

BALDWIN COUNTY PLANNING AND ZONING COMMISSION REGULAR MEETING 10/04/2018

1 CHAIRMAN SAM DAVIS: All in favor, say aye.

2 (Commission Members say "aye" in unison.)

3 CHAIRMAN SAM DAVIS: All opposed?

4 (No response.)

5 CHAIRMAN SAM DAVIS: Okay. Case P-18006 is
6 tabled until the next meeting. And the public hearing
7 will be postponed until the November meeting as well.

8

9 **8B - CASE Z-18041, DORGAN PROPERTY**

10 CHAIRMAN SAM DAVIS: Okay. The next case is
11 Z-18041, Dorgan Property.

12 MR. VINCE JACKSON: The applicant is requesting
13 to re-zone approximately point-nine-five (.95) acres from
14 B-2, which is the Neighborhood Business District, to
15 RSF-4, which is a Single-Family Designation.

16 The purpose of this re-zoning is to allow the
17 applicant to subdivide and create three (3) single-family
18 lots. As proposed, the largest lot would be
19 approximately fifteen thousand, five hundred and
20 ninety-six (15,596) square feet, and the smallest lot
21 would be approximately twelve thousand, five hundred and
22 thirty-three (12,533) square feet.

23 This property is located on the east side of Scenic
24 Highway 98 approximately three hundred fifty (350) feet
25 south of County Road 32 in Planning District 26.

26 And here is the locator map showing the zoning and
27 the location of the subject property. The area that you
28 see hatched, that is showing the boundaries of the Point

1 Clear Battles Wharf Historic District.

2 Any new construction or any renovations to existing
3 structures would be required to adhere before the Baldwin
4 County Architectural Review Board to ensure that the
5 architectural review standards are met.

6 If you will notice, the subject property involves
7 two (2) lots currently zoned B-2. And the zoning across
8 Scenic 98 is RSF-1. There's RSF-1 to the south and RSF-1
9 to the east.

10 Here is the aerial showing the subject property.

11 And this is a proposed layout of what the applicant would
12 ultimately like to do if the re-zoning is approved.

13 This is simply to show you what their plans are. If
14 this re-zoning is approved, then the applicant will
15 present a subdivision plat.

16 This is in the extraterritorial jurisdiction of the
17 City of Fairhope, so it will need to meet City
18 requirements as well as County requirements.

19 If you will notice, the property to the north, which
20 is shown as Lot 4 -- And, again, you're not being asked
21 to review this tonight. I just want to explain a few
22 things.

23 That corner property would remain commercial. It
24 would remain B-2. If you look to the east of the corner
25 parcel, I believe some of you will recognize that
26 property. That was recently considered. It's the
27 property that Mr. Conner mentioned where we had the
28 depth-to-width ratio a while back.

1 That issue was resolved when the regulations were
2 changed and that requirement was removed. And so these
3 lots were recently recorded. They are not part of this
4 development, but they're included to show how the
5 proposed three (3) lots would somewhat mirror what you
6 have on County Road 32. These are pictures of the
7 subject property and the surrounding properties.

8 And the staff recommends that this be approved. I
9 would point out that this is a re-zoning from commercial
10 to residential. These are typically approved without
11 controversy. However, in this case, we do have
12 controversy.

13 There were some letters that were submitted along
14 with the staff report, which you've received copies of.
15 And there were some additional letters which came in
16 today, which I believe were e-mailed to you all. And I
17 believe you should have hardcopies.

18 I will stop my comments for right now. I believe
19 that there are people here who want to address the
20 Commission. So I will -- I have some additional remarks
21 I've prepared, but I think it would probably be best if
22 we proceed with the public hearing. And then I can
23 return, once the public hearing is closed, and address
24 the concerns and perhaps make additional comments.

25 In the meantime, are there any questions for me?

26 COMMISSION MEMBER SPENCE MONROE: Yes. I have
27 one quick one. And this may come up. Lot 2 appears to
28 have a fair amount of flood zone on it, looking at the

1 flood map stuff.

2 MR. VINCE JACKSON: Are you referring to
3 potential wetlands?

4 COMMISSION MEMBER SPENCE MONROE: Yes. Thank
5 you. Yeah.

6 MR. VINCE JACKSON: Yes, sir. What you see on
7 our maps -- on our aerial photography, it means that
8 there are conditions in the area where there is a
9 potential for wetlands to exist.

10 If you look at the proposed layout, which I have on
11 the screen now, that shows you where the wetlands have
12 actually been identified.

13 And so it's actually -- And I believe at some point
14 in the past, there might have been some fill on these
15 plots many years ago. But what you see on this layout
16 before you is where the wetlands actually are.

17 And they have addressed that primarily on Lot 1
18 where they have shown that they would meet the thirty
19 foot (30) wetland setback.

20 So what you see on our aerial does not necessarily
21 mean that there are actually wetlands there. This map
22 that's before you on the screen is a better
23 representation.

24 COMMISSION MEMBER SPENCE MONROE: Thank you.

25 CHAIRMAN SAM DAVIS: Any other questions for
26 Seth [sic] at this point?

27 (No response.)

28 CHAIRMAN SAM DAVIS: Thank you, Seth [sic].

1 We'll open the public hearing at this point.

2 There's two signed up in favor and two signed up in
3 opposition.

4 Scott Hutchinson, would you like to come up?

5 MR. SCOTT HUTCHINSON: Good evening. I'm Scott
6 Hutchinson with Hutchinson, Moore and Rauch. We're the
7 engineers on the project. And I'll just answer any
8 technical questions that you may have, but Jeff Barnes
9 would like to explain the project to you.

10 CHAIRMAN SAM DAVIS: Okay. So let me just do
11 this. Any questions for Scott at this point?

12 (No response.)

13 CHAIRMAN SAM DAVIS: Otherwise, I'll ask Jeff
14 to come up.

15 If you will, just tell us why you want to go from
16 commercial to residential.

17 MR. JEFF BARNES: Yes, sir. I'm Jeff Barnes.
18 I'm with Sterling Properties. But tonight I'm here as a
19 representative of not only the adjacent property owner
20 but the applicant himself, Mr. Norton.

21 It's convenient that the plat is shown before you,
22 because I think it would help if I could just explain a
23 little bit of the history about why we're asking for
24 RSF-4 and kind of where we've gone with this property.

25 But the three lots that front County Road 32, that's
26 approximately one acre that years ago was sold RMF-6
27 allowing for six units per acre as long as the units were
28 connected.

1 So, by right, we had the right to put six units on
2 that acre. We've subdivided those into those three lots,
3 which would give us rights to put duplexes on each of
4 those lots to get our six units.

5 So my partners and myself are trying to come up with
6 a development plan that would be perceived and embraced,
7 I guess, by the community. And we know that commercial
8 is something that they want to avoid and -- But, you
9 know, we needed to come up with a development plan that
10 would hopefully have worked.

11 And so one of the things that we most recently did,
12 I guess, back in the winter, we came up with a concept to
13 develop three duplexes on each of those three lots
14 fronting County Road 32, which would be, you know, a
15 total of six units.

16 And then we left the corner as just a commercial
17 piece with some conception drawings to show, you know,
18 small, you know, well-done commercial structures. They
19 can't be large because of the parameters.

20 And then the acres to the south is just owned by
21 Mr. Dorgan, which is simply labeled preliminary site plan
22 as future. And so I wanted to get the opinion of the
23 Point Clear residents and naming the Point Clear Property
24 Owner's Association to have a meeting with that group or
25 certain representatives of that group.

26 I showed them kind of a color conceptual plan. And
27 I think the takeaway was, you know, we know you have
28 rights to develop the property. One day, we would like

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1 to see, you know, less density, you know, and minimal
2 commercial was the takeaway points, which was no
3 surprise.

4 And so I talked to my partners. We talked to some
5 residential builders. And so we opted to build
6 single-family homes or develop single-family homes on
7 those three lots.

8 We have an arrangement with three local builders.
9 Planning is underway. We've got houses designed, really
10 close to pulling permits. We'll be in a position to do
11 so. And so instead of six units, you know, on those
12 three lots, we're gonna have three single-family homes.

13 And so during this whole process, because of the
14 fact that Mr. Dorgan is an adjacent property owner, he --
15 I wanted to share with him what we were doing. Okay?

16 So when I showed him this -- And at one time, he had
17 plans to develop his B-2 property into a commercial
18 structure of some sort. I wasn't involved at the time
19 but had knowledge of it.

20 I think a lot of people are aware of his wedding
21 business and the fact that he is contemplating a
22 reception hall of some sort there.

23 Anyway, he's no longer in that business. He's, you
24 know, not interested in doing that but would like to
25 participate in a nice development for the community.

26 And he saw what we were doing with the three houses
27 on County Road 32. And he said he would like to do the
28 same thing with a portion of his property with this, once

1 acre -- the point-nine-five (.95) acres that was just
2 before you this evening and build houses there to
3 compliment what we're doing on 32.

4 So I said, well, let's -- And he asked that I would
5 represent him in a sense as the developer and his agent,
6 I guess, to guide him through this development. He said
7 he'll support it. He'll do it. He just doesn't really
8 want to get involved with my initial process.

9 So I hired HMR. They came up with these lots.

10 RSF-4 was selected because a couple of reasons. And I
11 will acknowledge there's not any RSF-4 zoned property in
12 proximity to the site, nor is there any RMH-6.

13 You know, we have RMH-6, which we could have asked
14 for, but I knew that would have been controversial
15 because of the density that that would allow.

16 So RSF-4 seems to be the most logical zoning to
17 allow for the similar and comparable lot width size as
18 what we already had. And the houses would be similar.

19 So that's what the plan was, you know, or is. And
20 so but before we proceeded and before I made application
21 on behalf of Mr. Dorgan to go through this process yet
22 again, you know, I had a couple of meetings with
23 representatives of the Point Clear Property Owner's
24 Association to explain to them what our plan was.

25 And there were some questions about how big are the
26 lots going to be. I explained to them that we were
27 attempting to re-zone to RSF-4. The lots would be, as
28 you see on here, about sixty-six (66) feet wide.

1 And the size -- You know, as Vince has pointed out,
2 there's a twelve thousand, and five hundred (12,500)
3 square foot lot, there's a twelve thousand, six hundred
4 (12,600) square foot lot, and there's a fifteen thousand
5 (15,000) square foot lot.

6 Minimum lot size in RSF-4 would allow us to do
7 something as small as seventy-five hundred (7,500) square
8 feet. And so I think that's where there's been some -- I
9 won't call it miscommunications. It's just kind of where
10 we are.

11 When I left the last meeting with representatives of
12 the Point Clear Property Owner's Association, they were
13 generally pleased that we were considering down-zoning
14 approximately an acre of land from B-2 to a single-family
15 residential zoning.

16 So I advised Mr. Dorgan to proceed with the
17 application. We paid his fee. We submitted this. And
18 then, you know, Vince notified me of some letters when I
19 got the package.

20 And just in corresponding with him, he notified me
21 that there was some concern of RSF-4 because of the lot
22 size that was permissible. So I told him to please share
23 this plat with anybody who has concerns so they could see
24 the lot size that we were going for.

25 The only reason we didn't -- We would be happy to
26 make it contingent upon getting that approved
27 immediately. That's our plan. But the way the dynamics
28 or the way the system works, apparently that's not

1 something that could be done.

2 So here we are tonight. We're asking for approval
3 for these three lots. The size is much larger than the
4 seventy-five hundred (7,500) square foot minimum size
5 that you'll see in the letters. That's what the
6 opposition is all about.

7 Vince can address them and probably explain why
8 we're doing that. I mean, we can't -- You know, we can't
9 really get any more lots. We don't want anymore lots.

10 We want three lots. We don't want five lots. We don't
11 want small lots.

12 We've got -- You know, we feel like this will be a
13 very, you know, tasteful development, the way we've got
14 it laid out. There'll be six houses, total.

15 CHAIRMAN SAM DAVIS: Jeff, I'm getting the
16 sense that we understand where you're going.

17 MR. JEFF BARNES: Okay.

18 CHAIRMAN SAM DAVIS: Can we just open up for
19 questions, if anyone has questions of you?

20 MR. JEFF BARNES: Sure.

21 CHAIRMAN SAM DAVIS: Does anyone have any
22 questions -- not from the audience. This is for the
23 Commission. Does anyone here have any questions for
24 Mr. Barnes?

25 (No response.)

26 CHAIRMAN SAM DAVIS: Okay. Thank you.

27 Scott, do you have anything to add?

28 MR. SCOTT HUTCHINSON: No, sir. But if it's

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1 okay, if we can address any comments from the public
2 hearing, if there's anything we need to answer.

3 CHAIRMAN SAM DAVIS: Oh, yeah. We'll give the
4 opposition time now, and then y'all will get a chance to
5 answer those.

6 I've got Allan Chason and Mr. Feagin. Who wants to
7 go first?

8 MR. FRANK FEAGIN: I'm Frank Feagin with the
9 Point Clear Property Owner's Association. And, Jeff,
10 you're right.

11 We did have some meetings with Jeff. It was
12 probably a little miscommunication. We were under the
13 impression that he was just gonna put a couple of houses
14 there and not go to RS-4.

15 Our primary opposition to this is the RS-4 issue.
16 There's no RS-4 in Point Clear. And the precedent that
17 this may set is troubling to our property owner people.

18 And we represent probably a couple hundred citizens.
19 And when they heard about this going to R-4, they
20 expressed a desire to the property owner's association to
21 let's make our feelings be heard.

22 That's all I have.

23 CHAIRMAN SAM DAVIS: Any questions for
24 Mr. Feagin?

25 (No response.)

26 COMMISSION ARTHUR OKEN: I just want to be
27 clear on what those feelings are.

28 MR. FRANK FEAGIN: Pardon?

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1 COMMISSION ARTHUR OKEN: You said you want to
2 make sure their feelings are expressed. I'm making it
3 clear on what their feelings are.

4 MR. FRANK FEAGIN: Their feelings are that the
5 RS-4 issue to introduce that into Point Clear would set a
6 precedence for further RS-4s in the Point Clear Property
7 Owner's Association. And that affects the density of
8 housing and all that. We're generally an RS-1 or RS-2.
9 There's no RS-4 in that area.

10 COMMISSION MEMBER ARTHUR OKEN: They want to
11 maintain the status quo but not increase the density.

12 MR. FRANK FEAGIN: We don't feel RS-4 is
13 appropriate in our district.

14 COMMISSION ARTHUR OKEN: Thank you, sir.

15 CHAIRMAN SAM DAVIS: Mr. Chason?

16 MR. ALLAN CHASON: Thank you, Mr. Chairman.
17 I'm Allan Chason, and I live just down the street from
18 this property and well familiar with it. As Frank said,
19 I think the opposition here is just the RS-4.

20 Section 19.6 of your zoning ordinance lists about
21 ten factors or so that you look at to decide whether to
22 grant a re-zoning.

23 I've looked at all ten of those factors, and I think
24 there are four of them that are particularly relevant to
25 this issue, the most prominent of which is that if you
26 look at District 26, which runs from the south city
27 limits of Fairhope along Scenic 98 all the way to the
28 mouth of Weeks Bay at Pelican Point.

1 What is that, eight or ten miles, probably?

2 Hundreds and hundreds of lots along that length of that
3 road, not a single one is RS-4, not a single one. RS-4
4 is, in fact, nowhere in District 26.

5 All of the residential lots, there's a few
6 commercial lots, mainly those that like the Wash House
7 that had businesses there before zoning was adopted, very
8 little commercial at all.

9 But of the residential, it's all RS-1 and RS-2.

10 RS-1 allows or requires thirty thousand (30,000) square
11 foot lots. RS-2 requires fifteen thousand (15,000)
12 square foot lots. This is a large lot community. RS-4
13 permits seventy-five hundred (7,500) square foot lots.

14 I have a copy of the zoning map of District 26. And
15 you can look at it and see that all along Scenic 98,
16 there's nothing but yellow and tan. That's R-1 and R-2.

17 The whole length of it, eight or ten miles, whatever
18 it is, is all RS-1 and RS-2. And we think that that's
19 what it ought to stay.

20 That's the way this community has developed since
21 the zoning ordinance was adopted there in 1993. But for
22 twenty-five years, Point Clear has remained a low-density
23 single-family community. And that's what the vast
24 majority of the people there want to continue.

25 One of the other factors that 19.6 references is
26 your master plan. Your master plan that you adopted for
27 Point Clear has it as a low-density, single-family
28 residential community.

1 Probably -- And as a practical matter, what this is
2 about is those three lots. We have no objection to RS-2.
3 We would not object to him re-zoning this to RS-2.

4 The problem is that because of the dimensional
5 requirements of the zoning ordinance, RS-4 -- with RS-4,
6 he can get three lots out of this piece. But RS-2, he
7 can only get two lots.

8 So we're here talking about one lot, is what we're
9 talking about. And maybe you look at us and say, well,
10 why are you making such a fuss over one more house in
11 Point Clear?

12 Well, you're all familiar with the sewage problems
13 that Fairhope has had, the bacteria levels in the bay,
14 the runoff every time we get a big rain.
15 Casey Callaway and Mobile Bay Keepers have to check
16 the bacteria counts all up and down there and the work
17 people down there on the Eastern Shore, whether the
18 children can go swimming in the bay.

19 That's all a function of incident. We've got too
20 many people putting sewage in that sewer system. And the
21 only way to ever get it under control, aside from
22 spending an amount of money that Fairhope doesn't have,
23 is to limit the density over there, to limit the number
24 of people that live on a given size area of land. And
25 this is a way to do it is through the zoning ordinance.
26 And we do not want to increase density.

27 But it's not just this one house on this project.
28 There's a lot of undeveloped land along Scenic 98,

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1 primarily on the east side of 98. And if you introduce
2 RSF-4 to District 26 for the first time in the history of
3 zoning there, you would have no way to say no to the next
4 person that wants to subdivide their property into
5 high-density residential. And so it's the domino effect
6 that we're also concerned about, not just this one house.
7 We're concerned about it, too.

8 But I think the solution to this for everybody is a
9 compromise, which is to say to Jeff, we're happy to grant
10 your re-zoning, but we want it to be rezoned to RSF-2,
11 not RSF-4.

12 You can have two lots or a total of five lots --
13 five houses instead of six. And I don't think that's too
14 much of a sacrifice to ask.

15 I don't know what the additional income would be
16 from the extra lot, but, you know, that's not a reason to
17 re-zone property or not re-zone property.

18 So we thank you for your consideration of the wishes
19 of the hundreds and hundreds of residents of Point Clear.
20 And if you have any questions, I'll try to answer them.

21 CHAIRMAN SAM DAVIS: All right. Any questions
22 for Mr. Chason?

23 COMMISSION MEMBER SPENCE MONROE: Yes. I've
24 got one.

25 Looking at the usable uses that they've got for B-2,
26 which it currently is zoned, bait store, boarding room
27 and lodging house, car wash, several others that I think
28 personally would affect that area a lot worse than three

1 new homes on that property. Just my estimation. What
2 are your thoughts?

3 MR. ALLAN CHASON: I would rather see
4 commercial there than open the door on eight miles of
5 Scenic 98 to RS-4. There is lots and lots of acreage
6 that could be developed into seventy-five hundred lots.

7 In my opinion, I'd rather see a bait store there
8 than all that acreage being high-density residential and
9 more sewage that the sewer cannot handle now being put
10 into that system.

11 COMMISSION MEMBER SPENCE MONROE: So you're
12 thinking that one additional home --

13 MR. ALLAN CHASON: In this case --

14 COMMISSION MEMBER SPENCE MONROE: -- because
15 it's actually one additional home that we're talking
16 about-- would put in more sewage than a bait store or a
17 boarding house.

18 MR. ALLAN CHASON: As I said, it's not just
19 this one -- That's part of it -- but it's the precedent.
20 Because one of the factors that I mentioned that 19.6
21 asks you to look at is what other zoning is adjacent to
22 or in the neighborhood of the property.

23 And so when the next-door neighbor has got twenty
24 (20) acres that he wants to develop, and he wants you to
25 re-zone from R-1 to R-4, and he wants to put twenty times
26 seventy-five hundred, thirty or forty or whatever it is
27 houses there, yes, that bait store would look like a
28 wonderful addition.

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1 CHAIRMAN SAM DAVIS: Any other questions for
2 Mr. Chason?

3 (No response.)

4 CHAIRMAN SAM DAVIS: David, you look like
5 you're contemplating something.

6 ATTORNEY DAVID CONNER: Well, I was gonna say I
7 want to make sure that y'all were dancing to the same
8 song for a second.

9 And what I wanted to clear up and what Allan has got
10 a good point about is that it's not the difference of
11 just one home. If you-all decide to do this, it
12 potentially is setting a precedent in that area that
13 someone else or the next applicant is gonna come in and
14 look at.

15 Now, if you-all are making a recommendation to the
16 County Commission so the County Commission will
17 ultimately decide I see this change coming and this is
18 something that they want to change, then that's something
19 from a policy standpoint they would have to address.

20 But it is something that needs to be considered.
21 Because you're not just talking about one in this case.
22 Because of the size of the lot and the setback
23 requirements and the building width requirements of the
24 lot, it would only be one more home here.

25 The question is when the next one comes up that is
26 larger and could get, you know, what impact or what
27 feeling would you have about that in that location?

28 And that is a unique area in District 26, up and

1 down that road. So that -- In fairness to Jeff, the
2 impact for this particular lot is really not that bad.
3 There's not a big difference between 2 and 3.

4 But the potential ramifications of that decision
5 down the road could be larger than just -- or would be
6 larger than just that one lot.

7 So it's something that -- It's a policy decision
8 that this Commission is gonna have to make for that area.

9 I just want to make sure that y'all were looking on the
10 same thing. It's not just the one. It's the precedent
11 of allowing it here and the next applicant that comes.

12 MR. ALLAN CHASON: You know, seventy-five
13 hundred (7,500) foot lots, that's, what, five (5) units
14 per acre? Five (5) units per acre. So you get a twenty
15 (20) acre a piece on the east side, that's a hundred
16 (100) houses! Now, there's some other dimensional
17 requirements, but that is what -- In my book, that's high
18 density.

19 And, you know, there's been concern in Fairhope over
20 other multi-family priorities, high density. You
21 probably heard about the apartment complex up behind
22 Publix, which is not in District 26. But there was
23 another complex that's gone in on the east side of
24 District 26 there on Section Street.

25 CHAIRMAN SAM DAVIS: Let's kind of stick to the
26 subject rather than getting into all that, if you don't
27 mind.

28 MR. ALLAN CHASON: Sure.

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1 CHAIRMAN SAM DAVIS: Any other questions for
2 Mr. Chason?

3 (No response.)

4 CHAIRMAN SAM DAVIS: All right. Thank you.

5 MR. ALLAN CHASON: Thank you.

6 CHAIRMAN SAM DAVIS: Scott or Jeff, either one
7 wish to address the concerns?

8 MR. JEFF BARNES: Yeah. And I appreciate the
9 concerns. I really do. But I guess at the end of the
10 day, we're -- Mr. Dorgan is agreeing to down-zone this
11 property and take away the threat of B-2 for
12 Single-family Residential.

13 And I don't have a lot of people here tonight to
14 speak in favor of this. But, overwhelmingly, if you go
15 back and look at the case from 2013, when we were trying
16 to get our property rezoned back to B-2, I got twenty
17 letters that were easily, you know, overwhelmingly
18 supportive of Single-family Residential, Single-family
19 Residential. We don't want any commercial. So the
20 residents seem to overwhelmingly support Single-family
21 Residential development.

22 As far as runoff and drainage right now, that one
23 acre of B-2 property, if I understand the regulations
24 properly, we can go up to the sixty percent (60%)
25 coverage on the impervious surface, which is about
26 twenty-five thousand (25,000) square feet.

27 By going to RSF-4, we're limited to point-three-five
28 percent (.35%) or thirty-five percent (35%) coverage,

1 which knocks that down to about fourteen thousand
2 (14,000) square feet. So the impervious area, you know,
3 that's only gonna be a way to improve any threats for
4 that situation.

5 CHAIRMAN SAM DAVIS: Let me ask you to
6 specifically address the concern. I think everybody has
7 stipulated that one extra house on this particular piece
8 of property is no big thing.

9 But what about the concern that they've expressed
10 concerning the other properties, this setting a precedent
11 and opening it up to higher density development in that
12 area?

13 MR. JEFF BARNES: Yeah. I mean, I would --
14 Somebody like Vince could probably better address that.
15 I don't know.

16 CHAIRMAN SAM DAVIS: I'm curious as to how you
17 feel about that.

18 MR. JEFF BARNES: Yeah. I guess having
19 contiguous property zoned that way would be a threat.
20 Sure.

21 CHAIRMAN SAM DAVIS: David didn't understand
22 your answer.

23 My question to him was how he felt about the
24 property owners' concern that because there are large
25 pieces of property that would be in close proximity, if
26 this was re-zoned to RSF-4 and then they requested it and
27 it was granted, how he would feel concerning the higher
28 density in that area, this being a precedent.

1 Any other questions for Jeff?

2 (No response.)

3 CHAIRMAN SAM DAVIS: All right. Scott, you got
4 anything?

5 MR. SCOTT HUTCHINSON: No, sir. I believe
6 Vince may speak to the fact that there's no RSF-4 in this
7 district. It's because it didn't exist when the district
8 was created.

9 But I will just say in my twenty-five years of doing
10 this, I've never run into a bump of going from a
11 commercial zoning down to a Single-family Residential
12 zoning.

13 CHAIRMAN SAM DAVIS: Well, let me ask you to
14 express your personal opinion as to their concern about
15 this setting a precedent, opening the door to other
16 RSF-4s, which is higher density in that area, which is
17 not common to the area.

18 MR. SCOTT HUTCHINSON: Certainly. I can
19 certainly understand the concern with taking RSF-4 all
20 the way down the highway and the density that could
21 create to the properties to the south. However, I don't
22 think doing this will affect that.

23 And I can't speak for that future property. But
24 what we're proposing to do is really not even RSF-4. I
25 mean, these are twelve thousand (12,000), fifteen
26 thousand (15,000) square foot lots.

27 So I don't -- I really don't share that fear that
28 that would -- that this would create some door to be

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1 opened to just continuing on to the south.

2 It's zoned B-2 now. It's not like we're going from
3 R-1 to R-4. That's the thing. If this was zoned R-1 and
4 going to R-4, then you can kind of look, does that
5 continue. It's zoned B-2 now. So you already have that
6 higher-density area already there. So we're actually
7 lessening that. So I don't --

8 CHAIRMAN SAM DAVIS: You're referring to
9 coverage as far as an impervious surface; right?

10 MR. SCOTT HUTCHINSON: Yes, sir. In just
11 general planning where you go from business commercial
12 out to higher-density residential to lower-density
13 residential. So we're already more dense than an RSF-4
14 would create. I really don't think that applies here.

15 CHAIRMAN SAM DAVIS: Any other questions for
16 Scott?

17 COMMISSION MEMBER DANIEL NANCE: Yes. I have a
18 question. According to what we're given, all your lot
19 sizes exceed RSF-3. So why are we going to RSF-4
20 requesting an even smaller lot size?

21 MR. SCOTT HUTCHINSON: The width. The minimal
22 lot width. I can't remember what it is.

23 MR. VINCE JACKSON: The minimum lot width at
24 the building line is one of the dimensional requirements
25 that would need to be met.

26 And for RSF-3 and RSF-2, it's eighty (80) feet at
27 the building line. There's not sufficient area here to
28 get three lots that would have eighty (80) feet in the

1 building line.

2 So the next one down is RSF-4, which allows sixty
3 (60) feet. And I believe these would be about sixty-six
4 (66) feet wide at the building line. But that's the
5 reason they're asking for RSF-4. It's not lot size; it's
6 width at the building line.

7 COMMISSION MEMBER SPENCE MONROE: How wide are
8 these lots?

9 MR. VINCE JACKSON: At the building line, I
10 think they're about sixty-six (66) feet wide. It's a
11 little harder to see on lot one because it's a pie-shaped
12 lot, but it does get wider as it goes back.

13 COMMISSION MEMBER SPENCE MONROE: It's
14 sixty-six (66) on here?

15 MR. VINCE JACKSON: Yes.

16 MR. SCOTT HUTCHINSON: And we're fine with
17 restricting it to the plan that's presented versus
18 just -- I don't know if you can make that conditional or
19 not.

20 ATTORNEY DAVID CONNER: Well, again, this is a
21 recommendation tonight. But I always come back and look
22 at these issues and advise. And Vince does, too.

23 And I understand Vince's recommendation here. And I
24 don't really think anybody can really argue that having
25 one more home on this property is gonna change the world
26 out there. It's not.

27 But on the flip side, you don't look at a piece of
28 property necessarily in isolation as to what this one

1 developer is going to do. I always think that when you
2 look at a zoning request that you're supposed to look at
3 that zoning request and determine whether or not that
4 zoning classification is appropriate for that area, based
5 on how it's developed in that area, the uses in that
6 area, whether you can see that use sustaining itself,
7 whether it's moving or transitioning and you want to
8 bring about a transition over time.

9 I don't think anybody has a question with the
10 development and plan that y'all proposed, but the impact
11 of putting that classification in that area, what impact
12 it has in the future up and down that highway is a policy
13 decision that has to be made.

14 I don't think the impact of what you're proposing to
15 do on that site is a problem. But the impact of putting
16 that classification in that area could be significant.
17 And that's a policy shift, or at least a look that
18 you-all are having to make a recommendation on.

19 The County Commission is gonna have to look hard at
20 it, too. And I don't see and I really would have a hard
21 time if somebody really explained how it would be hard to
22 take one more house there. But it's the fact that we
23 don't have a mechanism to protect.

24 You know, it's not big enough to do a PRD. You've
25 got to have a certain number of acres. We don't have a
26 mechanism in place to allow you to do that simple thing,
27 unless I'm not thinking of it, and at the same time
28 protect from the ill effects that might be the result as

1 to that classification getting there.

2 Again, if the decision is made that we're okay with
3 some of that up and down the road, then that's one thing.
4 But that's a decision that needs to be looked at very
5 closely.

6 MR. SCOTT HUTCHINSON: And I totally get that.
7 My only point is if we were going from RSF-1 to this, I'd
8 say total valid point. But the fact is we're going from
9 a B-2 to this. That negates that argument.

10 ATTORNEY DAVID CONNER: I'm with you that
11 you're up-zoning. But in B-2, can they build -- I'm
12 sorry. Down-zoning. That's right. But could they build
13 a house on B-2?

14 MR. VINCE JACKSON: No. They can do mixed use
15 through a conditional use process where they could have a
16 retail office, something on the bottom floor, and then
17 have a residence above it. They can do residential in
18 that respect.

19 There's also an ability to do a bed and breakfast,
20 that type of thing under B-2. And those are
21 owner-occupied. So those are the only residential-type
22 uses that would be allowed.

23 ATTORNEY DAVID CONNER: So I don't know if you
24 can get six units out of that or five units out of that
25 or not under those scenarios, but it's not likely. So
26 it's just a unique piece of property.

27 You're right in your argument, but because of the
28 size of it and just where it's fitting here in this

1 district, it's a unique property.

2 We're having to try and look at it -- strain to look
3 at it. But the flip side of that, the decision
4 ultimately is -- at the end of the day, is that zoning
5 classification appropriate for that area? And that's the
6 decision that everybody is gonna have to make.

7 COMMISSION MEMBER ARTHUR OKEN: Mr. Chairman,
8 as I understand it, that lot or that property will
9 accommodate three lots. Okay. We're dealing with a lot
10 of conjecture here. But there's always the argument --
11 And this is the kind of the argument that's being raised
12 as the camel's nose.

13 This property is distinguishable. The argument
14 being that it will not actually produce four residences
15 as it would produce a maximum of three. If that's
16 acceptable, if it's distinguishable tonight to justify
17 the re-zoning, it's distinguishable in the future when
18 somebody comes in and says, hey, there's already an R-4
19 there.

20 The argument is, yes, it's an R-4, but the situation
21 was unique. The actuality was or the understanding was
22 that no more than three houses would be there.
23 Therefore, you cannot consider this a bona fide
24 precedent.

25 Okay. I'll just throw that into the mix.

26 MR. SCOTT HUTCHINSON: Good point.

27 CHAIRMAN SAM DAVIS: All right. Any other
28 questions for Scott?

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1 COMMISSION MEMBER ARTHUR OKEN: My question is
2 do the -- can the neighbors live with three, or do they
3 feel -- Do the neighbors feel strongly?

4 I drive through that area just as often as I can.
5 It's so beautiful. And I can understand the neighbors
6 wanting to preserve that ambiance, that space.

7 Are three homes acceptable to those who object to
8 this re-zoning on the basis that R-4 is too much and it
9 puts the camel's nose under the --

10 CHAIRMAN SAM DAVIS: Thank you, Scott.

11 MR. SCOTT HUTCHINSON: Thank you.

12 COMMISSION MEMBER ARTHUR OKEN: That's a
13 question.

14 CHAIRMAN SAM DAVIS: Yes, sir.

15 Would either of you gentlemen like to answer that
16 question; Mr. Chason or Mr. Feagin?

17 I believe the question --

18 MR. ALLAN CHASON: Okay with the three lots?

19 COMMISSION MEMBER ARTHUR OKEN: I understand
20 that four is unacceptable. The reality is that the
21 maximum that could actualize or occur there is three. I
22 understand the neighbors' position.

23 Are three acceptable? In other words, can you live
24 with someone putting three houses on that property?

25 MR. ALLAN CHASON: Well, the only way you can
26 put three houses is to go to RSF-4.

27 CHAIRMAN SAM DAVIS: Speak into the mic.

28 COMMISSION MEMBER ARTHUR OKEN: Yes. But

1 that's my point. If it is zoned RS-4 and three houses --
2 If there were an RSF-3 available that would put three
3 houses, could you live with that?

4 And the reason why I ask that is because in the
5 future, it's arguable that when somebody raises the
6 camel's nose again, the argument is this property was
7 unique. The neighbors will not -- You know, the
8 precedent is not what you would have for the acceptance
9 of four houses.

10 MR. ALLAN CHASON: We would have the same
11 objection to RSF-3 as R-4. The entire District 26 is R-1
12 and R-2. We want everything -- all residential to be R-1
13 and R-2.

14 COMMISSION MEMBER ARTHUR OKEN: So your answer
15 is, no, you don't want three?

16 MR. ALLAN CHASON: Right.

17 COMMISSION MEMBER ARTHUR OKEN: Thank you.

18 CHAIRMAN SAM DAVIS: All right. We'll close
19 the public hearing at this point.

20 Staff, your comments?

21 MR. VINCE JACKSON: I have a few. And I want
22 to be real clear. My point in making these comments is
23 to clarify the staff position on some of these things, to
24 clarify how we look at these things, how the ordinance
25 works. And I want to be sure that people understand that
26 I'm not being argumentative if I say something that's
27 disagreeable.

28 As you know, we did make a recommendation to approve

1 this. That would be a recommendation to the County
2 Commission. I guess one of the first things that jumped
3 out at us is that this would have been -- this is a
4 re-zoning from commercial to single-family.

5 And as I stated at the beginning of my remarks,
6 those are pretty much approved without controversy. And
7 Mr. Barnes hit on this in his comments, but we've had
8 some requests in the past involving re-zonings to
9 commercial.

10 And the overwhelming feedback that we got was that
11 the residents didn't want commercial and that the
12 residents were dissatisfied with the existing B-2. So
13 our thought was that maybe this would receive some
14 support.

15 And we were hopeful. Because it's difficult when we
16 have to get up here and we have people at odds. We do,
17 to some extent, understand the concern about RSF-4 and
18 the lot size that could be allowed, the potential density
19 that could be allowed. But let me explain a little bit
20 about why there is not RSF-4 in Planning District 26.

21 When the zoning was adopted in 1993, there was no
22 RSF-4. It did not exist. It was not created until 2007.
23 So at the time that the zoning was adopted, it couldn't
24 have been applied, because it wasn't there.

25 And so that's the short-answer reason for why it's
26 not there. Now, it's true that the majority -- the vast
27 majority of the residential lots in this planning
28 district are zoned either RSF-1 or RSF-2.

1 Originally, with the original zoning ordinance, they
2 were called R-1 and R-2. But I'm gonna use the current
3 terminology to keep things from being confused.

4 Now, having said that, in 1993, and with the oldest
5 planning districts, each of the planning districts at
6 that time had their own zoning ordinance. And they would
7 pick and choose the designations that they wanted to
8 have.

9 There were two residential designations available
10 for Planning District 26 at the time, and they were
11 called R-1 and R-2. Now, if you look at old ordinances,
12 there's also a mention of an R-1H and R-2H. But what
13 that is, is an acknowledgement that some of the lots are
14 in a historic district and some are not. When you look
15 at the description and the actual area and dimensional
16 requirements, there was no difference.

17 In 1999 -- And let me go back to the individual
18 zoning ordinances for a minute. I think some might argue
19 that there's a value in that, because of the way our
20 zoning is done in a districted approach and because we
21 have so many unique areas in the county.

22 Now, I was not here back then, but I think, from
23 what I've understood talking to people who were here, it
24 became problematic from an administration standpoint
25 because the zoning designations were not uniform from one
26 planning district to another.

27 What you call R-1 or R-2 in one planning district is
28 not necessarily the same as what it was called in another

1 planning district.

2 So in 1999, the County Commission adopted a
3 consolidated zone ordinance, which is the basis of the
4 ordinance that we have now. They're still -- Planning
5 District 26 remained largely the same. There were other
6 changes in the ordinance later on.

7 Like I said, we created RSF-4 in 2007. There was
8 also an amendment where all of the zoning designations
9 became available to all of the planning districts. So
10 that was a change as well. Because up until that time,
11 it had still been the two, even though the nomenclatures
12 had changed.

13 Now, when we talk about RSF-1 and RSF-2 and we talk
14 about it as they were applied to the lots in Planning
15 District 26. I wish I had -- I wish I could put the
16 whole zoning map on the screen for you.

17 Obviously, when we have a re-zoning request, we give
18 the greatest consideration to the properties that
19 immediately abut the property that has been requested for
20 re-zoning. But we tend to take a broader view when we
21 look at the entire planning district.

22 With these lots, these RSF-1 and RSF-2 lots in
23 Planning District 26, some of them exceed the area and
24 dimensional requirements for those designations; but some
25 of them are less, particularly when you look at the RSF-2
26 lots and particularly as you go from the south along the
27 bay.

28 You had some very small lots, smaller than what's

1 been proposed here, less width than what has been
2 proposed here. And those are already zoned RSF-2.

3 Now, there were lots of record at the time the
4 zoning was adopted. And that's fine. You know, given
5 what designations they had at the time, the RSF-2 was the
6 closest to matching those area dimensional requirements.

7 If we had had an RSF-4 back then, it may have been
8 applied. Because if you're looking at lot size and lot
9 width, it would make more sense for a lot of these small
10 lots.

11 Now, there's no reason to re-zone those today. Like
12 I said, they are lots of record. An RSF-2 actually
13 provides a setback variation in Planning District 26 that
14 RSF-4 does not allow.

15 So you take those smaller RSF-2 lots, if you
16 re-zoned them, they would actually lose something -- lose
17 a right that they have now. So we wouldn't make that
18 suggestion. It's just to point out that there are lot
19 sizes throughout Planning District 26 that are actually
20 much closer to the RSF-4.

21 Now, and I can show you one example, and that's a
22 unique example. When you look at Nellie Pose Lane,
23 that's actually a family subdivision, from what I
24 understand.

25 Looking at the property ownership, I believe the
26 owners of those properties are relatives. This was done
27 years ago. This was done before zoning. But the lot
28 there at the corner, the first lot that has frontage on

1 Scenic 98, that lot is not actually part of the
2 subdivision. But that lot is sixty-five hundred (6,500)
3 square feet zoned RSF-2.

4 As you go to the west going towards the bay, all of
5 those lots are small. The majority of them are three
6 thousand, seven hundred sixty-seven point five (3,767.5)
7 square feet. Then they all -- When you get closest to
8 the bay, that's called Lot 10. They all have a
9 fractional ownership. And that lot is their common area.

10 So it is -- Like I said, it's a family subdivision.
11 It existed before zoning. But it's an example of
12 something that's R-2 -- RSF-2, rather, that doesn't
13 really fit. And there are other examples throughout the
14 planning district.

15 Another thing I would point out, when you talk about
16 adjacent zoning designations, the only adjacent
17 designations you have are B-2 and RSF-1. And that is one
18 of the standards that we look at.

19 But, like I said, RSF-4 was not allowed or not
20 available at the time, and so that's not -- that's why
21 it's not there. And it's never been requested for
22 Planning District 26 until now.

23 The only other designation that's close to this
24 property is actually RMS-6, if you look just to the
25 northeast. That's multi-family. That's an even more --
26 or even less restrictive designation than what's been
27 requested here.

28 And those are three lots. They're a little bit

1 larger than the lots that have been proposed for this
2 property. But if you go back and look at the layout,
3 again, it would somewhat mirror each other.

4 So you would have the residential lots. You would
5 keep the commercial on the corner. But as you travel
6 south on Scenic 98, the RSF-4 would provide you with a
7 transition from a B-2 to the north to RSF-1 to the south.
8 And transitional zoning is something that we look upon
9 favorably.

10 Now, I want to address the question of precedent
11 just a minute. And I know this won't necessarily change
12 anybody's mind, and I'm not attempting to do that. I
13 just want to say how we look at precedent -- how we've
14 been told to look at precedent over the years and things
15 that I've heard as I've been in this field.

16 In our review, every zoning case is unique. Every
17 zoning case stands on its own merits. And just because
18 you've done something in one case, that doesn't give any
19 rights or guarantees that you will do it or even
20 recommend doing it in another.

21 Now, I think Mr. Hutchinson and Mr. Oken were kind
22 of hitting on this; is how we would look at this property
23 relative to other properties in the planning district.

24 First and foremost is this is a re-zoning from
25 commercial to residential. For me, that's the biggest
26 distinguishing factor.

27 Now, I don't believe -- If this is ultimately
28 approved by the County Commission, I don't believe that

1 we're gonna suddenly see a rush to re-zone property in
2 this planning district RSF-4.

3 I can't predict the future. And, obviously, there
4 is undeveloped land primarily on the east side. But
5 we've had RSF-4 available for eleven years, and no one
6 has asked for it until now.

7 So I don't think that -- Even if this is re-zoned
8 for this property, I don't think that that necessarily
9 changes anything.

10 But we would also in another area, if you're talking
11 about, like Mr. Hutchinson said, a re-zoning for RSF-1 to
12 RSF-4, we won't look at that in the same way. It's not
13 gonna be reviewed the same. It's not gonna be looked at
14 according to our criteria the same. So just because
15 somebody asks in a different situation doesn't mean that
16 they'll get it.

17 And, again, I'm just trying to explain our
18 perspective. Yes, if we have RSF-4 approved here, that
19 would be a change. That would be something different,
20 introducing a designation into Planning District 26
21 that's not currently there.

22 We do have an RTF-4 in the planning district, but
23 it's in another area. We have an RSF-3, but it's in
24 another area.

25 So it's correct, by in large, we're RSF-1 and RSF-2.
26 But given some of what's out there, we don't feel that
27 this is inconsistent.

28 Once again, you know, I'm not in any way wanting to

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1 be argumentative. I'm just wanting to explain our
2 perspective.

3 CHAIRMAN SAM DAVIS: We appreciate that.

4 MR. VINCE JACKSON: I'll be happy to answer any
5 questions.

6 COMMISSION MEMBER ARTHUR OKEN: I have a
7 comment, Mr. Chairman.

8 CHAIRMAN SAM DAVIS: Yes, sir.

9 COMMISSION MEMBER ARTHUR OKEN: While we're in
10 the remnants of speculation and conjecture, it surprises
11 me that it wasn't designated RSF-1 and the commercial
12 property on the site just simply be considered
13 nonconforming use. That would have protected the --

14 MR. VINCE JACKSON: I think what happened,
15 there are some existing businesses in the planning
16 district and there are -- there were some businesses that
17 were existing at the time of zoning that are not in
18 existence now.

19 When you look at the picture, you can see a
20 commercial building. And I think there was a building
21 that was attached to that or adjacent to it to the north
22 at some point.

23 So I think there was -- In the beginning of zoning,
24 there was an acknowledgement at least that there was some
25 commercial activity, and so they tried to pick up a
26 designation that was at least somewhat protective of
27 those existing uses.

28 But you have some undeveloped parcels that kind of

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1 went along with that. And I think that in those
2 instances, it was map uniformity that they were looking
3 for.

4 But, you know, you're correct. They could have just
5 zoned them, you know, single-family and the uses would be
6 nonconforming. To some extent, some of the uses are
7 nonconforming now, even with the B-2 zoning.

8 But some of them are okay because they're more --
9 Some of them are allowed and some of them are actually
10 B-1 uses. But, yeah, it's something that could be
11 done -- could have been done, but it wasn't.

12 CHAIRMAN SAM DAVIS: Any other questions for
13 Vince?

14) (No response.)

15 CHAIRMAN SAM DAVIS: All right. Thank you,
16 Vince.

17 Any discussion?

18 MR. VINCE JACKSON: Just this would be a
19 recommendation to the County Commission.

20 COMMISSION MEMBER SPENCE MONROE: You can't do
21 a conditional zoning either, can you?

22 MR. VINCE JACKSON: I don't think so. I wish
23 we could.

24 COMMISSION MEMBER SPENCE MONROE: That's fine.

25 MR. VINCE JACKSON: That's a question for
26 Mr. Conner.

27 ATTORNEY DAVID CONNER: I'm gonna tell you that
28 there are some cases out there that purport to give

1 zoning authority the right to do some conditional zoning.
2 But, I mean, that is just fraught with issues from all
3 the way around.

4 And I've always discouraged it. I'm never gonna say
5 never to that, because the right case might come one day
6 for the right project and the right place for that. I
7 would want the County Commission and Planning Commission
8 to have the authority to do that, but that's something
9 that we ought to exercise very rarely.

10 MR. VINCE JACKSON: People ask me about
11 conditional zoning all the time. And sometimes I wish I
12 could tell them yes, because I think it would resolve a
13 lot for us.

14 But I think if we -- at some point in the future, if
15 we got some feedback or had some information that kind of
16 leads us to a different conclusion, I think we would want
17 to make the appropriate changes in our regs to make sure
18 that we're where we would need to be in that regard.

19 ATTORNEY DAVID CONNER: If we were gonna go
20 down that road, Vince is right, we would have to set up
21 some type of procedure and process to address that issue.

22 CHAIRMAN SAM DAVIS: Any other discussion?

23 (No response.)

24 CHAIRMAN SAM DAVIS: All right. Thank you,
25 Vince.

26 Staff has recommended -- This would be a
27 recommendation to the County Commission for approval.
28 Staff has recommended that. Is there a motion to do so?

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1 COMMISSION MEMBER ARTHUR OKEN: So moved,
2 Mr. Chairman.

3 CHAIRMAN SAM DAVIS: There's a motion on the
4 table to recommend this. Is there a second?

5 COMMISSION MEMBER BRANDON BIAS: Second.

6 CHAIRMAN SAM DAVIS: Can I have a rollcall
7 vote?

8 MR. VINCE JACKSON: Mr. Oken?

9 COMMISSION MEMBER ARTHUR OKEN: Yes.

10 MR. VINCE JACKSON: Mr. Monroe?

11 COMMISSION MEMBER SPENCE MONROE: Yes.

12 MR. VINCE JACKSON: Mr. Nance?

13 COMMISSION MEMBER DANIEL NANCE: Yes.

14 MR. VINCE JACKSON: And Mr. Bias?

15 COMMISSION MEMBER BRANDON BIAS: Yes.

16 MR. VINCE JACKSON: Motion carries. And we
17 will take that recommendation to the County Commission.

18 CHAIRMAN SAM DAVIS: Thank you, Vince.

19

20 8C - CASE Z-18044, DCF, LLC PROPERTY

21 MR. VINCE JACKSON: Okay. Our next case is --
22 This one is also in Planning District 26 -- Z-18044, DCF,
23 LLC Property. This is a re-zoning from RSF-1 to RSF-2.

24 The subject property is located on the west side of
25 Scenic Highway 98 south of Battles Road in Planning
26 District 26. This property is, as I stated, currently
27 RSF-1, and it consists of two-point-three (2.3) acres.

28 The reason for this request is to re-zone to the

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1 RSF-2, combine this parcel with an adjacent RSF-2 parcel
2 to the north, and then create -- It's called a family
3 subdivision, but I think the way we would view it is more
4 of a family compound where they would keep the ownership
5 of the property in the family and provide dwelling units
6 for the family members.

7 It's something with the configuration and location
8 of the property and with the configuration that they're
9 looking for that it's a creative thing to do. It's, I
10 think, an admirable goal to keep family property
11 together.

12 It doesn't fit neatly into our conventional
13 regulations. So we talked about -- and we talked about
14 it for a while -- how do we get there? What are some
15 options?

16 And basically what they're attempting to do, as I
17 stated, is re-zone this to RSF-2, combine it with an
18 adjacent RSF-2 parcel that they own, then they would seek
19 approval to do a planned residential development. But
20 there's a variance that would have to go along with that.

21 There is a variance application pending. It was
22 originally scheduled for October 8th, but it's been
23 postponed in order to let the re-zoning application run
24 its course.

25 So it probably will not go before the Board of
26 Adjustment until December. So if they get the re-zoning
27 and then if they get the variance, they will proceed with
28 their PRD site plan.