

Transcript of Meeting with Louisville Metro Government:

Fauxpoints' Request for Formal Determinations in Writing on HRG's Development Plan for property owned by the Rosewood Condominium Council and located at 1505 Rosewood Avenue, Louisville KY 40204

Meeting Date: April 24, 2015 at 2:00 p.m.

Location: Louisville Metro Government
444 South 5th Street, Suite 500, Louisville, KY 40202

Appearances: Jon Baker, Assistant County Attorney

Mike Beard, Plan Review Supervisor for Develop Louisville

Daniel & Elizabeth Fauxpoint of the Rosewood Condominium Council

Mandy Hayden, State Building Inspector, Department of Housing

Robert Kirchdorfer, Director of Codes & Regulations

Emily Liu, Director of Planning & Design Services

Dave Marchal Assistant Director of Develop Louisville

Jim Mims, Director of Develop Louisville

Bill Seiller, Legal Counsel for Daniel & Elizabeth Fauxpoint

Steve Skinner, Supervisor for Building Codes Enforcement

JIM MIMS: Okay. Let's go ahead and get started. Dave Marchal will be joining us.

ELIZABETH FAUXPOINT: That's the wrong plan.

JIM MIMS: Okay. We'll get the right plan up here. But this is a meeting with -- related to the property at 1505 Rosewood Avenue. And here with me today is Robert Kirchdorfer, Bill Seiller, Jon Baker, Elizabeth and Daniel Fauxpoint, and Emily Liu. We'll be joined probably by Dave Marchal and Mike Beard to discuss a number of items related to the property. And I really wanted to get this meeting just we could look at things on the plan and figure out if there remains any problems or any concerns. So, with that, we have, you know, a letter that was written to me back on April 4th, which prompted the scheduling of this meeting. And I guess I want to see in very specific terms as to your concerns, specifically as relates to anything we may have done in error, and then let's try to move on here.

BILL SEILLER: I come a little bit late to the party here. But Daniel and Elizabeth supplied to me, and I know supplied to all of you --

[Mandy Hayden, Steve Skinner, Mike Beard, Dave Marchal join the meeting and introductions are made]

DANIEL FAUXPOINT: Just for information for everybody: we're recording this meeting because we didn't want to have to write, you know, all the time. So we do have a tape recorder here in the middle.

ELIZABETH FAUXPOINT: We can scoot over if you'd like.

DANIEL FAUXPOINT: We have seats here if you want to get a little closer. We can definitely make a bit more room.

JIM MIMS: Okay. So we were just opening it up. And I guess for the benefit of the recorder, we have Mike Beard, Dave Marchal, and I guess from the State...

STEVE SKINNER: Steve Skinner.

MANDY HAYDEN: Mandy Hayden.

JIM MIMS: Okay, Steve Skinner and Mandy Hayden. So again, the purpose of this meeting is to address items reflected in your April 4th letter, which prompted the meeting, and to see if there has been some error on the part of Louisville Metro or the State in terms of addressing any permitting that may have been issued here. So why don't you just walk us through your concerns here, please.

BILL SEILLER: Well, what I was going to say is I came a little bit late to the party, but Daniel and Elizabeth have supplied -- and I'm sure has supplied to all of you -- a 32 page memo outlining what they feel are problems and deviations. And so they really have stated in that memo their position and their objections. And we were hopeful that you all would be in a position to respond to it, and to tell us either where you think that they're off base or where you find things that you think are meritorious and deserve more consideration.

JIM MIMS: Yeah. Well, I think I want to change it around. I want them to explain specifically those concerns. So let's get started here.

DANIEL FAUXPOINT: No, that's not the reason why we came here. What we are asking is for the city to answer a list of 20 or 23 questions. And we're asking for answers in writing. That's all.

JIM MIMS: Okay.

DANIEL FAUXPOINT: So we came here -- we have all of the details, as Bill explained, in this document [4/3/15 *Fauxpoint Memo*]. We came here ready to answer any questions. If there are things that are not clear, that don't make sense --

JIM MIMS: -- well, one concern --

DANIEL FAUXPOINT: -- and our assumption -- I would like to finish, if I may. Our assumption is by the time we leave here today, the city has all the information you need so that you can, indeed, produce a written document with your answers and positions. The problem we've been having is that this has been going on for

over a year. As you know, we've been having issues with this development plans and this has really caused a very unfair burden on my wife, Elizabeth, for the most part, and myself. We've been working on this. This has become a full-time job for her for over a year. And we want to get -- we want to make progress. We've had a lot of difficulties getting, again, written answers from PDS and Codes & Regulations and Develop Louisville. We want those written answers so that we then can take appropriate actions based on these answers. And we're here to help, again, complement the information that is in this package, not to go over it line by line. That was not the intention of the meeting for today. And I believe we had clarified that in the email we sent about two weeks ago when we sent this package originally.

JIM MIMS: Okay. Well, we've gone -- taken extraordinary efforts to put this meeting together. And then for my benefit, if you'll please accommodate me, Daniel, I'd like to understand the specifics of it. Because I've read through this and there are items that I didn't understand. So if you can assist me in terms of understanding, that would be great. All right? And then we'll have a recorded record of this.

BILL SEILLER: Jim, that might be a good place to start. What is it that you didn't understand in the --

JIM MIMS: -- I want to understand all of it, Bill. And so let's start at #1: reinstatement of expired permits. And apparently the issue or the request is: "Enforce KBC §105 regulations related to the proper procedure for obtaining a building permit or provide the applicable regulations that would demonstrate the Department's authority to reinstate suspended [and] expired permits." So I guess -- and this is for my understanding -- I guess we have issued building permits on this property, David?

DAVE MARCHAL: We have in the past. And for this project we issued new permits.

JIM MIMS: And we issued new permits. And that was based on, I guess, it being compliant with -- this would be the Kentucky Building Code?

DAVE MARCHAL: Kentucky Building Code and the approved development plan.

JIM MIMS: Okay. And so that's in accordance with our programmatic agreement -- or our expanded jurisdiction agreement that we have with the Commonwealth of Kentucky to administer the Kentucky Building Code. Is that correct?

STEVE SKINNER: Yeah.

JIM MIMS: Okay.

DANIEL FAUXPOINT: So, just to be sure everybody is on the same page. We're talking about the three building permits that were issued in January of 2014?

DAVE MARCHAL: Right.

DANIEL FAUXPOINT: Okay. So you know that those three permits were then suspended in February of 2014

--

JIM MIMS: -- mm-hm --

DANIEL FAUXPOINT: -- because Elizabeth and I produced a long list of compliance issues related to the plans that had been used to support those permit applications and the issuance of those permits. Everybody remembers that? We were here over a year ago to discuss this. And as a result of that meeting, those three permits got suspended.

JIM MIMS: Okay.

DANIEL FAUXPOINT: Okay. We believe these permits are in a suspended state as of today. Is that correct?

DAVE MARCHAL: Well, they basically were suspended and then they -- the -- we received application for a new structure -- a revised structure. And that takes the place of those old ones. So they're going to remain in a suspended state. And the ones that are now approved under the new building and approved development plan are --

DANIEL FAUXPOINT: -- and so our question was that there are three permits, they have unique IDs, right? 359225, 9231, 9232. We want to be sure that the city -- we want to ask whether the city is planning on reinstating those or issuing new permits under different permit numbers?

DAVE MARCHAL: We've issued new permits under different numbers --

DANIEL FAUXPOINT: -- you have issued new permits? Okay. When was that? Because we've been monitoring the website that lists all -- that are public open records, as far as we know. And I don't think we've seen new permits. When were they issued?

DAVE MARCHAL: Well, I was talking to the reviewer today. And we were wrapping up the documentation, and the new numbers, and making sure that that was all in order. But the review is done. He said he issued them.

ELIZABETH FAUXPOINT: Can I ask --

DAVE MARCHAL: -- so it's done. I'm going to circle back, Mike and I -- Mike is the new plan review supervisor -- circle back with the reviewer to make sure the documentation is finished. But they're essentially issued.

JIM MIMS: Okay.

DAVE MARCHAL: So if they're not issued technically today, they will be in very short order.

JIM MIMS: Okay.

DANIEL FAUXPOINT: Was there --

DAVE MARCHAL: -- and you'll be able to see them.

DANIEL FAUXPOINT: Yeah. Was there a reason why you made the decision to reissue these permits knowing that we were going to meet today and we had all these concerns about these development plans?

DAVE MARCHAL: Well, we had -- they met Kentucky Building Code. And I confirmed with Planning & Design that the development plan that was stamped was official and in good standing and sufficient on which to order the -- issue the new building permits.

JIM MIMS: So you went through the normal process?

DAVE MARCHAL: Sure. Yes.

JIM MIMS: Okay.

DAVE MARCHAL: We did do the extra check on the development plan, and that was also --

JIM MIMS: -- let me be clear on one thing, Daniel, or one major point is that our agreement with the Commonwealth is that if plans are compliant with the Kentucky Building Code, we really have no other choice but to issue permits. And so I'm going to ask Mike and David -- the presumption is that those plans are compliant with the Kentucky Building Code?

MIKE BEARD: Mm-hm.

JIM MIMS: And then the other caveat, of course, is that it has to be compliant with the Land Development Code. And we found that they were compliant with the last plan that was reviewed by Planning & Design.

EMILY LIU: Actually, the Planning Commission hold a public hearing on this.

JIM MIMS: Okay.

EMILY LIU: This was a parking waiver -- actually staff level approval, but then actually it went all the way to the Planning Commission.

BILL SEILLER: Excuse me, I couldn't hear you.

EMILY LIU: Oh, that the parking -- we're talking about the parking waiver. The parking waiver was small enough, was supposed to be like staff level approval. But because of the concerns with the neighbors, we

actually sent it to the Planning Commission. The Planning Commission hold a public hearing and then approved it. So this was approved after public hearing was held.

DANIEL FAUXPOINT: The issue we have with the public hearing, though, Bill, is that they were based on older plans that we did not believe were the most recent and were compliant. Because as far as we know, all the plans we've seen still have compliance issues. One of them, for example, is the fact that they're over the floor area ratio. So how can you guys think that those plans are compliant when we have calculations and submitted a lot of documentation showing that, for example, they exceed the permitted FAR for an R7? How does that -- how do we resolve that difference?

JIM MIMS: Okay, once -- well, we -- first of all, this apparently is not the approved plan.

EMILY LIU: This has signatures on that.

JIM MIMS: Why don't you...

EMILY LIU: It's the same plan. August 21st. What plan you talking about? This is the approved plan.

DANIEL FAUXPOINT: And just to give you another idea, for example, those plans rely on a variance that was granted by BOZA in '05 -- 2005, where BOZA specifically authorized only 11 units on this parcel of land. And you're approving plans for 12 units. We also do not understand that. How do we resolve that difference?

JON BAKER: I guess, what was the BOZA approval?

DANIEL FAUXPOINT: For a private yard area variance reducing the private yard by almost, what, 40%? And they had -- during the hearing the developer had testified that they were going to develop a max of only 11 units at the most. The BOZA board members wrote 11 on the plans, but somehow the plans that ended up being filed with you guys did not have those hand-written corrections. But you have the video of the BOZA hearing with that information.

JON BAKER: I mean, the floor area ratio, we need to figure out from the calculation. I mean, BOZA doesn't have the authority to restrict how many units go there.

EMILU LIU: No.

JON BAKER: So they wouldn't be able to do that anyway. But the accurate floor --

DANIEL FAUXPOINT: -- they weren't restricting anything. They were granting a variance based on the assumption that what they were told was the truth, which is that there was going to be 11 units.

JON BAKER: I understand, and that does sound disingenuous. But I'm just letting you know that the Board doesn't really have the authority to grant a private yard area variance based on a justification related to how many units are going to be there.

DANIEL FAUXPOINT: Okay.

JON BAKER: And I guess they can make an argument through a connection about how they -- each unit would share that private yard area.

DANIEL FAUXPOINT: Mm-hm.

JON BAKER: But what would be more concerning to me is this floor area ratio calculation. And that's something we need to get to the bottom of.

DANIEL FAUXPOINT: Right.

JON BAKER: Especially if the developer was misrepresenting that type of information to us, that's really uncool.

ELIZABETH FAUXPOINT: And it happened on every site plan that HRG had submitted until the building permits were suspended. So if [*background noise*] That plan there [*2005 plan*], it has an existing floor area of 15,863 for the principal structure. It's, in fact, 17,800 and change. And so they've under reported the floor area, the existing floor area, in every plan.

DANIEL FAUXPOINT: For years. And the floor area ratio is just one of the compliance issues that still exist today, right? In addition to this, we've outlined the fact that there are over a dozen uncured violations that exist

today. And we do not believe, based on the statutes, that it is possible to issue new permits related to, you know -- to a developer who has currently open, uncured, outstanding violations. So we'd like to understand that also.

JIM MIMS: Okay. Well, let's get through this. We'll leave the floor area --

JON BAKER: -- real quick, for a timeline. Where is he in the process of -- I mean, is there -- that second structure that he was getting approvals for that was related to the parking waivers, has he started on that? No?

ELIZABETH FAUXPOINT: No.

DANIEL FAUXPOINT: He was waiting on getting permits.

JON BAKER: No, waiting on permits. I'm just getting caught up on the timeline here.

DANIEL FAUXPOINT: If they were issued today or yesterday, he's going to be trying -- he's going to be starting any day, I suppose.

JON BAKER: Okay. Go ahead, sorry. Go ahead. I just want to make sure where we are on the timeline, where the developer is looking to go, because -- has he applied for those permits?

DAVE MARCHAL: Mm-hm. He's applied for them, yeah.

JON BAKER: Have they been issued?

DAVE MARCHAL: They've been issued. I was just checking with our reviewer, Mike. We need to make sure the final documentation is done. If they can't see them on the website, that brings a question to my mind. But the review is done. So it's at issuance stage, I think.

DANIEL FAUXPOINT: We recommend you do not fully issue them until we've resolved those existing compliance issues.

JON BAKER: Well, I think that our side, we'll do that too, based on the information that's provided. We have to verify that FAR because that right there, in and of itself, is a reason to say hold on, get us the accurate information. Because it's going on the same parcel, is it not?

DANIEL FAUXPOINT: Yeah.

JON BAKER: It's an existing condominium regime. So...

JIM MIMS: Okay. So the -- this says the existing building is 17,829, which I think that's what you believe is the correct size, Elizabeth?

ELIZABETH FAUXPOINT: That's right.

JIM MIMS: Okay. And the proposed new building is 4,788. Brings the total building area up to 22,617. This property is...

ELIZABETH FAUXPOINT: 21,423. And I don't believe they're including the square footage for the existing carriage house, which is 755 square feet. It has to be included in the FAR. So anything over 21,423 is --

JIM MIMS: -- FAR is 1 here? Is that right, Emily? FAR in R7, is it 1?

EMILY LIU: R7, I'll double-check.

DANIEL FAUXPOINT: It is 1.

EMILY LIU: It is...

JON BAKER: It's R7.

JIM MIMS: Okay. Yeah.

JON BAKER: No, what is that? What is the FAR?

EMILY LIU: 1 FAR.

JIM MIMS: Okay. All right.

DANIEL FAUXPOINT: In terms of the... so, what's the best way to get to the exact number, for example? Because one of the problems we've been having is we cannot get accurate square footage information from HRG.

JIM MIMS: Yeah, sure. It's -- here again, if it is as you've indicated -- or as the plan indicates, the total building square footage is 22,617. The site area is... I don't see right off the bat.

ELIZABETH FAUXPOINT: It's 21,423.

JIM MIMS: Private yard area required -- yeah, and again, it shows 21,423. In that particular area I'd have to actually, you know, go over boundaries as to -- I'd have to confirm that. But if that's the case, then yeah, we have more building here than what the FAR allows.

ELIZABETH FAUXPOINT: But is this the plan that you've issued building permits for today? Because he has submitted a different plan. It has a very large covered porch. This [*pointing to the loading/service area depicted in August 2014 site plan*] has already been confirmed by Joe Reverman as area that is not allowed to be qualified as private yard. There are a lot of problems with this plan. And that's not the one he submitted in December.

DANIEL FAUXPOINT: Yeah, you couldn't -- you guys couldn't issue permits based on that. Those are not his latest site plans. And this specific plan is not in compliance with his PYA variance.

JIM MIMS: Okay. Let's go on to question number 2. That's a good point.

DANIEL FAUXPOINT: Just in terms of the zoning violations, you know, they're more than the FAR and the PYA that are outstanding today.

ELIZABETH FAUXPOINT: Well, there are quite a few zoning violations that exist on the property today. I don't know if you want me to --

JIM MIMS: -- okay, so we're down here.

ELIZABETH FAUXPOINT: -- go through --

JIM MIMS: -- no, we're going down to 1b: Expiration of HRG's development plan: "Formal acknowledgement by the Department that the development plan of January 2013 expired in January of this year." So help me out. I thought that he went back through a parking waiver and a development plan approval. Is that right, Emily?

EMILY LIU: Yes.

DANIEL FAUXPOINT: It was in August.

JIM MIMS: It was in August?

EMILY LIU: They had a parking waiver. That's the date here.

DANIEL FAUXPOINT: But that [*Tree Canopy/Landscape Plan, February 2015*] is a different plan. So when they were in front of the Planning Commission, I don't believe that this was the plan that they showed, or was it?

EMILY LIU: This is the one that was approved.

DANIEL FAUXPOINT: Yeah. And then one of the questions we're having is: do they have somewhere, something that is actually their formal development plan? I don't think we've seen a collection of documents that is the HRG Development Plan, official, right? This is just a site plan. We do not believe that a single site plan on its own constitutes the entirety of the development plan, or does it?

JIM MIMS: Normally it does. Why would you say that, Daniel?

ELIZABETH FAUXPOINT: Well, there's nothing about drainage, there's nothing about erosion --

JIM MIMS: -- those would be site construction plans.

DANIEL FAUXPOINT: There's no landscaping plan, for example.

JIM MIMS: That's separate.

ELIZABETH FAUXPOINT: Well, that's what we mean. All of those elements that aren't --

JIM MIMS: -- okay. All right. You're talking about construction plans.

ELIZABETH FAUXPOINT: -- addressed here [*referring to August 2014 plan*].

EMILY LIU: That's the approved plan. There is the Tree Preservation Plan, but that's different plan. I thought we're talking about the -- this is the development plan. If you want to talk about Tree Preservation Plan, that's something else that was approved [*background noise*]. But that's separate.

ELIZABETH FAUXPOINT: But you can see that this building --

EMILY LIU: -- well, this is more detailed.

ELIZABETH FAUXPOINT: But it's still not --

DANIEL FAUXPOINT: But it's not the same --

ELIZABETH FAUXPOINT: -- it's a different building.

DANIEL FAUXPOINT: Yeah, it's not the same building. It's not the same dimensions. You can see, for example, that this says 57 feet. Here it says 47. So really, it's the same problem and the same pattern with HRG: no consistency, no reliable information, switching plans around, and decisions being made on a collection of documents that are not even consistent internally.

JIM MIMS: Okay.

DANIEL FAUXPOINT: And in addition to that, we're under the impression that all applications have expired. All permits that have been issued previously, like grading permits, had also expired because of the amount of time that had elapsed.

EMILY LIU: I want to clarify: this is the plan approved [*August 2014 plan*]. This is approved plan --

JIM MIMS: -- the approved plan.

EMILY LIU: -- by the Planning Commission. An applicant always come back with construction plans at later stage. It could be more detailed. It could be little bit different. This one shows -- there's no landscaping. This one shows a lot more information. It's a different purpose. It's not serving the same purposes.

ELIZABETH FAUXPOINT: What you're saying makes sense. What I'm saying is the building is altogether different. The private yard area is different.

JON BAKER: Are they representing things on their plan that they didn't get approved for?

ELIZABETH FAUXPOINT: I could -- yes. I mean, yes. I could -- you can just look at --

DANIEL FAUXPOINT: -- so for example on this one, again, they're not compliant with the private yard area variance.

JIM MIMS: Well, so -- and we will -- and let me be clear about this: we will approve landscape plans that are different than the development plan.

EMILY LIU: Right.

JIM MIMS: If -- and again, this is where we have the latitude of looking at the plan and saying: "is it reasonably consistent with the development plan?" Particularly if it shows a smaller building or a wider yard or something like that. So, the expectation is that, you know, we will approve a plan that could be different.

ELIZABETH FAUXPOINT: Well, how do you decide between those two buildings? Which is the building he's actually going to build? This is more recent [*Tree Canopy/Landscape Plan, February 2015*], and this one --

EMILY LIU: -- this is for landscaping purposes. This is a landscaping plan.

DANIEL FAUXPOINT: So I guess the other question would be: in the building permits that are about to be issued, what is the floor area that those permits authorize for each floor?

DAVE MARCHAL: The plan that we have is the approved, latest stamped development plan.

JIM MIMS: Yeah, it'd be this one [*points to the August 2014 plan*].

DAVE MARCHAL: That's the one we go by.

JON BAKER: I guess this is a general question. It does beg the question -- I mean, even if it is a landscaping plan, why would someone represent a completely -- not completely -- but a different building? Why wouldn't they just carbon copy that and stick it on, since that's the later approved plan or later submitted plan? I just don't understand why someone would show a different building on a landscape plan, which is important as for landscaping because that's what it's going to be used for. And if that was approved after --

JIM MIMS: -- it did show --

JON BAKER: -- or submitted after the --

JIM MIMS: -- it did show some offsets and things like that, Jon. And you know -- in other words, it's showing offsets and porches, and you know, just -- you know, from my limited experience I've had in the development business, you know, as you move from a preliminary or concept type of plan and begin putting it into specific foundation plans, you do have these changes.

EMILY LIU: More details oriented.

JIM MIMS: More details and so forth. And that's what we're always called upon from staff as to interpret the plans as best we can.

JON BAKER: And they're maintaining, I guess, the same square footage and numbers --

JIM MIMS: -- right, it seems so.

ELIZABETH FAUXPOINT: But they're not the same numbers. They're not the same dimensions. It's not the same porch. It's not the same yard.

JIM MIMS: In fact, it looks like it's a little less but, you know.

ELIZABETH FAUXPOINT: But the covered porch is actually a really big issue with us and the whole neighborhood. This new porch on the latest --

JIM MIMS: -- on the landscape plan, yeah --

ELIZABETH FAUXPOINT: -- the landscape plan. It's 282 square feet. The adjacent property, their porch is 40. The Rosewood itself is 70 square feet. And this one in the middle is [280].

JIM MIMS: Yeah, it sounds pretty good to me.

ELIZABETH FAUXPOINT: Well, not if you want balance and compatibility and continuity on your street, it doesn't.

JIM MIMS: Sure.

ELIZABETH FAUXPOINT: But more importantly, Joe Reverman explained that they're going to build external stairs. Not internal, but stairs on the outside. And that's the explanation for why this porch is so large.

JIM MIMS: Okay.

ELIZABETH FAUXPOINT: Also, if -- I don't know what they mean by *covered*, but if it's enclosed, then it would count towards the floor area. Also, there are balconies in the last design [*2013 approved building drawings*]. If those are enclosed, they would count also. So you cannot really tell from -- well, either plan, but mostly especially that [*pointing to Tree Canopy/Landscape Plan, February 2015*] -- you really cannot -- there's not enough information to know what the intended floor area is for that building.

JIM MIMS: And that -- yeah, sure. Okay.

EMILY LIU: So when we approve the building permits, we also double-check the floor area ratio, right, in this case? In every case basically.

DAVE MARCHAL: No, what we do is we check the foundation plan --

EMILY LIU: -- Mm-hm.

DAVE MARCHAL: -- the floor plan, and look at the overall dimensions. And if they match what's on the development plan, then we go. We don't double-check, you know, the numbers --

JIM MIMS: -- the calculations on the approved plan --

DAVE MARCHAL: -- when we get an approved plan with a footprint --

EMILY LIU: -- but if they meet --

DAVE MARCHAL: -- generally if it is -- if they bring it in and its massaged the final details to where it's actually a smaller building, then we -- we'll go with it.

EMILY LIU: Okay.

DAVE MARCHAL: If it's bigger, you know, then we'll, you know, raise the flag.

JIM MIMS: Sure.

DAVE MARCHAL: It's kind of a tier point, Jim. I mean, if they develop a project and fine tune the details, and there -- you know, some minor changes happen. But if it's generally a smaller building, we'll roll with it.

JIM MIMS: Okay. Well, and I mean, -- I think the big question is it appears that we have a floor area ratio that was maybe overlooked in terms of they're exceeding that.

EMILY LIU: Well, it's not on -- the plan says gross acreage: 21,423 square feet. The proposed new building -
- this new building: total building square feet: 21,374. So it's slightly less than 1.0.

ELIZABETH FAUXPOINT: But if I could point out: they're not including the square footage for the carriage house in the total calculations. So they need to add 755 square feet to that. But what I'm saying is: you don't actually know what the floor area of the proposed building is because so much of it can be enclosed. And if you had read this [4/3/15 *Fauxpoint Memo*] carefully, you would understand that this developer has a pattern of presenting one plan and then building something entirely different.

JIM MIMS: Hm.

ELIZABETH FAUXPOINT: And that's one of the reasons actually why we're here is because there are multiple structures that are on this property that there was no building permit for, there were no inspections. So, you

have to look at the pattern and this is what this document [4/3/15 *Fauxpoint Memo*] was about, is trying to demonstrate to you that you can't go by these plans that they're submitting.

JIM MIMS: Yeah.

ELIZABETH FAUXPOINT: You have to ask more critical questions.

JIM MIMS: Okay. And you're -- and when we see that 21,000, we assume it includes all the carriage houses. You're -- I don't know that we -- have we -- we probably didn't put a scale -- put a scale to these [outposts?]. If it was, that wouldn't be a surveyed, you know, floor plan. We wouldn't ordinarily do that.

ELIZABETH FAUXPOINT: No, just for accessory apartments, I understand that they don't count towards the floor area. But this is one of the condominium units. It's not a small, tiny apartment. It is --

JIM MIMS: -- sure. Yeah --

ELIZABETH FAUXPOINT: -- absolutely part of our condo regime.

JIM MIMS: Okay.

ELIZABETH FAUXPOINT: And it's a dwelling unit that needs to be included in the floor area.

DANIEL FAUXPOINT: And those [280] square feet of that porch that could count against the FAR if it ends up being enclosed. That's not included in those numbers either.

JIM MIMS: Yeah.

DANIEL FAUXPOINT: So you're talking about close to 1,000 additional square feet.

JIM MIMS: Yeah, well, we'll check the floor area ratio and we'll check the covered porch to see if it's enclosed, and that should show up on the building plans that were submitted.

ELIZABETH FAUXPOINT: When were they submitted?

JIM MIMS: The building plans?

JON BAKER: You don't have the construction documents?

JIM MIMS: I don't know when the plans were --

DANIEL FAUXPOINT: Could we get a copy of those?

DAVE MARCHAL: Two weeks ago. Yeah, within the past couple of weeks. We usually do those [in time?].

ELIZABETH FAUXPOINT: Is it possible to see them?

DAVE MARCHAL: Hm?

DANIEL FAUXPOINT: Are we allowed to get a copy of them?

DAVE MARCHAL: Yeah, we usually do that through the open records requests for building plans.

ELIZABETH FAUXPOINT: I've already asked for those plans through all the official channels. Could we get a copy before we leave?

DAVE MARCHAL: Have we -- have you filed an open records request recently?

ELIZABETH FAUXPOINT: Yes. There are two that the city hasn't responded to.

DAVE MARCHAL: Okay, let me check on the status of those and make sure that these line up with those requests, and make sure we're giving the responsive records in the appropriate amount of time.

JIM MIMS: Sure, that's fine.

DAVE MARCHAL: But I don't know if I can do that today. Let me --

BILL SEILLER: How do you all handle -- and I'm not familiar with this particular plan. But how do you handle where you have a balcony that can be enclosed? Because, you know, there are lots and lots of buildings where somebody will leave it open and somebody else will enclose it to make another room. How do you all deal with that?

JIM MIMS: It's probably ad hoc, you know, from the standpoint that if somebody was enclosing a balcony, you know, it would be up to somebody to report them, you know, hey, this -- you know, "this guy, you know, is enclosing this balcony." Otherwise, you know, we would expect that that person would come in and get a building permit to do that. So, let's take -- let's use this as an example, this porch here, the one that's shown on the other plan. If this developer were to come back afterwards and start framing it up and putting materials up that would enclose that, then that would ordinarily require a building permit. And it would be up to the neighborhood to report it to us if they did not believe you got a building permit.

JON BAKER: A lot of problems with those types of situations, Bill, is you get a lot of homeowners that rely on contractors that assure the homeowners that they're going to get a permit but they never do. And so the homeowner actually thinks everything is in line when, in fact, it's not. I suspect with this case, if anything gets enclosed --

JIM MIMS: -- oh, we'll know about it.

EMILY LIU: We'll know about it.

JON BAKER: You'll know about it.

ELIZABETH FAUXPOINT: Can I just ask: what is the city's position on building without permits? Is that a problem to build multiple structures without getting a building permit or inspections?

JIM MIMS: We expect the people that are building buildings that wouldn't ordinarily require permit to get a permit.

ELIZABETH FAUXPOINT: And if they don't, which HRG didn't, why has the city issued -- why did you guys issue building permits today?

EMILY LIU: What type of building are you talking about without permits?

ELIZABETH FAUXPOINT: If you go to Section 5 of the document [4/3/15 *Fauxpoint Memo*], I've explained every structure that was built without permits.

EMILY LIU: There are some exclusions that are small, like 200 square feet.

DAVE MARCHAL: No, these are bigger. I'd -- so I need to go into that section and do some investigation on those.

DANIEL FAUXPOINT: And we've made open records requests also to ask for the corresponding building permit applications and the building permits themselves. And as far as we know [you] haven't been able to locate them.

ELIZABETH FAUXPOINT: I did the open records request. I got 84 pages of documents.

JIM MIMS: Hm.

ELIZABETH FAUXPOINT: And none of those structures that I believe were constructed without a permit -- it's not in there. They're all listed in there [4/3/15 *Fauxpoint Memo*]. There are pictures of every structure on the disk of supporting documents. I have before and after pictures taken by the PVA, which shows all of these structures being built.

JIM MIMS: Okay. We'll follow up on that.

JON BAKER: This is all on the same parcel?

DANIEL FAUXPOINT: Yep.

JON BAKER: How many structures are on the parcel?

ELIZABETH FAUXPOINT: Well, there is the principal building, there's a carriage house attached to [two] garages, and then there's a separate garage --

JON BAKER: I'm just trying to orientate myself. Is the main structure -- if you're going towards -- does the backyard back up on Tyler or is it on the other side?

ELIZABETH FAUXPOINT: No. Well, here. [*referring to August 2014 site plan*] This is Rosewood.

JON BAKER: Right. And what's over here?

ELIZABETH FAUXPOINT: and then this would be Goddard.

JON BAKER: Okay.

ELIZABETH FAUXPOINT: So Tyler Parkway would be --

JON BAKER: -- got you. So this is on --

ELIZABETH FAUXPOINT: -- more over here.

JON BAKER: Got you. I know where we are.

ELIZABETH FAUXPOINT: The structures that I'm talking about is: for one, a roof deck, there was no permit for that. A garage, no permit for that. He -- they reconstructed the carriage house significantly. They changed the entrance from one side to another. In the back of the principal building, there are five sun rooms that were added, which also expands the floor area because they're all enclosed. The PVA took pictures of that while they were under construction. There's also an addition to Unit #2 that now encroaches on the LBA over here. There's also a bedroom in the basement that is part of Unit #3 that wasn't in the work -- so all this work I'm describing wasn't covered under --

JON BAKER: -- was not permitted?

ELIZABETH FAUXPOINT: -- no. And I'm just surprised that you [*directed to Jim Mims*] would issue building permits without first addressing this. As a layperson, this seems like a pretty big deal.

JIM MIMS: Yeah. Yeah, well, again, we'll verify. A lot of times we don't know about these additions.

DANIEL FAUXPOINT: Well, but those --

ELIZABETH FAUXPOINT: -- but it's all here [*pointing to the 4/3/15 Fauxpoint Memo*].

DANIEL FAUXPOINT: Yeah, and we've mentioned those to you two weeks ago and you were ready to issue those permits.

ELIZABETH FAUXPOINT: And also, there's a possible sinkhole. I don't know if you got to that part.

DANIEL FAUXPOINT: Yeah, we want to continue going through the list, I think.

JIM MIMS: Yeah, let's go through the list. That's what we're doing here. All right. And so we're now on 2: Category 3 Review: "Designate a Category 3 Review to HRG's comprehensive development plan."

DANIEL FAUXPOINT: I'd like to wait for [Jon Baker] to come back to discuss this because I think it's an important one.

JIM MIMS: Yeah. Sure.

EMILY LIU: I'm sorry, I reserved one hour, so I have to leave at 3:00. I only have an hour. If you want to reschedule, I'll be back with Joe Reverman. He's actually supposed to be here, too.

JIM MIMS: Yeah, we'll work --

EMILY LIU: -- he's out of the country right now.

JIM MIMS: We'll work until 3:00 or -- soon we'll resume. This may be a project.

DAVE MARCHAL: I've already got Section 5, you know, on my list of follow-up items.

JIM MIMS: Okay, so all of Section -- that's 5a, 5b --

DANIEL FAUXPOINT: 5a to 5g. In addition to the lack of permits, there are no inspections that we could find for a number of those structures, so --

JIM MIMS: -- typically, if we don't issue a permit, we wouldn't inspect it. You know, so...

DANIEL FAUXPOINT: That would make sense.

ELIZABETH FAUXPOINT: But there were also some incomplete inspections on the work that was covered under the permit.

JIM MIMS: Is that on the list here about incomplete inspections?

ELIZABETH FAUXPOINT: It is, yes.

DANIEL FAUXPOINT: It's 5g, actually.

ELIZABETH FAUXPOINT: The reason why we're asking for some sort of performance bond is because we have had a lot of problems with things that were inspected and they passed final inspection, and then shortly thereafter there were some major malfunctions, such as the sprinkler system, the elevator system, some exterior stairs that I believe received only a partial pass. But there was -- they still got a Certificate of Acceptance, but it was issued after four of the units had already been sold. And a Certificate of Occupancy, after all but one of the units had been sold and occupied.

JIM MIMS: Okay.

ELIZABETH FAUXPOINT: So we're concerned about not having rigorous inspections.

JIM MIMS: Okay.

ELIZABETH FAUXPOINT: We don't want that to happen again with this new building.

JIM MIMS: Sure. All right. So here we are at Item #2: Category 3 Review. And I guess the question is: did an additional Category 3 Review occur with this plan, or was it --

ELIZABETH FAUXPOINT: -- no.

JIM MIMS: -- was it -- what was the question there?

ELIZABETH FAUXPOINT: No, we're asking if it could be reviewed more thoroughly because the way that this plan advanced over the course over many years, it was fragmented, in pieces. And so, for example, they started off saying this is an interior renovation. We're not expanding the floor area. We're staying all inside. We're just

converting. So after that building permit was issued, then they came to BOZA and they came up with the site plan to support the variances and the waiver. What I don't think Planning & Design understood at the time was that this wasn't an interior renovation project. It was creating an expandable condominium regime to contain 10 or more units. That was never clear from the start. And it didn't trigger the threshold that it should have, whether it was 10 units or more, or 10 lots or however you want -- parcels. And so it only -- so it's never received the review that I think is applicable just by the threshold table.

JIM MIMS: Sure.

DANIEL FAUXPOINT: Yeah, I guess we could say that we are asking for a Category 3 Review because we believe this project meets the criteria that triggers those type of reviews. And if the city doesn't think that is the case, we'd like to understand why.

JIM MIMS: Sure. All right.

ROBERT KIRCHDORFER: Wouldn't the last review when it came to the Planning Commission --

EMILY LIU: -- yeah, that would function as --

ROBERT KIRCHDORFER: -- that would have been even more than a Category 3 --

EMILY LIU: -- that would function the same. The development plan Category 3 only if you don't have any other waivers or variances. But this one is approved as a parking waiver and also as a development plan. So that would be.

ELIZABETH FAUXPOINT: Right. The problem the neighborhood had with the Planning Commission hearing was that it was not asking: is this a good development plan; does it meet the requirements of the Comprehensive Plan; what do the neighbors think of it; are there violations that are existing? Go ahead.

DANIEL FAUXPOINT: I want to ask a question. So, what does a Category 3 Review look like? That's probably, you know, a number of steps --

EMILY LIU: It's a ministerial review.

[unidentified speaker]: -- administrative --

EMILY LIU: -- it's ministerial review.

DANIEL FAUXPOINT: -- I believe -- I thought --

EMILY LIU: -- the Comprehensive Plan does not come into play.

DANIEL FAUXPOINT: I thought the public was supposed to be involved.

ELIZABETH FAUXPOINT: But would the Planning Commission hear -- would there be a big picture review of it rather than --

JON BAKER: Uh-uh.

ELIZABETH FAUXPOINT: -- just taking little pieces of it like parking? Because we only could talk about parking.

JON BAKER: Right.

ELIZABETH FAUXPOINT: And that was the frustration. We wanted to explain that -- we had half our neighborhood there --

JIM MIMS: -- huh.

ELIZABETH FAUXPOINT: -- to explain why they were opposed to this development. We had a lot of data, a lot of facts [*referring to the Rosewood Council's Opposition Statement; Response to Staff Report; and supporting documentation*] that the Commissioners did not get until the day of the hearing, even though we had submitted it a week in advance. So we were hamstrung. We could only talk about parking. We could never actually talk about the development itself. And so the neighborhood -- and I am speaking on behalf of the neighborhood -- would like to have some say-so, some input, some involvement.

JIM MIMS: Well, I would have though the hearing would have had that.

EMILY LIU: Yeah.

JIM MIMS: But I guess -- I didn't go to the hearing.

JON BAKER: Well, unfortunately, with Category 3 cases, what essentially what that is that it's counting on a date, depending when that property was zoned. All properties now that get zoned are Plan Certain. Those -- when those get rezoned, and those development plans that go with those rezonings, those type of conversations we have. There are certain properties out in Louisville that have pre-dated that requirement and have maintained the zoning since then.

And so what happens is they don't have a Plan Certain development plan with all those details on it that you see with Plan Certain. Those are the Category 3 plans, which when they do file something for additional development, it's typically not a discretionary decision. We're matching boxes with building code and with the Land Development Code, but there's no ability for the Planning Commission or a committee thereof to say, "well, you know what, we see what you're doing here but we think you need more buffering over here. Or we don't like what you're doing over here with the parking." They don't have that authority with Category 3 type cases.

And so basically what happens is when they meet a certain threshold for square footage or something else that requires them to do a plan, that's what we get. And you don't get that holistic type discussion. And it's very hard for someone in the neighborhood, like where you guys are, to understand that because you would envision a new project or something like that having that type of nailed down detail. I mean, I can understand why you're frustrated, especially with this type of Category 3. And it's a common misunderstanding. Even people on our Metro Council don't understand the difference between a Category 3 and a Plan Certain development plan.

ELIZABETH FAUXPOINT: So you're saying because it was zoned -- rezoned in 1971, before the existence of Plan Certain that it falls out of that comprehensive, holistic --

JON BAKER: -- the requirement to do Plan Certain plans, yeah. There's a lot -- they're peppered out throughout Louisville Metro and there's a lot of Category 3 type properties out there.

JIM MIMS: Okay, so are we saying that you're not going to get a Category 3 review. You got a hearing on the parking waiver, and the recording will just have to tell that story.

DANIEL FAUXPOINT: Fair enough.

JIM MIMS: All right. So then we come into Item #3: origination of the certified Land Use Restriction: "Identify the person or entity responsible for preparing the contents of the recorded LUR. Impose the appropriate penalties and instruct HRG to cure the improper filing." Okay, so the land use restrictions, were they filed in conjunction with what, the condominium? Explain to us what's going on.

ELIZABETH FAUXPOINT: It was filed in August of 2005, a few months after the BOZA hearing. The problem with what was filed is that -- the point of this Land Use Restriction being recorded in the county records is to give the public notice that there is, for example, a development plan, which there was, but this was not reflected on the LUR that was recorded. The name of the project wasn't reflected on it and the case number was wrong. So, it's a problem because if you are a potential buyer and you're looking to the county records, the LUR that was filed by Planning & Design doesn't point to the existence of this development plan. And unfortunately, neither does the condo plat that was filed. It doesn't depict the building either. So as a buyer, you don't actually know that there's been a plan that's been approved. And you can't tell from the county records, and that's really what the point of the land records are. So this question is: who prepared this document? Because the document is so defective. It wasn't clear if it was just filed by Planning & Design or if Planning & Design actually put the information together.

EMILY LIU: We put the information together, yes. Usually that's very brief. I'm not familiar with the specific LUR. Just like you said, after this is approved, we put the -- for the variance, put the docket number, and basically put people on notice that this application is filed. If you need additional information come to our office and you'll get it. Generally speaking, there's more than waiver and zoning related to a site, which got recorded.

Some other action does not get recorded. Usually people come here, they look up the whole -- what we do is that we search the address, saying "you want to look at this site," and the address will show all the actions. And a lot of actions that do not get recorded, you can search for that, too. But that's mostly --

JIM MIMS: -- so when we file a Land Use Restriction, we more than ordinarily attach the plan to the land use --

EMILY LIU: -- no, no we don't. Just like a paragraph saying --

JIM MIMS: -- okay. There's been action --

EMILY LIU: -- come to our office and search that.

ELIZABETH FAUXPOINT: That's the problem, though. It doesn't actually reflect that there was an approved development plan.

EMILY LIU: But usually people will come here, they will see that. It's just saying --

ELIZABETH FAUXPOINT: -- but on the designated form there's a box and you can check off. One of the restrictions is a development plan, and you can check off "yes." Then when you file it, somebody looks it and says, "oh, well I'm interested in this property but it's subject to a development." Without filing the correct form -- and the function of the form is to indicate that there is a development plan. In addition to -- and on top of it, when the case number is the wrong case number, so somebody says "I would like a copy of this case," and what they see is not the private yard variance and not the curb cut, but they see just this little garage gets to be built at zero feet from the property line.

JIM MIMS: Sure.

ELIZABETH FAUXPOINT: I'm not sure --

JON BAKER: -- the incompleteness of the file really frustrated your due diligence is basically what happened. For any lay person who wanted to go and see what was there on the property through the clerk's office, they would come up to either A) incomplete information or B) information that took you in the wrong direction.

JIM MIMS: Sure.

ELIZABETH FAUXPOINT: Or the wrong information.

JIM MIMS: I think it'd be easy enough to correct that defect by just filing another Land Use Restriction notice and have that attached to the property. We'll do that.

DANIEL FAUXPOINT: Okay. I think that's a good point, though, to remind everybody: you can see on page 7 that when the developer started to sell the condos back in '06, he was advertising to all prospective buyers that he was going to keep the green space as an open space. It was written in emails to prospective buyers. It was mentioned verbally to many of them. So again, another illustration of saying one thing and doing another.

JIM MIMS: Okay. So, --

JON BAKER: -- has this been the same developer the whole time?

DANIEL FAUXPOINT: Yes.

JIM MIMS: Who is this person? What's the name of the company?

ELIZABETH FAUXPOINT: His name is Gene Crawford. The group is Highlands Restoration Group.

JIM MIMS: I don't know him. Do you know him?

JON BAKER: HRG is Highlands Restoration Group?

JIM MIMS: -- okay, moving --

JON BAKER: Gene?

ELIZABETH FAUXPOINT: Gene Crawford.

JON BAKER: Yeah, the first time when I was at the waiver hearing, that's the first time I've ever seen him. He's not one that shows up too often.

ELIZABETH FAUXPOINT: He has a lot of other side things that he does. He develops land as a part time thing. It's not his primary gig.

JIM MIMS: All right. For #4 --

JON BAKER: That explains some things.

JIM MIMS: Number of permitted dwelling units: "Clarify the maximum number of dwelling units allowed for the Rosewood site." So, I'm just looking at the last of --

ELIZABETH FAUXPOINT: -- well, [to *Emily Liu*] if you wouldn't mind, I noticed that you had the 2005 plan that was submitted to BOZA.

EMILY LIU: Yeah. That's a variance.

ELIZABETH FAUXPOINT: Actually, I don't know if it's just as easy [*opens laptop*] -- there are a few documents. Well, there are two different site plans.

EMILY LIU: Do you -- I need somebody to take care of these files for me. I actually have to leave.

JIM MIMS: Yeah, we'll probably just end at about 3:00 and reconvene probably next --

DAVE MARCHAL: -- do you want me to leave them on your desk?

EMILY LIU: Yeah, I can be here for a couple more minutes, but...

DANIEL FAUXPOINT: But I think overall, you know, the argument here was based on what BOZA had reviewed and approved -- but it doesn't sound like they have the authority to impose a limit? [*background noise*] is the fact that BOZA wrote 11 on the plan.

ELIZABETH FAUXPOINT: That's -- okay, whether or not BOZA can or cannot -- and I guess BOZA can't approve it. But the point is, though, that HRG testified under oath to BOZA five times that there would be 11 units. It was in the application for the private yard variance.

JON BAKER: Mm-hm.

ELIZABETH FAUXPOINT: Unfortunately, the site plan said 12, but HRG is testifying to 11 units. So BOZA noticed this. They commented. They asked "why are you saying 11 units when the site plan says 12?" HRG said this is an absolute mistake, the site plan is wrong. So BOZA said, "okay, I'll make that change so the site plan will reflect 11 units." But then when Planning & Design stamped approval, they did it on a clean plan, a clean copy, rather than the corrected copy, and in effect approved 12 units even though only 11 were what was proposed six times. So in our minds, the number of units on this property should be limited to 11, not 12.

JIM MIMS: What's R7 --

ROBERT KIRCHDORFER: What's R7, then?

JIM MIMS: R7 allows up to...

JIM MIMS: 34. That's...

ELIZABETH FAUXPOINT: Well, and for this property it would be 17.

JIM MIMS: 17.

ELIZABETH FAUXPOINT: But that's not what they proposed. That's not what they testified to. They just took advantage of a mistake that Planning & Design made when they stamped the wrong site plan.

EMILY LIU: That plan did not get built. We're talking about the 2005 plan?

ELIZABETH FAUXPOINT: Right.

EMILY LIU: That's the plan you said had a lot of deficiencies, so we are moving away from that and get a new plan approved, right?

DANIEL FAUXPOINT: But it's the same new number of units.

EMILY LIU: But they have a new review. But they're entitled to 17.

DANIEL FAUXPOINT: And their new plans rely on that private yard area variance, which was obtained on the basis of their testimony.

ELIZABETH FAUXPOINT: And also the floor area. As I said, they're not including the carriage house. And they under reported the principal structure by at least 2,000 square feet. So that variance is based on the wrong floor area, the wrong private yard area. So the density is related to that. For this to be -- whether or not there can be 17 units --

JON BAKER: Right.

JIM MIMS: -- well, the --

ELIZABETH FAUXPOINT: I'm saying the land itself is --

JIM MIMS: -- sure --

ELIZABETH FAUXPOINT: -- it can't contain 17 units. And it can't contain the additional 3 that he's proposing. But I don't see why it shouldn't be limited to 11, which was what HRG proposed.

JIM MIMS: Yeah, unless they're smaller units. I mean, they can overcome the FAR by making small units. But you know, we're going to check the FAR.

ELIZABETH FAUXPOINT: Mm-hm.

JIM MIMS: All right. Relative to the number of units, you know, provided they have met all the other requirements relative to FAR and private yards, they're entitled to 17 units.

EMILY LIU: 17, yeah.

JIM MIMS: And we will allow them to have as many units as they're entitled to have, provided they meet all these other requirements.

ELIZABETH FAUXPOINT: Well then, while we're talking about the floor area --

JIM MIMS: [*directed to Emily Liu*] Do you want to go ahead?

ELIZABETH FAUXPOINT: -- one of the questions I have is if Code prohibits the use of a carriage house in an R7 district? And this is one lot. It's not subdivided. So I had a question about: is that considered a nonconforming use?

JON BAKER: I mean, that's something we can talk about. But I think that would change a little bit under a condominium regime --

JIM MIMS: -- condominium, yeah.

JON BAKER: But the disallowance of the use of the carriage house is more pointed towards like apartments. People have -- you know, they set up their primary residence in the primary structure and then rent out to whoever in the carriage house. Under a condo regime, everyone's under the same sets of restrictions. And I understand the frustration with [*background noise*] going out there and expanding the condo regime. So what you originally bought, you didn't think -- you thought that was going to be it, and now it's expanding. So that's -- but as it goes to the carriage house, I guess the carriage house wouldn't really be viewed as a carriage house. It would just be viewed as another condo unit under the regime.

EMILY LIU: Sorry, I have to leave [*background noise*].

JIM MIMS: No, no, we're getting ready to wrap up here.

JON BAKER: Because the regime should have incorporated it. If they didn't, they'd have to annex that unit into the regime so that everyone is still apportioned what they get under the regime. Whereas that relationship is non-existent just with the carriage house when looked at as an apartment.

ELIZABETH FAUXPOINT: It's just that I've looked at every R7 condo project in all of the Highlands. And there's only one R7 that's a condo, multi-family condo with a carriage house, and they had to subdivide it. They had to subdivide the land. The Rosewood is the only property like this in all of the Highlands.

JON BAKER: Do you know when that -- in that specific case -- perhaps we could pull it -- but what forced the subdivision?

ELIZABETH FAUXPOINT: The developer -- he did it that way because the Code restricts a carriage house in an R7 district. And I noticed that with other carriage houses, that seems to be the trend. The land is getting subdivided, when a carriage house is not a conforming use in a certain district. It's only allowed in an R5-B. Anything other than that, people are having to get Conditional Use Permits --

JON BAKER: -- Conditional Use Permits.

ELIZABETH FAUXPOINT: But only if it's an apartment. The problem is you can't get a Conditional Use Permit for a condo because you could have it taken away. But there are many nonconforming elements to this carriage house. It was being used illegally when HRG purchased the property. It was a lawn care business. And the use was abandoned multiple times before that. And so I don't know how HRG was even allowed to use the carriage house. It had been abandoned and it was used illegally. I'm not sure how you can expand a condo regime when you have an illegally nonconforming use and structures.

JON BAKER: And that's why I guess we have to take a look at that more closely because at that point, yeah, there would be no nonconforming use there that's legal. The question then turns to whether or not we view the carriage house as a carriage house rather than just a condo. I mean, that's what I'm having a hard time understanding of just -- I mean, under the condo regime I can see it being part of the condo regime, and just the virtue that it's a carriage house, I don't...

JIM MIMS: I don't know if it makes any difference. I mean, I would utilize your great legal mind to research it.

JON BAKER: I'd like to know -- do you know what that one other case is? I'd like to look at that and see what forced that subdivision because that didn't make sense to me.

ELIZABETH FAUXPOINT: Yes.

JIM MIMS: But it does make sense what you're saying. And I don't know anything about this relative to being a condo carriage house within a condominium regime. Does that legitimize the use of it? I think it does and I can understand the logic there. I understand the logic of why carriage houses within the context of a single family home would ordinarily have to go through a CUP process.

ELIZABETH FAUXPOINT: But that's part of the problem, is that the Code forbids having -- if you have multiple structures, they all need to be multi-family structures. In other words, you don't have a multi-family building on the same lot as a single-family home, or --

JIM MIMS: -- yeah, I think that --

ELIZABETH FAUXPOINT: -- or a carriage house --

JIM MIMS: -- got resolved with the Dominion work we're doing.

ROBERT KIRCHDORFER: We got a whole lot of independent, single --

JIM MIMS: -- condos, yeah --

ROBERT KIRCHDORFER: -- you know, detached single-family condos --

JIM MIMS: -- condos --

ROBERT KIRCHDORFER: -- that were --

JON BAKER: -- and that's why if the carriage house was being -- was legally set up as a single-family house on the same structure and not a part of the condo regime, then that wouldn't be legal, which since it is part of the condo regime we would view it as --

JIM MIMS: -- well, I mean, is it spelled out in the condo regime, Elizabeth?

ELIZABETH FAUXPOINT: Yes, the master deed --

JIM MIMS: -- does acknowledge the carriage house?

ELIZABETH FAUXPOINT: It describes -- that he contemplates incorporating it. But I think there were a few problems with the carriage house. Mostly the reconstruction of it without a building permit and --

JIM MIMS: -- well, that's a different subject.

JON BAKER: But that's why the first issue I keep moving back to -- and we've got to get on that FAR.

JIM MIMS: Sure. All right.

JON BAKER: Since if he thinks he's moving forward with this other building, I mean, that's our leverage to pull those permits from him.

JIM MIMS: All right. We're going to wind this thing down for now and pick it up at another date when Emily can participate because there are many things that she's doing. But let me recap things and see if I have it right. Under 1a, we're going to check the FAR. Under 1b, we -- David Marchal, the construction plan review group used the [August] 21st, 2014 plan as the basis for their review, which again, may have had an improper FAR and that's something we'll check. So it is related. Under item #2: a Category 3 Review, we contend you've already had your Category 3 Review and we're not going to do another one. Under item #3: Origination of the certified Land Use Restrictions, we will re-file a new Land Use Restriction correcting the one that is of record now, so by date it should supersede -- supersede the one that is currently filed. Under item #4, you know, related to the number of units, we will give them the number of units that is allowed for by the zoning ordinance provided that they meet all the other requirements, yards, FAR, stuff like that. And what they had represented relative to the BOZA case really contextually is of, you know, of no -- it's not of any consequence to us because the Board case was related to variances.

JON BAKER: Well, I mean, let's just double-check. As it relates to the number of units -- and I understand your argument and there is some merit to it. But what I think even controls more than that is the FAR.

JIM MIMS: Sure.

JON BAKER: Because FAR goes directly to how much private yard is going to be there, and I think that --

JIM MIMS: -- all of the above --

JON BAKER: -- there's a bigger correlation there. And if -- let's just see how that process matches up with what is actually built because we got a different conversation after that.

JIM MIMS: Sure. And then --

ROBERT KIRCHDORFER: -- I recall discussions during the Planning Commission hearing on the number of units and it went back to -- that issue came up, I recall, but I can't --

ELIZABETH FAUXPOINT: You guys kind of toyed with the idea of suggesting two units instead of three.

ROBERT KIRCHDORFER: But then the FAR -- I remember the floor area ratio came back in and then...

ELIZABETH FAUXPOINT: Well, we weren't allowed to talk about it.

ROBERT KIRCHDORFER: Okay.

ELIZABETH FAUXPOINT: Dan brought it up anyway. But we were under very strict orders to stick to parking.

JON BAKER: Parking, right.

ELIZABETH FAUXPOINT: So we were not able to talk about the floor area or the private yard or anything else.

JIM MIMS: Okay, so then we're looking at all these past permitting. Dave Marchal is going to look at the cases on 5a and just see what heck was permitted and what wasn't. And then we'll get those documents to you.

DANIEL FAUXPOINT: Right. If it's confirmed that there are no permits, are you guys planning on imposing fines and penalties?

JIM MIMS: That's typically what we do. In other words, if we see unpermitted work, I assume that we would go out and typically if it's under construction at the time, we'll ask them to stop work. In this particular case, it's already been built. So we may have to request that they submit plans. And we may have to go out there and actually, you know, I hate to say it but tear into walls to look into stuff. So tell me what you would do, David?

DAVE MARCHAL: Right. Basically that's it. I mean, and determine and see if they pre-date, you know, the time. Our current record -- you know, we -- our current record retention is five years. So if it was done more than five years ago, they may have gotten permits and we just disposed of them. That's a possibility. So I need to look really closely at your documentation of, you know, the time frames. If things were built without permits, then yeah, we'll certainly follow up on it with Gene.

JIM MIMS: Yeah.

DAVID MARCHAL: If we have to, do it after the fact, have them submit drawings and we go out and try to [?]

JIM MIMS: -- and he would probably because of that, he would be incurring probably a penalty. I mean, typically building without a permit is something that we impose monetary penalties on. When do you think that work was done?

ELIZABETH FAUXPOINT: The majority was between 2005 and 2007.

JIM MIMS: Okay, yeah. So again, it would be a matter of whether those records are still retained by us.

BILL SEILLER: Well, you have more than five years.

ELIZABETH FAUXPOINT: But you have -- if you have a building permit for 2004, which was the interior renovation, why wouldn't you have building permits after that?

ROBERT KIRCHDORFER: We should have that.

ELIZABETH FAUXPOINT: Applications, inspection notes?

JIM MIMS: Yeah.

ROBERT KIRCHDORFER: The computer would be there but the plans wouldn't be.

ELIZABETH FAUXPOINT: But I mean, you don't even need the plans. All you need are the PVA pictures and you can see what existed before and what existed after.

JIM MIMS: Sure. Yeah.

ELIZABETH FAUXPOINT: Instead of tearing out the walls or anything.

JIM MIMS: Well, the tearing out of walls would be in conjunction with any inspections we need to do, and that may be a little bit drastic --

DAVE MARCHAL: -- wiring or framing --

DAVE MARCHALL: -- there might be something in the drywall or something like that.

JIM MIMS: Yeah.

ROBERT KIRCHDORFER: I have one clarification that I think I made at the beginning, because your letter was made out for a response for the Department of Codes & Regulations. I explained that we changed departments in July. And the Construction Review division moved over to Develop Louisville. And so I just wanted to clarify that Codes & Regs will not be responding to the requirements. It'll be coming from the appropriate agencies.

ELIZABETH FAUXPOINT: Okay.

DANIEL FAUXPOINT: The last thing I would like to mention is the fact that, you know, there's a sinkhole potential on the open space where he's planning on building. So the same kind of thing, if I were -- I think I would be cautious about issuing new permits until we've had a chance to look at that more closely.

JIM MIMS: Well, when you say sinkhole -- and that was -- that determination was...

DANIEL FAUXPOINT: Based on a long list of pieces of evidence that seem to converge towards that indication. It's documented in Section 7.

ELIZABETH FAUXPOINT: Yeah. Gene Crawford, the developer, admitted that he did fill a large hole. There were numerous neighborhood complaints about a lake appearing over the weekend. And a large 15 by 20-something hole. There are also a lot of drainage problems. There's an actual depression in the land. There's an underground drainage system of some sort. There are pictures -- they're all on that disk [*enclosed with 4/3/15 Fauxpoint Memo*]. But the developer, a few weeks ago when someone from our Council met with him, he did admit that he filled a large hole on the development site. And also there's the LOJIC map and the Kentucky Geological Survey map that identifies this site as high karst potential. And so we have a lot of evidence combined that would suggest that if there is a sinkhole, there really needs to be an investigation done before a permit is issued.

DANIEL FAUXPOINT: A geological survey. And when it comes to the violations also, we would encourage you to look beyond the FAR. The FAR is the big one. But again, in that document there's another three or four.

JIM MIMS: Yeah. We'll have time maybe next week to go through these. You know, we'll probably get together and have a weekly meeting here.

JON BAKER: As far as dealing with him, though, the FAR I think gives us the most leverage as it relates to other buildings --

JIM MIMS: -- sure --

JON BAKER: -- and the other building he proposes to put down there. So that is a big red flag in my eyes.

JIM MIMS: Yeah.

JON BAKER: And I understand there are other concerns. But as we move forward dealing with him and what he intends to build, I think if there's been any misrepresentation of FAR on plans or whatnot then he needs to answer for that.

BILL SEILLER: There's one more issue which Jon will love. It is an interesting legal issue. It's my understanding that the owner of the property has requested a rezoning. And that the application is not being processed because this developer has development rights. But my understanding of the law is that even if you buy a property as a developer, you are not guaranteed that the zoning will stay the way it is. That the Planning Commission or Metro Council has the authority to change zoning. And just because you bought the property intending to build something on it does not give you a vested right. And so if you are the property owner, it appears to me that if you file an application to rezone, you have a right to have that application processed and have a hearing.

JON BAKER: And did you guys file for a down zoning?

BILL SEILLER: Yeah.

JON BAKER: Okay.

JIM MIMS: Remind me of those events because it is kind of -- that was last year?

ELIZABETH FAUXPOINT: Right, in July of 2014, we put together a presentation similar to that [4/3/15 *Fauxpoint Memo*] explaining why a number of highly -- there were a lot of irregularities with that zone change. And so we went through the zoning history. We explained the difficulties this developer is having finding -- putting together a code compliant plan because the property is fundamentally incorrectly zoned to begin with. And we presented a lot of arguments about why --

DANIEL FAUXPOINT: -- we actually filed an application, right? We've paid the filing fees.

ELIZABETH FAUXPOINT: Yes, we did. And we were told by Planning & Design that HRG has vested rights, although those vested rights according to -- they said was based on the fact that he has building permits issued. But he didn't.

DANIEL FAUXPOINT: When did we file it exactly?

ELIZABETH FAUXPOINT: We filed it in July of 2014.

BILL SEILLER: Did you supply them with a copy of this? *[referring to the draft/incomplete document to be submitted to PDS related to nonconformance and reconsideration of the Council's zone change proposal]*.

ELIZABETH FAUXPOINT: No, not yet.

BILL SEILLER: Oh, okay. Let me give that to Jon.

[Emily Liu and Jim Mims discuss something in the background]

ELIZABETH FAUXPOINT: It's in a draft -- go ahead, but it's in a draft form.

BILL SEILLER: Okay. But you've got another copy of it, right?

DANIEL FAUXPOINT: So we're not exactly sure what the current status of that rezoning application is.

JIM MIMS: Sure. No, it's probably held in abeyance.

BILL SEILLER: Jon, let me give you that because what she prepared might be a bit --

JON BAKER: -- you might want to think about hiring her.

BILL SEILLER: I told her it is great research.

JON BAKER: When I first saw this and the way it's put --

BILL SEILLER: -- yeah, I told her I need to hire her on my next case --

JON BAKER: -- it's even put together like a court of appeals brief or something --

ELIZABETH FAUXPOINT: Thank you. Just so you know, this is draft. I'm still working on it. It's not -- but this does explain the reason why were denied the processing of the application.

JON BAKER: So what you're saying is that he still has an argument. And whether or not it's merit -- whether or not there's -- you know, it's true or not, he still has an argument that he has vested rights.

BILL SEILLER: Sure.

JON BAKER: But you should still be able to request a change of zoning of your property.

BILL SEILLER: Yeah. I mean, that's right. He certainly has an argument and [*unintelligible - talking simultaneously*] but he'd still have to win it.

JON BAKER: -- so let's just say hypothetically, you guys filed the application, it was processed, they had the hearing, but the Commission said, "you know what, yeah, I think it's more in conformance with the Comprehensive Plan if this goes back to an R5 or R6," that still doesn't take away his right if he can prove he's vested for him to build out even though the zoning changes. But if it's proven that he's not vested, then he would have a hard time.

ELIZABETH FAUXPOINT: And that's why we wanted the application processed.

JON BAKER: Okay.

ELIZABETH FAUXPOINT: So we could make those arguments.

JON BAKER: Sure.

ELIZABETH FAUXPOINT: But we were -- we can't make them if...

JON BAKER: Loud and clear, I got you.

ELIZABETH FAUXPOINT: Okay.

BILL SEILLER: Well, thank you all very much.

JON BAKER: You're very welcome.

BILL SEILLER: You've been very helpful and I --

JIM MIMS: -- so we'll pick up -- I'll have John Fontaine set up another meeting date for everybody and we'll go through the rest of the items. We'll probably do that in one more session.

ELIZABETH FAUXPOINT: All right.

JON BAKER: Dave, just keep me informed on what you guys find out.

BILL SEILLER: Sometime after the Derby.

DAVE MARCHAL: On the FAR, I'm taking it that Emily is going to review that.

JON BAKER: Okay.

DAVE MARCHAL: And then we will let you know -- Mike and I -- know.

END OF AUDIO