular facts and circumstances of an individual case. In the area of land use, all comprehensive planning decisions are considered to be legislative. Most zoning decisions are considered to be quasi-judicial proceedings; a few, such as a Town-wide enactment of zoning, are likely to be considered legislative. Decisions on special permits, such as variances and building permits, are quasi-judicial.

Members of quasi-judicial boards are subject to certain restrictions when it comes to communications concerning matters under consideration. Such contacts are considered "ex-parte communications."¹ Since it is possible that applicants or other interested persons may seek to contact (or already have contacted) you to discuss the merits of development applications, the Council should address what, if any, communications will be allowed

¹ / "Ex-Parte" is defined as: on one side only; by or for one party; done for, in behalf of or on the application of, one party only. Black's Law Dictionary, 5th Edition. In other words, when the prosecutor talks to the judge in the absence of the defense attorney about the case against the accused, it is an ex parte contact.

between the Councilmembers and an applicant, as well as communications with the general public.

A. WHAT IS AN EX-PARTE COMMUNICATION?

An ex-parte communication is any communication, whether written or oral, between a Councilmember or other quasi-judicial board member and any person regarding the subject matter of any application that is, or foreseeably will be, heard in a quasi-judicial proceeding. Site visits and review of expert opinions are also considered ex-parte communications.

Currently, you must refrain from all ex-parte contacts with applicants or other interested persons regarding development applications, in order to avoid creating a legal presumption that your future decision on these applications is prejudiced by the contact.¹ However, as discussed below, the Town Council may remove this presumption of prejudice by adopting an ordinance or resolution establishing a process to allow ex-parte communications related to quasi-judicial proceedings.

i. JENNINGS V. METROPOLITAN DADE COUNTY

The leading case dealing with the issue of ex-parte communications and quasi-judicial boards is Jennings v. Metropolitan Dade County, 589 So. 2d 1337 (Fla. 3rd DCA 1991), rev. den., 598 So.2d 75 (Fla. 1992). In Jennings, the court disapproved of ex-parte communications and found them to be inherently improper because they violated the concept of fundamental due process, the cornerstone of quasi-judicial proceedings. The court further found that the existence of an ex-parte communication creates a presumption that the communication is prejudicial. As a result, any aggrieved party that objects to the ex-parte communication is entitled to an entirely new hearing unless it can be successfully proven that the communication was not, in fact, prejudicial.

While the types of matters which are subject to the rules put forth in the Jennings case are not clearly and consistently defined by the law, at a minimum the following matters are considered by courts to be quasi-judicial in nature:

site specific re-zonings, special exceptions, variances, site plan approvals, conditional uses, and code enforcement proceedings.²

ii. SECTION 286.0115(1), FLORIDA STATUTES: ACCESS TO LOCAL PUBLIC OFFICIALS LAW.

Due in large part to the Jennings decision, in 1995 the Florida Legislature enacted Section 286.0115, Florida Statutes, titled "Access to Local Public Officials". This law allows a municipality

¹ / The Town Charter provides for the continued applicability of Miami-Dade County ordinances until replaced or superseded by the Town's own ordinances. Miami-Dade County has not adopted any rules removing the presumption of prejudice and allowing ex-parte communications with members of quasi-judicial boards.

² / Board of County Commissioners of Brevard County v. Snyder; 627 So. 2d 469 (Fla. 1993); Irvine v. Duval County Planning Commission, 495 So. 2d 167 (Fla. 1986); Park of Commerce Associates v. Town of Delray Beach, 636 So. 2d 12 (Fla. 1994); Chapter 162, Fla. Stat. (2000).

to adopt an ordinance or resolution removing the presumption of prejudice from ex-parte communications with local public officials.

By definition, this statute covers all elected or appointed officials holding a municipal office who recommend or take quasi-judicial action as a member of a board or council. It allows any person to engage in ex-parte discussions regarding the merits of quasi-judicial matters with a Councilperson so long as the Councilperson discloses, on the record, the existence of the ex-parte communication. This disclosure must be made before or during the public meeting at which any final action is taken on the matter in order for the presumption of prejudice to be removed. The Councilperson must disclose the communication and the identity of the person, group, or entity with whom the communication took place. This procedure allows an applicant or an affected party with a differing opinion a reasonable opportunity to refute or respond to the substance of the ex-parte communication.

In order to allow any form of ex-parte communication or site visit without creating the presumption of prejudice, the Council is required to adopt an ordinance or resolution specifying what, if any, ex-parte communication is allowed.

iii. ORDINANCE REGARDING EX-PARTE COMMUNICATIONS.

Attached for your consideration is a proposed ordinance authorizing ex-parte communications so long as the communications are properly disclosed. Alternatively, the Council may elect to maintain the current practice followed by the County and prohibit all ex-parte communications in accordance with the court's ruling in the Jennings case.

B. GUIDANCE FOR COMPLYING WITH JENNINGS.

Until such time as the Town Council enacts its own rules governing ex-parte communications, the rule of law set forth in the Jennings decision applies. Any correspondence received by a Councilmember regarding a quasi-judicial application must be forwarded to the Town Clerk. In the event that someone attempts to contact you about a quasi-judicial matter outside of a public meeting, we recommend that you ask them to put their concerns in writing and forward their written documents to the Town Clerk. The Clerk will then make their correspondence part of the record on that application. Additionally, when the application is subsequently heard before the LPA or the Town Council, each Councilmember should state on the record the existence of the ex-parte communication, the nature of the communication, and the name of the person who contacted you. You should also state whether or not the ex-parte communication affects your ability to consider the evidence presented impartially.

Finally, even if the Town Council establishes a process to allow ex-parte communications on quasi-judicial matters, Councilmembers must comply with the Florida Government in the Sunshine Law. As is required on any issue that might come before the Council for consideration, Town Councilmembers may only discuss quasi-judicial matters with each other at a public meeting.

ORDINANCE NO. 07-_____

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, IMPLEMENTING THE PROVISIONS OF SECTION 286.0115, FLORIDA STATUTES, TO ESTABLISH A PROCEDURE GOVERNING EX PARTE COMMUNICATIONS WITH LOCAL PUBLIC OFFICIALS CONCERNING QUASI-JUDICIAL MATTERS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE TOWN CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Cutler Bay, Florida (the "Town") desires to implement Section 286.0115(1) Fla. Stat., by establishing a process to disclose ex parte communications (communications made on behalf of one side only without the presence of the other side) with local public officials; and

WHEREAS, the Town Council finds that adoption of these regulations is in the best interest and welfare of the citizens of the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:

Section 1. The above recitations are true and correct and are incorporated into this ordinance by this reference.

Section 2. Communications with The Town Council. Communications with local public officials [as defined in Sec. 286.0115(1)(b), Fla. Stat. (1997)], regarding quasi-judicial matters [as defined in Board of County Commissioners of Brevard County v. Snyder, 627 So.2d 469 (Fla. 1993)], including the adjudication of the rights of persons and the application of a general rule or policy to a specific individual, property, interest or activity shall be governed by the following procedure:

A. Any person not otherwise prohibited by statute, charter provision, or ordinance may discuss with any local public official representing the Town the merits of any matter on which action may be taken by any board, council or commission on which the local public official is a member. Such communication shall not raise any presumption of prejudice provided that the following process of disclosure occurs:

1. The subject and substance of any ex parte communication with a local public official representing the Town which relates to quasi-judicial action pending before the official, as well as the identity of the person, group or entity with whom the communication took place, is disclosed and made a part of the record before final action is taken on the matter.

2. A local public official representing the Town may read a written communication from any person; however, a written communication that relates to quasi-judicial action pending before such official shall be made a part of the record before final action is taken on the matter.

3. A local public official representing the Town may conduct investigations, make site visits and receive expert opinions regarding quasi-judicial action pending before him or her, provided that such activities and the existence of such investigations, site visits, or expert opinions is made a part of the record before final action is taken on the matter.

4. Disclosure made pursuant to paragraphs (1), (2) and (3) above must be made before or during the public meeting at which a vote is taken on such matters, so that persons who have opinions contrary to those expressed in the ex parte communication are given a reasonable opportunity to refute or respond to the communication.

Section 3. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 4. Inclusion in the Code. It is the intention of the Town Council, and it is hereby ordained that the provisions of this Ordinance shall become and made a part of the Town Code and that the sections of this Ordinance may be re-numbered or re-lettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 5. Effective Date. This Ordinance shall be effective immediately upon adoption on second reading.

PASSED and ADOPTED on first reading this ____ day of _____, 2007.

PASSED AND ADOPTED on second reading this _____ day of _____, 2007.

PAUL S. VROOMAN, Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA, CMC
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA
COLE & BONISKE, P.A.
Interim Town Attorney

FINAL VOTE AT ADOPTION:

- Mayor Paul S. Vrooman _____
- Vice Mayor Edward P. MacDougall _____
- Councilmember Peggy R. Bell _____
- Councilmember Timothy J. Meerbott _____
- Councilmember Ernest N. Sochin _____

ORDINANCE NO. 07-_____

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA , AMENDING CODE ENFORCEMENT PROCEDURES; CREATING ENHANCED PENALTIES FOR VIOLATIONS OF THE SIGN ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Mayor and Town Council of the Town of Cutler Bay (the "Town") finds it is in the best interest of the Town to amend the code enforcement procedures contained in the Miami-Dade County Code ("Code") as made applicable to the Town by Section 8.3 of the Town Charter.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above Recitals are true and correct and are incorporated herein by this reference.

Section 2. Code Enforcement Procedures Adopted. The Code is amended as follows:

Sec. 8CC-1. Civil offenses and penalties; hearing officers. Special Magistrate.

The violation of any County ~~Town~~ ordinance listed in ~~Section 8CC-10 of this chapter~~ shall constitute a civil offense punishable by civil penalty in the amount prescribed in Section 8CC-10 and as modified by Section 8CC-4 of this chapter. Accordingly, there is hereby created and established a code enforcement position to be filled by ~~hearing officers~~ a Special Magistrate to enforce the ~~ordinances listed in Section 8CC-10 which are contained in and enacted pursuant to this Code.~~ Town code of ordinances.

Sec. 8CC-2. Qualifications of officers the Special Magistrate and removal; organization.

(a) The County ~~Manager~~ Special Magistrate shall ~~create a Hearing Officer Review Board, comprised of three (3) members from code enforcement departments, one (1) member from the County Clerk's Office, two (2) members from the public at large, and one (1) member from the Office of the County Attorney. The duty of the Board shall be to recommend new Hearing Officer appointments and review, on an annual basis, the performance of Hearing Officers and, as necessary recommend the removal or reappointment of Hearing Officers to the County Manager.~~ (b) ~~The Hearing Officer Review Board shall use a basis for recommendation for appointment, criteria to be developed by the Review Board for approval and concurrence of the County Manager and Clerk of the Board of County Commissioners. Such appointments by the County Manager shall be submitted to the Clerk of the Board for ratification by the Clerk.~~(c)

~~Hearing Officers be a resident of Miami Dade County who possess an outstanding reputations for civic pride, interest, integrity, responsibility, and business or professional ability. The Special Magistrate shall be a member of the Florida Bar in good standing or a retired judge of one of the courts of the State of Florida. The appointment appointments of the Special Magistrate shall be made by the Town Manager County Manager on the basis of experience or interest in code enforcement. Such appointments shall be submitted to the Clerk of the Board of County Commissioners for ratification by the Clerk.~~(d) ~~the County Manager or his designee shall appoint as many hearing officers as are deemed necessary~~ Appointments shall be made for The Special Magistrate shall be appointed for a term of two (2) years. ~~Upon recommendation of the Hearing Officer Review Board~~ The Special Magistrate may be reappointed at the discretion of the County Town Manager. There shall be no limit on the number of reappointments that may be given to any ~~individual Hearing Officer~~ Special Magistrate; provided, however, that a determination as to removal or reappointment must be made ~~for each individual Hearing Officer~~ at the end of each of his or her two-year terms. The ~~Town Manager~~ County Manager shall have authority to remove the Special Magistrate ~~individual Hearing Officers~~ with or without cause. Appointments to fill any vacancy shall be for the remainder of the unexpired term.

(e) (b) ~~The Miami Dade County~~ Town Attorney's Office shall, when so requested by the Town Manager, represent the Town in the prosecution of a violation. ~~serve as general counsel to the Hearing Officers~~ Special Master. If an appeal hearing is held pursuant to Section 8CC-8, the County Town Attorney's Office shall, if requested by the Town Manager, represent the County Town at such proceedings.

Sec. 8CC-3. Enforcement procedures.

(a) For the purposes of this chapter, a "Code Compliance Officer" is defined to be any agent or employee of ~~the Miami Dade County~~ Town whose duty is to assure the enforcement of and compliance with the Code of ~~Miami Dade County~~ the Town. ~~Compliance Officer~~ Subject to the requirements of Section 8CC-11 below, a "Code Compliance Officer" is also defined to be any agent or employee of a municipality who has been authorized pursuant to that Section to assure code compliance. Municipal employees shall also be required to successfully complete a criminal background investigation prior to being provided authority to initiate enforcement proceedings under this Chapter.

(b) Code Compliance Officers shall have the authority to initiate enforcement proceedings as provided below. No ~~Hearing Officer~~ Special Magistrate shall have the power to initiate such proceedings.

(c) For the purposes of this chapter, "violators" shall be deemed to be those persons or entities legally responsible for the violation of the ordinances, ~~listed in Section 8CC-10.~~

(d) A Code Compliance Officer who finds a violation of those ordinances of this Code ~~listed in Section 8CC-10~~ shall determine a reasonable time period within which the violator must correct the violation. This determination shall be based on considerations of fairness; practicality; ease of correction; ability to correct; severity of violation; nature, extent and probability of danger or damage to the public; and other relevant factors relating to the reasonableness of the time period prescribed. A time for correction need not be specified if the violation is deemed to be an uncorrectable violation.

(e) A Code Compliance Officer who finds such a violation shall issue a civil violation notice to the violator. Service shall be effected by delivering the civil violation notice to the violator or his agent, or by leaving the civil violation notice at the violator's usual place of abode with any person residing therein who is fifteen (15) years of age or older and informing that person of its contents. If such service cannot be effected, the civil violation notice may be sent by certified mail, return receipt requested, or by posting of the civil violation notice in a conspicuous place on the premises or real property upon which the violation has been observed or by mailing to or posting the civil violation notice at the property owner's mailing address as listed in the tax records of the Miami-Dade County. Such posting of the civil violation shall be deemed proper service, and the time for compliance, stated in the notice, shall commence with the date such notice is posted.

(f) The civil violation notice shall include but not be limited to the following:

(1) Date of issuance.

(2) Name of Code Compliance Officer and division or department issuing the notice.

(3) Name and address of the violator.

(4) Section number of the Code Section that has been violated.

(5) Brief description of the nature of the violation, including location, date, and time of violation.

(6) Amount of the civil penalty for which the violator may be liable.

(7) Instructions and due date for paying the civil fine or filing for an administrative hearing before a ~~Hearing Officer~~ Special Magistrate to appeal the civil fine.

(8) Time within which the violation must be corrected if applicable.

(9) Notice that each day of continued violation after the time period for correction has run shall be deemed a continuing violation subject to additional penalty in the same amount, without the need for additional notices of violation.

(10) Notice that the filing of a request for an administrative hearing will toll the accrual of continuing violation penalties.

(11) Notice that failure to request an administrative hearing within twenty (20) days, or within the specified time period listed for a violation of a specific Section of the Code, after service of the civil violation notice shall constitute a waiver of the violator's right to an administrative hearing before the ~~Hearing Officer~~ Special Magistrate, and that such waiver shall constitute an admission of violation.

(12) Notice that the violator may be liable for the reasonable costs of the administrative hearing should he be found guilty of the violation.

(13) Notice that the violator may be liable for the ~~County's~~ Town's costs and expenses incurred as a result of investigation, enforcement, testing or monitoring should the violator be found guilty of the violation.

(g) A Code Compliance Officer is authorized to record in the public record the civil violation notice or a notice of violation which is based upon the civil violation notice. The recording of the civil violation or a notice of violation under this section shall not act as or be a lien on the property and shall not act as a notice of a lien on the property but shall merely act as public notice of the existence of the violation.

Sec. 8CC-4. Civil penalties and related terms construed.

- (a) Penalties for violations of the ordinances to be enforced by this chapter shall be in the amount prescribed in the schedule of civil penalties in Section 8CC-10.
- (b) An "uncorrectable violation" is a violation which cannot be remedied after the violation has been committed because the violation constitutes a single prohibited act rather than an ongoing condition or circumstance. Each reoccurrence of an uncorrectable violation shall constitute a separate violation and shall subject the violator to an additional penalty in the same amount as that prescribed for the original violation. If, however, a violator has been once found guilty of an uncorrectable violation, and causes the same uncorrectable violation to occur a second time, each reoccurrence of the uncorrectable violation by such violator shall constitute a "repeat violation" as provided in Section 8CC-4(d).
- (c) "Continuing violations" are those violations which remain uncorrected beyond the reasonable time period for correction contained in either the civil violation notice or the final order of the ~~Hearing Officer~~ Special Magistrate, whichever is applicable. For each day of continued violation after the time for correction has run, an additional penalty in the same amount as that prescribed for the original violation shall be added. ~~The maximum total penalty for any one (1) continuing violation shall be fixed at twenty (20) times the original penalty amount.~~
- (d) A "repeat violation" is a recurring violation of an ordinance by a violator who has previously been found guilty or who has admitted guilt of the same violation within the last five (5) years. In the case of correctable violations, a repeat violation can occur only after correction of the previous violation has been made. For the first repeat violation, the amount of the civil penalty shall be double the amount of penalty prescribed for the original violation by Section 8CC-10. The amount of civil penalty due for each subsequent repeat violation shall be double the amount of penalty due for the first day of the immediately preceding violation., ~~provided that the maximum penalty payable for the first day of any one (1) repeat violation shall be one thousand dollars (\$1000.00)~~
- (e) A repeat violation which remains uncorrected beyond the time prescribed for correction in the civil violation notice shall be treated as a continuing violation, and the additional penalty for each day of continued violation shall be equal to the doubled amount due for the first day of the repeat violation.
- (f) Continuing violation penalties shall accrue from the date of correction given in the civil violation notice until the correction is made and payment of the fine is received if a request for administrative hearing is not timely filed. If the named violator requests an administrative hearing on a correctable violation and loses his appeal, the ~~Hearing Officer~~ Special Magistrate shall determine a reasonable time period within which correction of the violation must be made, based on the considerations set forth in Section 8CC-3(d). If correction is not made within the period set by the ~~Hearing Officer~~ Special Magistrate, continuing violation penalties shall begin after the time for correction has run. No continuing violation penalties shall accrue during the time period from the date of the civil violation notice until the date of the administrative hearing, if the named violator timely requests an administrative hearing to appeal the decision of the Code Compliance Officer. Continuing violation penalties cannot be imposed by the ~~Hearing Officer~~ Special Magistrate for uncorrectable violations.
- (g) Continuing violation penalties shall be assessed by the ~~hearing officer~~ Special Magistrate upon the filing of an Affidavit of Non-Compliance by the Code Compliance

Officer. The violator may request an administrative hearing, which hearing shall be strictly limited to the amount of the continuing violation based upon the length of time the violation continued to exist. Upon the filing of the Affidavit of Non-Compliance, the ~~Clerk~~ Code Compliance Officer shall send a copy of the Affidavit of Non-Compliance Notice of Assessment of Continuing Penalties to the violator by first class mail, at the last known address of the violator. Said ~~notice~~ affidavit shall include but not be limited to the following:

- (1) The date of issuance.
- (2) Department or division issuing the original ~~notice~~ affidavit.
- (3) Section number of Code that has been violated.
- (4) Amount of continuing penalty to be assessed by the ~~hearing officer~~ Special Magistrate.
- (5) Notice of right to request an administrative hearing and instructions on how to file for the administrative hearing.
- (6) Notice that failure to request an administrative hearing within twenty (20) days after the receipt of the Affidavit of Non-Compliance Notice of Assessment shall constitute a waiver of the violator's right to the administrative hearing.
- (7) Notice that the administrative hearing is strictly limited to the amount of the continuing penalty based solely upon the length of time the violation continued to exist but in no case in excess of the maximum set forth in the Code.
- (8) Notice that the violator shall be liable for the reasonable costs of the administrative hearing if the violator is unsuccessful at the hearing.
- (h) Civil penalties assessed pursuant to this chapter are due and payable to ~~Miami-Dade County~~ the Town on the last day of the period allowed for the filing of an appeal from the ~~Hearing Officer's~~ Special Magistrate's decision, or, if proper appeal is made, when the appeal has been finally decided adversely to the named violator.

Sec. 8CC-5. Rights of violators; payment of fine; right to appeal; failure to pay and correct, or to appeal.

- (a) A violator who has been served with a civil violation notice or Affidavit of Non-Compliance Notice of Assessment shall elect either to:
 - (1) Pay the civil penalty in the manner indicated on the notice, and correct the violation within the time specified on the notice (if applicable); or
 - (2) Request an administrative hearing before a ~~Hearing Officer~~ Special Magistrate to appeal the decision of the Code Compliance Officer which resulted in the issuance of the civil violation notice or Affidavit of Non-Compliance Notice of Assessment.
- (b) Appeal by administrative hearing of the notice of violation shall be accomplished by filing a request in writing to the address indicated on the notice, within the time limit stipulated in the specified Code Section which is enforced pursuant to the provisions of this chapter, or no later than twenty (20) calendar days after the service of the notice, whichever is earlier.
- (c) If the named violator after notice fails to pay the civil penalty and correct the violation within the time specified (if applicable), or fails to timely request an administrative hearing before a ~~Hearing Officer~~ Special Magistrate, the ~~Hearing Officer~~ Special Magistrate shall be informed of such failure by report from the Code Compliance Officer. If the named violator pays the civil penalty for a correctable violation but does

not correct that violation within the time specified, each day that the violation continues beyond such specified time shall constitute a continuing violation. Failure of the named violator to appeal the decision of the Code Compliance Officer within the prescribed time period shall constitute a waiver of the violator's right to administrative hearing before the ~~Hearing Officer~~ Special Master. A waiver of the right to administrative hearing shall be treated as an admission of the violation and penalties may be assessed accordingly.

Sec. ~~8CC-6~~. Scheduling and conduct of hearing.

(a) Upon receipt of a named violator's timely request for an administrative hearing, the ~~Hearing Officer~~ Special Magistrate shall set the matter down for hearing on the next regularly scheduled hearing date or as soon thereafter as possible or as mandated in the specified Code Section which is enforced pursuant to this chapter.

(b) The ~~Hearing Officer~~ Special Magistrate shall send a notice of hearing by first class mail to the named violator at his last known address. The notice of hearing shall include but not be limited to the following:

- (1) Name of the Code Compliance Officer who issued the notice.
- (2) Factual description of alleged violation.
- (3) Date of alleged violation.
- (4) Section of the Code allegedly violated.
- (5) Place, date and time of the hearing.
- (6) Right of violator to be represented by a lawyer.
- (7) Right of violator to present witnesses and evidence.
- (8) Notice that failure of violator to attend hearing may result in civil penalty being assessed against him.
- (9) Notice that requests for continuances will not be considered if not received by the ~~Hearing Officer~~ Special Magistrate at least ten (10) calendar days prior to the date set for hearing.

(c) The ~~Hearing Officers~~ Special Magistrate shall call hearings on a monthly basis, ~~or upon the request of the Clerk of the Board of County Commissioners~~. No hearing shall be set sooner than twenty (20) calendar days from the date of service of the notice of violation.

(d) A hearing date shall not be postponed or continued unless a request for continuance, showing good cause for such continuance, is received in writing by the ~~Hearing Officer~~ Special Magistrate at least ten (10) calendar days prior to the date set for the hearing.

(e) All hearings of the ~~Hearing Officer~~ Special Magistrate shall be open to the public. All testimony shall be under oath. Assuming proper notice, a hearing may proceed in the absence of the named violator.

(f) The proceedings at the hearing shall be recorded and may be transcribed at the expense of the party requesting the transcript.

(g) The ~~Clerk of the Board of County Commissioners~~ Town shall provide clerical and administrative personnel as may be reasonably required by ~~each Hearing Officer~~ the Special Magistrate for the proper performance of his duties.

(h) Each case before a ~~Hearing Officer~~ Special Magistrate shall be presented by the County Town Manager or his designee.

(i) The hearing need not be conducted in accordance with the formal rules relating to evidence and witnesses. Any relevant evidence shall be admitted if the ~~Hearing Officer~~

Special Magistrate finds it competent and reliable, regardless of the existence of any common law or statutory rule to the contrary.

(j) Each party shall have the right to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him to testify; and to rebut the evidence against him.

(k) The ~~Hearing Officer~~ Special Magistrate shall make findings of fact based on evidence of record. The ~~Hearing Officer~~ Special Magistrate shall make the findings of fact immediately upon conclusion of the hearing. ~~Once commenced, no hearing shall be deferred, however,~~ The violator or the Town shall have the option to request a reschedule of the hearing. A request to reschedule shall only be considered prior to the commencement of testimony and presentation of evidence. In order to make a finding upholding the Code Compliance Officer's decision, the ~~Hearing Officer~~ Special Magistrate must find that a preponderance of the evidence indicates that the named violator was responsible for the violation of the relevant Section of the Code as charged for purposes of a civil violation notice, or that the violation continued to exist for the time period set out in the ~~Affidavit of Non-Compliance Notice of Assessment~~, for purposes of an Affidavit of Non-Compliance Notice of Assessment.

(l) If the named violator is found guilty of the violation, or if the violation is found to be a continuing violation pursuant to an ~~Affidavit of Non-Compliance Notice of Assessment~~ he shall pay the reasonable costs of the administrative hearing and the costs and expenses of the ~~County Town~~ for investigation, enforcement, testing, or monitoring. The costs and expenses of the ~~County Town~~ for investigation, enforcement, testing, or monitoring shall be calculated and submitted to the ~~Hearing Officer~~, Special Magistrate, to be attached to the final order for amount owed, in standard format as prescribed by departmental administrative orders of the ~~County Town~~ Manager. All costs of enforcement shall be paid within thirty (30) days of the date of the administrative hearing unless an alternate timeframe is established by the department.

(m) The fact-finding determination of the ~~Hearing Officer~~ Special Magistrate for purposes of a civil violation notice shall be limited to whether the violation alleged did occur and, if so, whether the person named in the civil violation notice can be held responsible for that violation. The fact-finding determination of the ~~hearing officer~~ Special Magistrate for purposes of an ~~Affidavit of Non-Compliance Notice of Assessment~~ shall be strictly limited to length of time that the violation existed. Based upon this fact-finding determination, the ~~Hearing Officer~~ Special Magistrate shall either affirm or reverse the decision of the Code Compliance Officer. If the ~~Hearing Officer~~ Special Magistrate affirms the decision of the Code Compliance Officer with respect to a civil violation notice, the ~~Hearing Officer~~ Special Magistrate, pursuant to Section 8CC-4(f), shall determine a reasonable time period within which correction of the violation must be made, provided however, that such time period shall be no more than thirty (30) days. If the ~~Hearing Officer~~ Special Magistrate reverses the decision of the Code Compliance Officer and finds the named violator not responsible for the Code violation alleged in the civil violation notice, the named violator shall not be liable for the payment of any civil penalty, absent reversal of the ~~Hearing Officer's~~ Special Magistrate's findings pursuant to Section 8CC-8(a). If the decision of the ~~Hearing Officer~~ Special Magistrate is to affirm, then the following elements shall be included:

- (1) Amount of civil penalty.
- (2) Administrative costs of hearing.
- (3) Date by which the violation must be corrected to prevent imposition of continuing violation penalties (if applicable).
- (n) ~~The Hearing Officer~~ Special Magistrate shall have the power to:
 - (1) Adopt procedures for the conduct of hearings.
 - (2) Subpoena alleged violators and witnesses for hearings; subpoenas may be served by the ~~Miami-Dade County Sheriff's Department~~ Town's Police Department or by the staff of the ~~Hearing Officer~~ Special Magistrate.
 - (3) Subpoena evidence.
 - (4) Take testimony under oath.
 - (5) Assess and order the payment of civil penalties as provided herein.
- (o) ~~(1) A Hearing Officer shall postpone and shall not conduct a hearing if the named violator, prior to the scheduled hearing date, files with a duly authorized County board of appropriate jurisdiction, if one exists, an administrative appeal concerning the interpretation or application of any technical provisions of the Code Section allegedly violated. It shall be the responsibility of the violator to provide evidence at the time of the hearing to show that such administrative appeal has been filed with the County board of appropriate jurisdiction. However, once an issue had been determined by a Hearing Officer in a specific case, that issue may not be further reviewed by a County board in that specific case. A named violator waives his right to administrative appeal to other County boards if the violator does not apply for such appeal prior to the violator's code enforcement hearing before the Hearing Officer.~~
 - ~~(2) Upon exhaustion of a timely filed administrative appeal and finalization of the administrative order by such board, the Hearing Officer may exercise all powers given to him by this chapter. The Hearing Officer shall not, however, exercise any jurisdiction over such alleged Code violations until the time allowed for court appeal of the ruling of such board has lapsed or until such further appeal has been exhausted.~~
 - (3) ~~The Hearing Officer~~ Special Magistrate shall be bound by the interpretations and decisions of duly authorized County Town boards concerning the provisions of the codes within their respective jurisdictions. In the event such a board decides that an alleged violation of the Code is not in accordance with such board's interpretation of the Code provision on which the violation is based, the ~~Hearing Officers~~ Special Magistrate shall not be empowered to proceed with the enforcement of the violation.

Sec. 8CC-7. Recovery of unpaid civil penalties; unpaid penalty to constitute a lien; interest to be paid on liens; foreclosure; prohibition of the issuance of permits, licenses, certificates of use and occupancy, or zoning approvals to violators with unpaid civil penalties or liens.

- (a) ~~Miami-Dade County~~ The Town may institute proceedings in a court of competent jurisdiction to compel payment of civil penalties.
- (b) A certified copy of an order imposing a civil penalty may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation exists or upon any other real or personal property owned by the violator; and it may be enforced in the same manner as a court judgment by the sheriffs of this State, including levy against the personal property, but shall not be deemed to be a court judgment except for

enforcement purposes. After ~~one (1) year~~ three (3) months from the filing of any such lien which remains unpaid, ~~Miami-Dade County~~ the Town may foreclose or otherwise execute on the lien.

(c) Liens created pursuant to Section 8CC-7 may be discharged and satisfied by paying to ~~Miami-Dade County~~ the Town the amount specified in the notice of lien, together with interest thereon from the date of the filing of the lien computed at the rate of twelve (12) percent per annum, together with the administrative costs, filing and recording fees and fees paid to file a satisfaction of the lien in the public records. When any such lien has been discharged, ~~Miami-Dade County~~ the Town shall promptly cause evidence of the satisfaction and discharge of such lien to be recorded in the public records. ~~Any person, firm, corporation or legal entity, other than the present owner of the property involved, who pays any such unsatisfied lien shall be entitled to receive an assignment of the lien held by the County and shall be subrogated to the rights of the County in respect to the enforcement of such lien, as permitted by law.~~

(d) Notwithstanding any provision of this Code, no ~~County Town~~ or municipal officer, agent, employee or Board shall approve, grant or issue any operating permit, license, building permit, certificate of use and occupancy, ~~municipal occupational licenses,~~ platting action, or zoning action to any named violator with (i) unpaid civil penalties; (ii) unpaid administrative costs of hearing; (iii) unpaid ~~County Town~~ investigative, enforcement, testing, or monitoring costs; or (iv) unpaid liens, any or all of which are owed to ~~Miami-Dade County~~ Town pursuant to the provisions of the Code of the Town of Miami-Dade County, Cutler Bay, Florida.

Sec. 8CC-8. Appeals.

(a) The named violator or the ~~County Town~~ may appeal a final order of the ~~Hearing Officer~~ Special Magistrate for all violations ~~except those contained in Chapter 5 of the County Code~~ by filing a notice of appeal in the Circuit Court in and for Miami-Dade County, Florida, in accordance with the procedures and within the time provided by the Florida Rules of Appellate Procedure for the review of administrative action.

~~(b) For violations of Chapter 5 of the County Code, the violator or the County may seek to overturn the order of a Hearing Officer by making application to Miami-Dade County Court for a trial de novo on the merits. Such application shall be filed within thirty (30) calendar days of the issuance of the order sought to be overturned. A violator shall have the right to a de novo proceeding provided that all administrative remedies have been exhausted. Failure to make such application within the prescribed thirty-day period shall render the findings of the Hearing Officer conclusive, binding and final. All findings of the Hearing Officer shall be admissible evidence at any de novo proceeding held pursuant to this section.~~

~~(e) (b)~~ Unless the findings of the ~~Hearing Officer~~ Special Magistrate are overturned in a proceeding held pursuant to Section 8CC-8(a), all findings of the ~~Hearing Officer~~ Special Magistrate shall be admissible in any proceeding to collect unpaid penalties.

Sec. 8CC-9. Provisions contained herein are supplemental; general penalty for failure to correct violations.

(1) Nothing contained in this chapter shall prohibit ~~Miami-Dade County~~ the Town from enforcing its Code by any other means. The enforcement procedures outlined herein are

cumulative to all others and shall not be deemed to be prerequisites to filing suit for the enforcement of any Section of this Code.

(2) It shall be unlawful for a named violator found guilty of a code violation pursuant to Section ~~8CC-5(c)~~ or Section ~~8CC-6~~ to fail to correct the violation as set forth in the uniform civil violation notice and said failure shall be a separate offense punishable as set forth in ~~Section 1-5~~ of the Code of ~~Miami-Dade County~~ The Town of Cutler Bay, Florida.

Sec. 8CC-10. Schedule of civil penalties.

The following table shows the sections of this Code, as they may be amended from time to time, which may be enforced pursuant to the provisions of this chapter; and the dollar amount of civil penalty for the violation of these sections as they may be amended. The "descriptions of violations" below are for informational purposes only and are not meant to limit or define the nature of the violations or the subject matter of the listed Code sections, except to the extent that different types of violations of the same Code section may carry different civil penalties. For each Code section listed in the schedule of civil penalties, the entirety of that section may be enforced by the mechanism provided in this chapter 8CC, regardless of whether all activities proscribed or required within that particular section are described in the "Description of Violation" column. To determine the exact nature of any activity proscribed or required by this Code, the relevant Code section must be examined.

TABLE INSET:

<i>Code Section</i>	<i>Description of Violation</i>	<i>Civil Penalty</i>
	<u>Maintaining any sign in violation of Town Ordinance 06-13 as subsequently amended.</u>	<u>\$1000</u>
***	***	***
33-95(e)	Maintaining a fence or wall sign in a residential district	\$200 <u>\$500</u>
**	***	***
33-107	Exceeding maximum Class C Sign Size	\$1,000
33-107	Exceeding the maximum height for a Class C sign	\$1,000
33-107	Failure to meet setback or spacing requirements for Class C sign	\$1,000
	<u>All sections of this Code not specifically listed in this schedule</u>	<u>\$500</u>
***	***	***

~~Sec. 8CC-10.1. Code Enforcement Technology Trust Fund.~~

~~Ten (10) dollars shall be added to each civil penalty to be placed in a trust fund by the Clerk of Courts to be used for the enhancement of the technological capability of all code enforcement departments. The Clerk of Courts and the County Manager shall jointly appoint a committee of five (5) people to determine the priority for use of the fund.~~

~~Sec. 8CC-11. Enforcement procedure for municipalities.~~

~~(a) Municipalities within Miami Dade County shall be entitled to enforce the applicable provisions of this chapter within their municipal boundaries subject to compliance with the provisions of this section.~~

~~(b) As a condition to enforcing the applicable provisions of this chapter, a municipality shall enter into an interlocal agreement with Miami Dade County. The interlocal agreement shall contain, at a minimum, the following:~~

~~(1) The section or sections of this Code which the municipality wishes to enforce through this chapter;~~

~~(2) The job title of the agents or employees of the municipality authorized to perform the enforcement functions and the number of agents or employees so authorized;~~

~~(3) The amount reimbursable to Miami Dade County for administrative costs relating to the conduct of hearings on appeals from violations issued by the municipality, including but not limited to attorneys' fees and costs, costs of transcription and clerical costs;~~

~~(4) The amount of revenue reimbursable to the municipality from any fine collected pursuant to this chapter;~~

~~(5) An agreement to indemnify and save the County harmless from and against any and all liability, actions and causes of action relating to the municipality's enforcement of the provisions of this chapter; and~~

~~(6) A term not to exceed three (3) years.~~

~~(c) With respect to laws and ordinances of County wide application, the provisions of this section shall be supplemental to and not in derogation of any authority of Miami Dade County to enforce the provisions of those laws and ordinances.~~

~~(d) Nothing contained in this section is intended to extend the substantive effect or application of any County law or ordinance to any municipal area where such County law or ordinance is not effective or applicable.~~

~~(e) Nothing contained in this section shall prohibit any municipality from enforcing provisions of its municipal code or this Code by any lawful and authorized means.~~

Section 3. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 4. Inclusion In The Code. It is the intention of the Town Council that the provisions of this Ordinance shall become and made a part of the Town of Cutler Bay Code; that the sections of this Ordinance may be renumbered or re-lettered to

accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 5. Effective Date. This Ordinance shall be effective immediately upon adoption.

PASSED AND ADOPTED on first reading this _____ day of _____, 2007.

PASSED AND ADOPTED on second reading this _____ day of _____, 2007.

PAUL S. VROOMAN, Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA, CMC
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA
COLE & BONISKE, P.A.
Interim Town Attorney

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman _____

Vice Mayor Edwards P. MacDougall _____

Councilmember Peggy R. Bell _____

Councilmember Timothy J. Meerbott _____

Councilmember Ernest N. Sochin _____



MEMORANDUM

To: Steven Alexander, Town Manager

From: Don O'Donniley, Planning Director *DO'D*

Date: February 21, 2007

Re: An Ordinance establishing revised standards prohibiting the use chain link fencing along the right of ways within the Town of Cutler Bay

REQUEST: Adoption of the attached ordinance prohibiting the use of chain link fencing along the right of ways within the Town of Cutler Bay.

BACKGROUND AND ANALYSIS: The Town Council has requested staff to review existing standards for fencing in general and chain link fencing in particular. The attached Ordinance sets limitations that prohibit using chain link fence for a distance of at least twenty five (25) feet or the front façade of a structure, which ever is greater along frontages within the Town of Cutler Bay, In addition, all fences are required to face finished side out.

The Town Council adopted the proposed Ordinance on first reading at its January 17, 2007 meeting.

RECOMMENDATION:

Approval

CONDITIONS:

N/A

ORDINANCE NO. 2006- _____

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING ARTICLE I “IN GENERAL,” SECTION 33-11 “FENCES, WALLS, BUS SHELTERS AND HEDGES” OF THE TOWN CODE OF ORDINANCES, TO PROVIDE THAT ALL FENCES BE ERECTED WITH THE FINISHED SIDE OUTWARD; PROVIDING THAT CHAIN LINK FENCES SHALL NOT BE LOCATED BEYOND THE FRONT FAÇADE OF THE BUILDING OR 25 FEET FROM THE FRONT PROPERTY LINE, WHICHEVER IS GREATER, AND SHALL BE PERMITTED ONLY ALONG INTERIOR SIDE PROPERTY LINES AND REAR PROPERTY LINES THAT ARE NOT ADJACENT TO A RIGHT-OF-WAY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Cutler Bay (the “Town”) currently permits chain link fences in residential zoning districts behind the front building line; and

WHEREAS, in order to enhance the character and aesthetics of the Town, Town staff has recommended that all chain link fences should not be located behind the front building line, and that all fences be erected with the finished side outward; and

WHEREAS, Town staff has further recommended, that within residential zoning districts, chain link fences should not be located beyond the front façade of the building or 25 feet from the front property line, whichever is greater, and should be permitted only along interior side property lines and rear property lines that are not adjacent to a right-of-way; and

WHEREAS, public notice was provided in accordance with law; and

WHEREAS, this Ordinance was heard and recommended by the Town Council, in its capacity as the Town’s Local Planning Agency; and

WHEREAS, after due notice and hearing, the Town Council finds this Ordinance to be consistent with the Miami-Dade County Comprehensive Development Master Plan, which now functions as the Town’s Comprehensive Plan; and

WHEREAS, the Town Council finds these changes to be in the best interest and welfare of the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY AS FOLLOWS:

Section 1. Findings. The foregoing “Whereas” clauses are hereby ratified and incorporated as the legislative intent of this Ordinance.

Section 2. Amendment to Section 33-11 of the Town Code. Article I "In General," Section 33-11 "Fences, walls, bus shelters and hedges" of the Town Code is hereby amended to read as follows:

ARTICLE I. IN GENERAL

Sec. 33-11. Fences, walls, bus shelters and hedges.

(a) *Permits; conformance to requirements; erection on property lines.* Permits shall be required for all walls and fences, and except as may be approved as a result of public hearings, walls, fences, which obscure or obstruct vision, and hedges shall be restricted to the height, location and type as indicated hereinafter, and except when a higher wall, fence or hedge is required as a visual screening buffer at the rear of double frontage lots under Chapter 28 of this Code. Except as hereinafter restricted, all walls, fences and hedges may be placed on the property lines. This section, however, shall not be construed to permit such walls, fences and hedges to extend beyond the official right-of-way lines or property lines. All fences shall be erected with the finished side outward. Notwithstanding anything in the code to the contrary, chain link fences in residential zoning districts shall not be located beyond the front façade of the building or 25 feet from the front property line, whichever is greater, and shall be permitted only along interior side property lines and rear property lines that are not adjacent to a right-of-way. ~~behind the front building line. It is provided, however, that the aforementioned restriction on chain link fences shall not apply in AU and GU zoning districts trended agricultural. It is further provided that the aforementioned restriction shall not apply to chain link fences surrounding a residential community maintained by a condominium or homeowners association or by a special taxing district.~~ Chain link fences lawfully existing prior to the effective date of this ordinance which as a result of this ordinance become nonconforming shall be exempt from Section 33-35(c).

Section 3. Severability. If any section, clause, sentence, or phrase of this Ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, the holding shall not affect the validity of the remaining portions of this Ordinance.

Section 4. Conflict. All Sections or parts of Sections of the Code of Ordinances, all ordinances or parts of ordinances, and all Resolutions, or parts of Resolutions, in conflict with this Ordinance are repealed to the extent of such conflict.

Section 5. Effective Date. This Ordinance shall be effective immediately upon adoption on second reading.

PASSED on first reading this _____ day of _____, 2007.

PASSED AND ADOPTED on second reading this _____ day of _____, 2007.

PAUL VROOMAN
Mayor

Attest: _____
ERIKA GONZALEZ SANTAMARIA, CMC
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA COLE & BONISKE, P.A.
Interim Town Attorney

FINAL VOTE AT ADOPTION:

Mayor Paul Vrooman _____
Vice Mayor Edward MacDougall _____
Council Member Timothy J. Meerbott _____
Council Member Ernest Sochin _____
Council Member Peggy Bell _____