

JUL 24 1989

DECISION ON APPEAL

BEFORE

THE BOARD OF COUNTY COMMISSIONERS OF ORANGE COUNTY, FLORIDA

July 24, 1989

THE DECISION OF THE BOARD OF ZONING ADJUSTMENT MADE ON THE 1st
DAY OF June 1989, ON THE APPLICATION OF
Irma Shores Homeowner's Association, HEARING # 32 IS HEREBY
overruled, AND THE APPLICANT'S REQUEST FOR A Special Exception in
R-1AA zone for private recreation facility (boat ramp) in
conjunction with subdivision on property located East side Irma
Shores Drive, 2/10 mile South of University Boulevard IS HEREBY
denied.

Sam Herman

CHAIRMAN

THE FOREGOING DECISION HAS BEEN FILED
WITH ME THIS 25th DAY OF July 1989.

Emily M. Dwyer

ASSISTANT DEPUTY CLERK
BOARD OF COUNTY COMMISSIONERS
ORANGE COUNTY, FLORIDA

1 A P P E A R A N C E S:

2 Orange County Commissioners:

3 CHAIRMAN TOM DORMAN, Commissioners District 2
4 LINDA W. CHAPIN, Commissioner District 4
5 HAL MARSTON, Commissioner District 3

6 SHARON SMITH, Zoning Director
7 HARRY STEWART, County Attorney
8 PHIL BROWN, County Administrator
9 MARTHA HAYNIE, County Comptroller

10 Appearing on behalf of Lake Irma Homeowners' Assn.:

11 ROSEMARY O'SHEA, Attorney
12 Baker & Hostetler
13 2300 Sun Bank Center
14 200 South Orange Avenue
15 Orlando, Florida 32801

16 Appearing on behalf of Irma Shores Homeowners' Assn.:

17 JEANNE ODOM, homeowner
18 3990 Irma Shores Drive
19 Orlando, Florida 32817

1 Transcript of Proceedings held before the Orange
2 County Board of County Commissioners, at the County Commission
3 Chambers, 1st Floor, County Administration Center, Orlando,
4 Florida, on MONDAY, JULY 17th, 1989, beginning at 2:30 o'clock
5 p.m., before LINDA K. LUBITZ, RPR, a Stenotype Shorthand
6 Reporter and Notary Public, State of Florida at Large.

7 - - -

8 THE CHAIRMAN: At 2:20 p.m., we have a public hearing
9 by the name of Irma Shores Homeowners' Association, their
10 request for a special exception at R-1-AA zone for a private
11 recreation facility, or boat ramp, in conjunction with the
12 subdivision on property located the east side of Irma Shores
13 Drive, 2/10th of a mile south of University Boulevard.

14 This was a Board of Zoning Adjustment Public Hearing,
15 Number 32, June 1, 1989, where there was a decision rendered
16 to approve the re -- a request for a boat ramp only, with some
17 other conditions. Ellis D. Wilson, appeal.

18 MR. BROWN: Mr. Chairman, before the presentation
19 starts, Commissioner Donegan contacted me Saturday and
20 advised me of his unavoidable absence due to the death of his
21 grandmother. He requested, if at all possible, that, ah,
22 should the Board decide that if he -- request that the, ah,
23 decision on this be postponed until he could be in attendance.

24 THE CHAIRMAN: Yeah, well, we'll hear the testimony.

25 COMMISSIONER MARSTON: When is he expected back,

1 next week?

2 MR. BROWN: Yeah, I assume he'll be back for the
3 budget hearings.

4 COMMISSIONER MARSTON: When will -- when -- will
5 Commissioner Carter be back?

6 MR. BROWN: Yes, sir.

7 MS. SMITH: Yes, Mr. Chairman, ah, first of all,
8 I would like to point out that this request that comes before
9 you today is very similar to one that the Board of Adjustment
10 and County Commission heard back, in, ah, September of '73.
11 Ah, a lot of the same issues that were addressed at that time
12 have also been addressed by, ah, property owners in opposition
13 to this request. Both came to our attention as a result of
14 a violation due to construction of a boat-ramp facility on
15 the subject property.

16 The subject property is the southerly nine feet --
17 ah, excuse me -- southerly 30 feet of Lot Nine, within the
18 Irma Shores Subdivision, ah, and, of course, the property
19 zoning is R-1-A throughout.

20 Ah, this property was, at one time, a county
21 drainage easement, which was vacated and, of course, ownership
22 deeded to the Homeowners' Association of, ah, Irma Shores.

23 You have before you a copy of the site plan, which
24 shows that this request is for a ten-and-a-half by 25-foot
25 concrete ramp, which has already been installed. Ah, since

1 the time of the violation, there has been a chain across that
2 boat ramp and it, ah, has not been utilized pending the out-
3 come of this hearing.

4 There were, at that hearing, 25 people in opposition
5 to this request. The concerns that, ah, were addressed at
6 that time had to do with, ah, one, use of the lake, ah,
7 environmental concerns regarding the lake, and mechanisms
8 that could be in place if this use were approved, as far as
9 being able to limit the use of the property and how that
10 enforcement would take place.

11 The Board of Adjustment reviewed the requests and
12 listened to the testimony and it was their -- it was their
13 feeling that this property, ah, being owned by the homeowners'
14 association, and being lakefront property, um, that it would
15 not create additional adverse impacts on the lake, other than
16 what anybody would normally have if their properties abutted
17 the lake, since they would also be allowed to have boat
18 ramps and what have you.

19 In light of that, they recommended approval. They
20 did limit their approval to 18 months from the date of the
21 Board Hearing and also, limited use of the subject property
22 to the residents of Lake Irma Subdivision and their guests
23 only.

24 They indicated that no boat or other vehicular
25 storage shall be permitted on the site, and thirdly, they

1 subjected their approval to the Environmental Protection
2 Department and all other appropriate governmental regulations.

3 THE CHAIRMAN: The fact that we have a court
4 reporter, would you read our handbook there?

5 THE CLERK: All persons are advised that all
6 documentary evidence and other matters submitted will be a
7 part of the record as evidence in the case.

8 THE CHAIRMAN: Thank you. Is the applicant present?
9 Why don't we, you know, you can close and, you know, try to
10 hear about this and then we'll.

11 MS. O'SHEA: Yeah, when you refer to the applicant,
12 which we're the appellant. We are appealing the Board of
13 Zoning.

14 THE CHAIRMAN: All right. Well, we'll hear you.
15 Sorry.

16 MS. O'SHEA: Good afternoon, Commissioners. My
17 name is Rosemary O'Shea. I'm an attorney with Baker &
18 Hostetler in Orlando, Florida, and I appear, representing
19 the Lake Irma Homeowners' Association. This is an unin-
20 corporated association of approximately 130 lakefront property
21 owners on Lake Irma, which is in East Orange County.

22 Um, we have a number of our, ah homeowner associa-
23 tion members here today, and I also have a petition to present
24 to the Commission, signed by the association members in
25 opposition to the application for a special exception by

1 Irma Shores Homeowners' Association.

2 THE CHAIRMAN: Okay. I'll take that. Give me --
3 bring it to me, please.

4 MS. O'SHEA: Okay.

5 THE CHAIRMAN: Thank you. We'll mark this Exhibit
6 One.

7 (Exhibit One was marked for identification.)

8 MS. O'SHEA: As I indicated, we are here today to
9 appeal a decision by the County Board of Zoning Adjustment,
10 which was rendered on June 1st, 1989, granting a special
11 exception for a boat ramp and a boat-launching facility to
12 the Irma Shores Homeowner Association to use a 30-foot by
13 140-foot strip for purposes of launching boats into Lake Irma.

14 I also have another document that I would like to
15 present to the Commission to -- to be placed into evidence,
16 which is a binder containing documents which, ah, show the
17 history of this particular piece of property and also, of
18 similar properties, both on the same lake and on a lake which
19 is about two miles away, which is approximately the same size,
20 if I might present that to you?

21 THE CHAIRMAN: Sure, I'll take it. Exhibit Two,

22 (Exhibit Two was marked for identification.)

23 MS. O'SHEA: In that binder, the documents at
24 tabs three through ten, basically, track the history of this
25 particular parcel of property.

1 Um, in 1972, the developer first platted this parcel
2 of property, Irma Shores Estate. In 1973, the developer
3 submitted a replat, which was approved by the County Commission
4 and reported in the Public Records of Orange County at Plat
5 Book Five, pages 29 through 30.

6 On that replat, the developer shows a drainage
7 easement along the southerly ten feet of Lot nine. There
8 is nowhere on that plat, any indication of any kind of
9 recreational facility of any property which is to be
10 dedicated to the homeowner association.

11 Approximately a month after that replat is approved
12 and recorded in the Public Records, the developer deeded
13 to the homeowner association a 30-foot strip, which is the,
14 ah, piece of property which is currently in dispute. It's
15 the southerly 30 feet of Lot Nine of Irma Shores Subdivision.

16 There is no indication the developer ever came back
17 before the Commission to amend the plat, to apply for a replat,
18 or to go through a lot-splitting procedure.

19 In September of 1973, the Irma Shores Homeowner
20 Association then seeks a special exception to use this
21 property to launch boats before the Board of Zoning Adjustment.
22 This request was denied.

23 In October of '73, the County Commission of Orange
24 County confirmed the BZA's decision to -- denying that special
25 exception request.

1 In spite of those denials, in 1975, the homeowner
2 association installed a boat ramp on the property and began
3 using it, in violation of the Commission's decision and of
4 the, ah, County Zoning Ordinances.

5 This resulted in a flurry of letters between county
6 offices and the homeowners adjacent to the subdivision and
7 ultimately resulted in the County demanding that the boat
8 ramp be removed and -- excuse me -- finally, in 1976, the
9 County actually sent county workers in to remove the boat
10 ramp.

11 Now, approximately 16 years later, Irma Shores
12 Homeowner Association is again, requesting the same special
13 exception for a boat ramp only, not for any other recrea-
14 tional facilities, but only for a boat ramp. It's the same
15 special exception request which was denied in 1973.

16 Lake Irma is a small lake. It's approximately 100
17 acres. It's surrounded by property which is zoned R-1-A and
18 R-1-AA, single-family homes and accessory uses.

19 Um, a special exception for the -- under the zoning
20 classification includes, among other things, a request for
21 parks and recreation areas operated by nonprofit organizations,
22 if such a special exception is not adverse to the public
23 interest, the character of the neighborhood, and the value of
24 the surrounding property.

25 At the most recent BZA hearings, the question was

1 raised as to why this was not dealt with back when the
2 subdivision was platted.

3 Unfortunately, it appears that due to some confusion
4 that occurred at the BZA hearing -- there was a fire drill
5 in the midst of it -- ah, our clients didn't get an opportunity
6 to respond to that by indicating that they had not had a
7 chance to address this in the platting phase because it had
8 never been platted before.

9 This question was also raised at the original
10 County Commission meeting back in 1973. The question was
11 asked, "Why wasn't this dealt with in the platting stage?"
12 And the developer was not there at that time, so again, the
13 issue went unanswered.

14 In other instances, where the Commission has had an
15 opportunity to address similar situations, which are
16 detailed in the -- in this binder at tabs 11 through 18,
17 when these issues were raised in the platting stage, the
18 Commission has consistently denied a similar-use request.

19 In 1974, Harbor East, which is also on Lake Irma,
20 a subdivision which consists of approximately 435 homes, at
21 the platting stage, the developer came forward, showed a
22 recreation area, requests a boat-launching ramp -- rights.
23 The Commission, in 1974 said, "You can have your, ah, recreatio
24 area, but no boat launching."

25 Ah, Lake Irma Estates, which is a subdivision of

1 approximately 74 homes, which is directly adjacent to Irma
2 Shores, similarly, in '74, requested the right to, um, plat
3 a recreation facility and a boat-launching facility on a
4 little flag lot in that subdivision.

5 Again, the Commission said, "No problem with the
6 recreation area, but no launching of powerboats."

7 Again, on Lake Waunatta, which is a lake of similar
8 size, about two miles away from this lake, um, in the same
9 time frame, the early 1970s, the developer came forward with
10 a plat, which he, ah, and -- and a request to have a
11 recreation facility on the lake.

12 In that instance, the Commission not only denied
13 boat launching, but also denied the right to have a recreation
14 and park facility on the lake and was suggested to that
15 developer that such a facility be located off of the lakefront.

16 Again, each instance -- this was handled at the
17 platting stage, the process pursuant to which the Commission
18 has the benefit to get the expertise of all the various
19 county departments that review and comment on platted
20 developments.

21 This developer, it appears, tried to circumvent
22 that process by deeding off this property a month after the
23 original plat was approved by the County Commission.

24 Now, I understand from the Zoning Department and
25 from the Legal Department that, apparently, this is no

1 problem; that special exceptions can be sought in this way.

2 However, the fact the developer deeded off this
3 30 feet a month after the plat was approved, indicates
4 something less than candor with the Commission and somewhat
5 of a cavalier attitude for the processes that are designed
6 to, ah, bring before the Commission all the competing interests
7 involved in determining the proper use of a piece of our
8 property like this, at the platting stage.

9 The second issue that the Commission must address
10 in a special exception request is whether or not the
11 requested use is in the best interest of the public, is in
12 the best interest of the character of the surrounding
13 neighborhood, and in light of the impact on the value of the
14 surrounding property.

15 Regardless of the method by which the homeowner
16 association came into possession of this property, there are
17 still those public-interest issues which must be addressed.

18 We respectfully request denial of the request for
19 a boat ramp for the following reasons:

20 Number one, the increased safety hazard of increased
21 powerboating, skiing, Jet Skiing, and similar uses on a small
22 lake that's only 100 acres large.

23 As you can see from the map at tab one in the binder
24 that I gave you, this lake has a very strange configuration.
25 It actually is composed of three small lakes that sort of

1 join together in the middle. This meandering shoreline
2 increases the difficulty of boats and skiers anticipating
3 what other boating activity might lurk around the corner.

4 In addition, the precedential value that would be
5 set, ah, by granting this special exception -- as you can see
6 from the map, there are a number of other subdivisions
7 surrounding this lake, which, if Irma Shores is successful
8 in their request for a special exception to launch boats,
9 will surely be back before this Commission seeking the same
10 rights and it will be very difficult to deny those. There's
11 Lake Irma Estates, 75 or 74 homes; directly adjacent to this
12 particular subdivision, Harbor East, 435 homes; Hidden Cove,
13 approximately 20 homes; University Shores, 138 homes, and then,
14 the undeveloped parcel on the south side of the lake, which
15 is in the platting process now, which, certainly, ah, requests
16 for a boat-launching facility will be sought in connection
17 with that platting.

18 The increased pollution possibilities to the lake,
19 um, by introduct -- introducing aquatic weeds from other
20 water bodies, um, by boats that are using both this lake and
21 other lakes that, if they're not carefully washed down, have
22 the possibility of bringing hydrilla and other noxious weeds
23 into this lake. This homeowners' association has spent
24 approximately \$15,000 over the past eight years in control
25 of that hydrilla problem. This is a -- a privately-owned

1 lake so there's no opportunity for any kind of State or --
2 or County funds to help control the weeds, and I would like,
3 for a moment, to direct your attention to the testimony set
4 forth at page 169, tab 12. This was the hearing on the
5 Harbor East request for a special exception at which Dr.
6 David Richards, who's the Associate Professor and Chairman of
7 the Biology Department at Rollins, back in 1974, who, at that
8 time, had spent six years of his life directing a program
9 of Lake Ecology and Research in the Winter Park Chain of
10 Lakes.

11 At that hearing, he testified that -- before the
12 Commission that there was a tremendous potential for increase
13 in motorboat use on the small lake. Such boat-launching
14 facility for people who do not own property on the lake
15 encourage lots of in-and-out use of trailer boats with a
16 greater likelihood of introducing new weeds disease.

17 Also, this great potential motorboat use means
18 going from a usually calm, smooth surface to almost constant
19 wave action from boats and will increase erosion of unpro-
20 tected shore areas, and the amount of water mixing or turbulence
21 would be greatly increased and the effects on a shallow lake
22 would be substantial.

23 He strongly recommended against the boat-launching
24 facility back in 1974, and we have certainly, since 1974,
25 increased our awareness of the, ah, ecology and the impact

1 on the ecology of the lake of tremendous boating activities.

2 To op -- to potentially open up this lake to
3 over 600 homeowners, which could be the result if the other
4 subdivisions come seeking special exceptions before this
5 Commission and -- and there's no way to find a valid reason
6 to deny them, would certainly increase the pollution to this
7 little lake.

8 And, finally, there's the issue of shore erosion
9 from increased boat-wave activity. Irma Shores submits to
10 this Commission that they will carefully police this piece
11 of property if granted the right to have a boat-launching
12 facility here; that they will not let any members of the
13 public use this facility, other than the homeowners in Irma
14 Shores.

15 This is a very difficult thing to do, if not
16 impossible. Al Wilson, who's the president of, ah, Lake Irma
17 Homeowners' Association, is gonna address that issue, ah,
18 past experiences on the lake with those problems with you.

19 Irma Shores Homeowner Association says that they
20 have letters from the, ah, County Marine Patrol Facility
21 indicating that they support the, ah, in-placement of this
22 boat ramp, because it will give them easy access to the lake.

23 We also have a number of letters from homeowners
24 all around the lake that indicate that, if need be, the
25 Marine Patrol certainly will have access to their boat ramps

1 in cases of emergency or for any other reason that the Marine
2 Patrol may want to use their boat ramps, if I might submit
3 this to the Commission, too, place it into evidence?

4 THE CHAIRMAN: Thank you. That'll be Exhibit
5 Three.

6 (Exhibit Three was marked for identification.)

7 MS. O'SHEA: Finally, Lake Irma Homeowner Association
8 cites a letter from Mr. Harry Stewart, who's the County
9 Attorney, stating that all lakefront property owners have the
10 same riparian rights as any other lakefront property owner.

11 I would respectfully agree with Mr. Stewart to a
12 point. However, I do not believe that his letter addressed
13 this question in the context of a request for a special
14 exception.

15 If, ah, Irma Shores Homeowner Association was
16 requesting to use this property in connection or in compliance
17 with the primary zoning category for R-1-A or R-1-AA property;
18 that is, single-family homes with accessory uses, I think
19 that's a true statement, but once they come before this
20 Commission seeking a special exception, they then subject
21 themselves to the Commission's police power to make deter-
22 minations as to what use of that property is in the best
23 interest of the public. This is the whole purpose of the
24 special exception.

25 For all of the reasons that I have stated above

1 we would respectfully request that the Commission follow
2 its prior precedent in these kinds of matters and deny the
3 special exception request by Irma Shores Homeowner Association
4 for a boat ramp on this parcel of property.

5 I would also like to introduce to the Commission,
6 Mr. Al Wilson, who is the president of Lake Irma Homeowners'
7 Association, who would like to address a couple of issues
8 for the Commission.

9 THE CHAIRMAN: Thank you.

10 MR. WILSON: Good afternoon, ah, my name is, ah, Ellis
11 Edward Wilson. I'm known as Al Wilson, the president of the
12 Association, ah, for Lake Irma. I reside at 3202 SMU Boulevard
13 That's on a canal which accesses the lake. It's approximately
14 a two-and-a-half-block-long canal, which has several homes
15 on it that have access to the lake, also.

16 All right. Ah, as Rosemary said, we have 130 or
17 slightly higher homes on the lake and the canal that have
18 access now to the lake. Ah, currently, we have at -- 90
19 or more active members who participate in helping us, ah,
20 control the lake as far as the weeds, because we're, ah --
21 we're not funded by the State. If we have a problem with the
22 lake, we have to maintain it ourself. We call in the County
23 and hire them to come in the spray, but they don't do it at
24 no charge. We have to pay them each time.

25 Okay. Another thing, talking about the -- the

1 safety and policing of a lot that has a cable or a chain
2 across it. We have had this problem in the past from Harbor
3 East on two particular lots. One was a Lot Nine, which is at
4 the end of this -- of SMU Boulevard, which I now live on,
5 which accessed the lake and had a ramp during the mid '70s
6 and it had the ramp the same way. It was a vacant lot that
7 had a cable and a chain, with a cement pad that you could get
8 back into the water with. The problem with that was anyone
9 who paid \$10 for a key in the housing development which,
10 at that time, there was probably over 250 homes at the time
11 which now, there's a lot more. Of course, it's completely
12 developed. They could let them or their guests in, okay?
13 For a \$10 key per year. Of course, we changed the lock once
14 a year, but of course, for \$10, you got a key and you
15 handed it out to whoever had it. If your brother-in-law
16 had a key -- or had a boat and you didn't, you gave him the
17 key and he used it. If you couldn't go, he still went. If
18 he couldn't go, he gave the key to his friend. So the next
19 thing you know -- and there was no way of finding out, well,
20 who is a member, because he had a key, so that means he
21 must have had a right to go in there, even though he didn't
22 live in the development, so we ran into a problem with that.
23 Well, not only that, the key didn't stop anyone because there
24 was a lock, because it was in a development, and there were
25 homes around it. People were going in there and pulling the

1 chain off, cutting the chain, cutting the cable, taking the
2 key out. They were using it all the time. They were staying
3 overnight at the place, so we had a problem with that.

4 Well, then, finally, someone bought the lot, took
5 that right away from us homeowners that lived around the
6 areas to launch our boats off of the canal, and built a home
7 on it. Well, that eliminated that problem.

8 Well, then, Harbor East came in and got their
9 recreational park, which is on the canal, 400 feet of
10 property, but the Zoning and the Commissioners, during the
11 '70s says, "Well, you can't use it for launching of boats."

12 I live across from that park right now. I've been
13 living on that part of the canal for two years and believe
14 me, they still launch watercraft off the property. They don't
15 launch big watercraft. They launch small boats they can
16 carry in with ten, 12 horsepower motors. I try to stop
17 'em because, being the president, and I get a lot of stares
18 and a lot of yells and a lot of complaints and a lot of
19 "I'm going to take you to court," and all this, "'cause I
20 got the right to do this," but they don't have the right
21 to do it and then, we get a lot of canoes and that, that are
22 slid through the wall, that actually broke a section of the
23 wall out and they got out; that they weren't supposed to do,
24 to be able to make it easier to slide down to the -- to the
25 boat -- to the canal to gain access to the lake, so on the

1 policing of it, no matter how many cables and how many gates
2 you put up across that thing, no matter how many locks you
3 put on that thing, once keys are out, people are gonna start
4 using it.

5 The people that are in the development are not
6 always in the development. They're gone. They're gone on
7 vacations. The one on each side of the lot may not be
8 there. The one down the street, he may be off on vacation.
9 Then comes the access through the property. They've got a
10 key. How can I tell 'em, "Well, look, you know, you got a
11 key. Would you please abide to some type of rules which we
12 put out?"

13 We place -- or hand out at least once every two
14 years, a new set of safety rules that were adopted by the
15 Orange County Safety Commission for Water. We put out a
16 set of rules so all the homeowners on the lake -- which state
17 the required rules as far as regulation for the boat and
18 also, the requested rules that we would like 'em to abide by,
19 because it's such a meandering lake and traversing the lake
20 around the shoreline is -- is really dangerous, if you don't
21 all travel the same direction.

22 In other words, we ask for the same thing that the
23 County does, counterclockwise, traveling at high speeds and
24 skiing around the lake, and this way here, you don't have
25 the boat come around a point, and run into a boat coming

1 into the point, and then run into each other or their skiers
2 or their friends, so we try to police that part of it there,
3 but like I say, we spend our money on and around the lake
4 to try to control the lake and the weeds and that and we would
5 just rather you not have a ramp on the property, or we ask
6 that -- it's gonna be hard to control those boats that do
7 come in bringing in other aquatic problems and bringing in
8 other people to use the lake, which is -- to tell you the
9 honest truth, is overused at times.

10 I -- I personally try to use it during the week if
11 I can because on the weekends, it gets to be a real fiasco
12 out there, especially during the holiday times and the
13 summertime. Thank you. If there's any other question, I'll
14 be ready to answer.

15 THE CHAIRMAN: Thank you, sir. Does anyone else
16 wish to speak in opposition to it?

17 Let's turn to the other side.

18 MRS. ODOM: My, ah -- my name is Jeanne Odom. I
19 kind of feel like it should be David, and I forgot my slingshot

20 Ah, I reside at 3990 Irma Shores Drive, and I'm
21 speaking on behalf of the Irma Shores Homeowners' Association.
22 I would like to submit a packet --

23 THE CHAIRMAN: Okay.

24 MRS. ODOM: -- to each of the commissioners for
25 their information. It's to be used as, ah, documentary

evidence in the event of an appeal.

THE CHAIRMAN: Thank you.

MRS. ODOM: Although we --

THE CHAIRMAN: Mark this -- we'll mark this Exhibit 4.

(Exhibit 4 was marked for identification.)

MRS. ODOM: The Homeowners' Association was chartered by the State of Florida in 1973, and, of course, membership is not mandatory. Presently, we have 15 families who are members. Four of these families have boats that may be learned -- ah -- launched into Lake Irma. We have a 19-foot Sea Ray, a 15-foot Boston Whaler. I own a 13-foot johnboat, and there is a canoe.

Irma Shores Drive is a cul-de-sac off University Boulevard. It's one block west of the Econ Trail. There are 23 full-sized lots on this street. Four of them are on the lakefront. There's also a 30-foot-wide by 140-foot-long lot that was deeded by the developer to the homeowners' association in June of 1973.

The property has a ten-foot-wide drainage easement on it. The association pays taxes on the lot. This lot included a ramp built by the developer. The homeowners' association did not install it original. The, ah, lot was to be a marketing device. The lots on the street were advertised as having lake access.

The primary purpose of the association, as stated

1 in Article One, is to provide access to Lake Irma for the
2 owners of lots one through 23. The association has used the
3 lot for the last 16 years. In 1976, the developer's boat
4 ramp was removed for the lack of correct permits.

5 In the Spring of 1988, one of our members did
6 research on placing a concrete pad on the lot to give traction
7 to vehicles, thereby eliminating soil erosion.

8 The Environmental Protection Department said that
9 no permit was needed, since the planned pad was above the
10 100-year high-water mark.

11 The County Building Code addressed ramps into the
12 water, docks, and boathouses. We did not know that any
13 improvement to the lot required a permit. The ramp was
14 poured and we were immediately cited with a code violation.

15 A chain was then double-locked and the lot has not
16 been used for lake access, except by the Orange County
17 Sheriff's Department, and the environmental agencies, ah,
18 doing aquatic inspections.

19 We appeared before the Board of County Commissioners
20 on August 22nd of last year. The result of that discussion
21 was a motion made by Commissioner Carter and carried by all
22 of the commissioners to require this association to file
23 the proper permits and to further waive the filing fee.
24 To that end, we appeared before the Board of Zoning Adjustment
25 on June the 1st, 1989, requesting the special exception,

1 which was granted five to nothing, with the stipulations
2 detailed in the packet, and now we have the appeal.

3 It is my understanding that we are present to
4 discuss one topic; a concrete pad, and not the platting or
5 replatting and not access to Lake Irma. I do direct this as
6 a question, Commissioner Dorman. Ah, would you address it,
7 or Mr. Stewart?

8 THE CHAIRMAN: Harry? Would you repeat your question?

9 MRS. ODOM: Certainly. I understand that we are
10 present to discuss the topic that was brought up at the
11 BZA: a concrete pad, a special exception for a concrete
12 pad, not platting or replatting, and not lack of access to
13 Lake Irma; is that correct?

14 MR. STEWART: Mr. Chairman, the -- the issue before
15 you is simply a request for a special exception, which this
16 Board has the discretion to grant or not grant, and as I
17 understand it, it's limited to a -- they're asking for an
18 R-1-AA zone, a private recreational facility, and that that
19 recreational facility is a boat ramp.

20 THE CHAIRMAN: I think that's fair. That's the way
21 that it was listed here, or as I read it early on. Irma
22 Shores Homeowners' Association requests a special exception,
23 an R-1-AA zone for a private recreational facility or boat
24 ramp in conjunction with subdivision on property located
25 east side, Irma Shores.

1 MRS. ODOM: Ah, we've, um, had a lot of other material
2 that were addressed. Ah, I object to that in the sense that
3 I had not come prepared to address, ah, platting, etc.

4 As a freshwater biologist with more than 15 years
5 of teaching and field experience, I'm particularly sensitive
6 to the use of our natural resources.

7 I'll also state that I know Dr. Richards personally.
8 He lives on Lake Irma, or did until recently, and, ah, I've
9 been teaching lymnology at Winter Park High School for a
10 number of years and we've used some of his studies and we've
11 supplemented some of them. We've used his materials and
12 we've lent him some tools.

13 I'm particularly sensitive to the use of the natural
14 resources. The lake is 119 acres, not 100, and it does
15 require specific conditions of use. I submit that with the
16 restrictions imposed by the BZA and with the very small
17 number of people eligible for membership in our organization,
18 that the stewardship of the lake is in excellent hands.

19 A letter from Dr. and Mrs. Paul Mitchell, who have
20 lived in the northern lot for ten years, give you a good
21 description of the past use of the common lot.

22 No property owner on this lake has undergone an
23 18-month review policy. Our maintenance and the policing
24 of the property speaks well of our environmental concern.
25 When you have two homes within 15 feet of the lot, we

1 believe, maybe we just don't have the traffic that Harbor
2 East has experienced. We don't have the problem of people
3 knocking over poles. We've never had anyone try to cut the
4 chain. A lock and a key cannot be duplicated.

5 In a lake with 21 existing ramps, numerous seawalls,
6 bulkheads, and extensive shoreline alteration, our 30 feet
7 looks pretty good, with its native Florida plants.

8 The Lake Irma Association could go ahead and read
9 the League of Women Voters of Orange County's newest edition
10 of Preserve Our Waters. By continuing the very limited
11 access of our lot, the lid is kept on the Pandora Box of
12 enforcement.

13 I understand, somewhat, the worry of setting a
14 legal precedent. I thought that that was one of the functions
15 of the individual review process. If there are any precedents
16 set, they might be in the platting of other lakes that have
17 substandard or smaller lots that are used by homeowners'
18 association for entrance to those lakes.

19 Addressing the lot on the canal, no ramp can be
20 built without interfering with the drainage. This is a
21 drainage canal. Since it is a canal, it's an artificial body
22 of water and riparian rights do not exist. I ask you to
23 keep in mind, we own a lakefront property. Our privileges
24 of ownership are the same as a single-family dwelling. We do
25 have riparian rights. We do have the use of the surface

1 water. We do own a tiny parcel of submerged land. We do have
2 the obligation to use the lake judiciously and in a custodial
3 manner. We do believe that the legal rights of the many do
4 not override the legal rights of the few. Any questions?

5 THE CHAIRMAN: The -- all the residents that live on
6 the lake have access to the lake through their property; do
7 they not?

8 MRS. ODOM: Yes, sir, I believe so.

9 THE CHAIRMAN: Okay. Thank you.

10 COMMISSIONER CHAPIN: Mr. Chairman --

11 THE CHAIRMAN: Commissioner.

12 COMMISSIONER CHAPIN: I have a question of Mr.
13 Stewart. I'd like a little better understanding of Mrs.
14 Odom's contention that they have the same legal rights of
15 access to the lake as any of the property owners around the
16 lake.

17 MR. STEWART: Let me tell you how this got here
18 and explain the -- the course of events.

19 I think it was back about, ah, 1987, sometime in '87
20 -- I forgot the exact date, they -- a problem where a complaint
21 was made about a zoning violation. There was a boat ramp
22 on this piece of property. That boat ramp consisted of a --
23 some kind of a metal grate which, ah, I guess it was of the
24 kind that you normally lay down for temporary airstrips. It
25 was laid out into the water under the dirt. Weeds were

1 growing up through it, but it gave cars traction and the
2 question was raised, "Is that a boat ramp?"

3 And -- and we determined, yes, it was, and I wrote
4 'em a letter and told 'em to get the boat ramp out of the lake

5 Ah, in response to that, shortly after that, after
6 the boat ramp was gone and in addition, I wrote them and told
7 them that they would have to ask for a special exception; ah,
8 that I became familiar with the file then and the newspaper
9 articles, and the continuing battle since 1973.

10 I wrote a letter to a -- ah, I believe the gentleman's
11 name is, ah, Homer Kelly, and explained that because he was one
12 of the main complainants that lived on the other side of the
13 lake, and explained to him that his position that this was
14 a private lake and they didn't have any right to use the lake
15 was -- was in error and that this -- that all property
16 owners that lived on the lake had the same riparian rights
17 that all other property owners had and if they were a home-
18 owners' association, they had that right as well. Any
19 property owner, whether they launch one boat or a hundred
20 boats, has the right to put water -- or put the boat in the
21 water.

22 There is the -- the lake bottom of this lake is
23 privately owned, but the use -- use of the surface waters, ah,
24 is the right of all riparian property owners.

25 So, if the homeowners' association, which owns

1 this 30-foot strip is granted, ah, the special exception, then
2 they would be in conformity with the zoning, and can have a
3 boat ramp and can launch boats on this particular site, so
4 the question simply is, today, is, as I -- as I believe the
5 question has been posed to you, is whether or not the special
6 exception is -- to use that property for a boat ramp is or
7 is not, ah, consistent with our zoning regulations; if they
8 meet that criteria.

9 COMMISSIONER CHAPIN: Does that mean, then, that any
10 subdivision that actually dedicates a -- a lot for recreational
11 use to homeowners, has the right -- absolute right to put a
12 boat -- boat ramp in?

13 MR. STEWART: No, it doesn't. They have the right
14 to use the property --

15 COMMISSIONER CHAPIN: Yes.

16 MR. STEWART: -- with or without a boat ramp. The
17 question -- one of the problems that we came to here is they
18 put in a concrete pad, which they say is not a boat ramp, but
19 was used to facilitate the launching of boats. Does not go
20 down to the high-water line. Doesn't go into the water, and
21 we took the position -- I wrote another letter. Said the ramp
22 got to go, too, ah, and we used that special legal theory
23 about quacking like a boat ramp, and waddled like a boat
24 ramp, so it was a boat ramp.

25 Ah, then the -- then this application came, and the --

1 then, as the lady appearing before you just now pointed out,
2 um, the Board, last year, told them that they should apply for
3 this special exception. If they're gonna have a boat ramp
4 there, they have to apply for a special exception, ah, and
5 come back to the Board. They've -- and that's what they've
6 done.

7 A -- an adjacent property owner can use the lake,
8 but that use has to be consistent with the zoning regulations
9 that apply to whatever the property happens to be zoned. If
10 it were zoned for commercial and they could get a permit
11 for a boat ramp, they could charge fees, I suppose. I don't
12 know of any restriction that would keep them from doing that.

13 COMMISSIONER CHAPIN: Well, are there two separate
14 questions? I'm sorry to be so dense about this, but we're
15 looking at the rezoning the -- the special exception for a
16 rezoning?

17 MR. STEWART: Yes.

18 COMMISSIONER CHAPIN: Are we also looking at a boat
19 ramp or once you get the rezoning that assures you of a boat
20 ramp?

21 MR. STEWART: This -- the special exception -- they
22 have the zoning, but what they want now is a special exception
23 that will allow the boat ramp.

24 COMMISSIONER CHAPIN: Okay.

25 MR. STEWART: That's the question.

1 COMMISSIONER CHAPIN: Okay.

2 MR. STEWART: So it's really -- the boat ramp is the
3 question. The special exception, ah, is for recreational
4 use, specifically for a boat ramp, 'cause there are no other
5 improvements planned on that. They have to have a special
6 exception to make any improvements to the property. They
7 can just have this -- this vacant lot with -- with grass,
8 or weeds, or whatever, um, but they can't make improvements to
9 it unless they're granted a special exception within the
10 R-1-AA zone category, so you're -- the question to you is
11 do you want to grant the special exception and allow the boat
12 ramp? If you deny the special exception, they can't have a
13 boat ramp.

14 COMMISSIONER MARSTON: But could they still put
15 boats in the water?

16 MR. STEWART: I -- I don't know of, ah, any restric-
17 tion that says they couldn't put boats in the water if it's a
18 riparian owner. The question is, how to get down to the water
19 if the -- now, I don't know how that we could prevent a
20 property owner, who owns the property, from putting a boat
21 in the water. We can -- we can prevent improvements that
22 might facilitate that, but I don't know that our zoning
23 regulation prevents someone or a group of people from -- from
24 using that lot and exercising those riparian rights that go
25 along with that lot; whether it be an individual ownership

1 or a corporate ownership; whether it be IBM that owns it, or
2 the homeowners' association, or an individual.

3 THE CHAIRMAN: Anyone else wish to address the
4 Board? Sure.

5 MR. BLENDEN: Okay. My name is Bob Blenden. I
6 reside at, ah, 3964 Irma Shores Drive, and, ah, I won't take
7 up your time with a long-winded speech. Really, all I was
8 going to address, because, ah, kind of germane to the issue,
9 is my -- my background as an engineer. I've been in civil
10 engineering, platting, ah, lands, ah, in Orange County, now,
11 for about six years, and that's all I wanted to address, the
12 simple -- that issue, because it was brought up by the, ah,
13 ah, people, ah, fighting this issue.

14 Ah, I did some research and I'd like to, ah, enter
15 it in for the record. Ah, three -- and it's just, I didn't
16 have a lot of time to do much research, but I called a few
17 people who are members of homeowners' associations in Orange
18 County that have access, ah, to lakes that, ah, in a couple
19 of cases are smaller than ours; in one case, is larger. All
20 the lots are greater than the number that we have for all
21 three lakes that I'm going to give you.

22 THE CHAIRMAN: Thank you. Exhibit Five.

23 (Exhibit Five was marked for identification.)

24 MR. BLENDEN: Now, my only point with those --
25 really, just two. I'll make 'em very quickly. None of

1 these plats and they were dated -- this is -- one was fairly
2 recent, but two of 'em were more along the -- the, ah, age
3 of ours. Ah, none of these plats have any dedications for
4 the particular lots that are now used for boat ramps. They
5 have boat ramps on 'em, not just used tracts. This would have
6 boat ramps on 'em. The plats do not address issues of access.
7 As a matter of fact, it would be interesting to note that the
8 canal that -- that is platted for half the members here that
9 are here fighting this issue, that canal is nothing more than
10 a drainage easement. It is not -- does not state on the
11 plat that it provides them with any special rights. That is
12 not done by platting. That's done by separate legal instrument
13 You'll find nothing in these plats concerning either the, ah,
14 homeowners' association being formed or just being dedicated
15 to a homeowners' association, the individual tracts, or any
16 rights to the lake, and yet, they're all providing access to
17 the lakefront homes off the lake. That's all I would like to
18 point out, because they brought up the platting issue.

19 Oh, excuse me. Just one other item, is the zoning
20 regs for, ah, R-3 zoning, also do not address whether a
21 piece of property owned is required to be a lot or a parcel
22 or a tract or otherwise dedicated at the time of the platting
23 for any purposes. It only addresses special exception for
24 properties. That's all -- that's all the wording in here.
25 Thank you.

1 THE CHAIRMAN: Thank you. Anyone else wish to
2 speak? Well, now, you know, we could go back and forth and
3 this is not a court, and we're not going to argue this thing.
4 We're gonna try to make some determination. The problem
5 of what we're gonna do is to -- is, ah, just continue this
6 hearing for a week, until the district commissioner, since
7 he's requested that he be here, to make the decision. We're
8 probably gonna continue it for a week for the decision.
9 Ah, if you, you know, if you have -- I'm gonna give the, ah
10 -- the attorney one minute to -- to wrap up here because
11 she's the one that's, ah, making these arguments in the
12 beginning, but I'll only give you a minute to -- and cut off,
13 so if you wanna come back to the mike for one minute, then
14 you may.

15 MS. O'SHEA: The only purpose that I wanted to come
16 up here for was just to point out in, ah, the special laws
17 of Florida, Chapter 63 1718, which deals with the granting
18 of special exceptions, in Section 13, subparagraph B, ah,
19 addresses the Board of Zoning Adjustment's authority to grant
20 special exceptions and states that, ah, the Board -- the Board
21 of Zoning Adjustment has the right to grant special exceptions
22 with such conditions and safeguards as are appropriate under
23 the zoning resolutions, and then in -- in a -- a another
24 section, Section 15, the Board of County Commissioners is
25 given the authority to hear appeals from those BZA decisions

1 and the authority to reverse, affirm, wholly or part --
2 wholly or partially, or modify the order, requirement, or
3 decision by the BZA, so I would respectfully sub -- submit
4 to this Commission that there are a variety of things that
5 can be done with a special-exception situation and that even
6 a riparian owner does not have the right to use that property
7 and a special exception without the sanction of this Commis-
8 sion and without whatever safeguards this Commission determine
9 need to be placed on that property to preserve the public
10 interest. Thank you very much.

11 THE CHAIRMAN: Thank you. I move we continue this
12 for one week.

13 COMMISSIONER MARSTON: Second.

14 AN AUDIENCE MEMBER: (Inaudible.)

15 THE CHAIRMAN: Ma'am?

16 AN AUDIENCE MEMBER: Can you kind of get an idea of
17 how many of us have taken time off to be here today?

18 THE CHAIRMAN: If you'd like to stand as the ones
19 that's opposed to it, we'll look at you. Okay. Thank you
20 very much, and -- and what about the ones on the other side?
21 How many have we got here today?

22 MR. ODOM: We -- we don't go for numbers. Not very
23 many of us --

24 THE CHAIRMAN: Well, I'll give you the same option.
25 I moved that we continue it for a week until Commissioner

1 Donegan returns, seconded by Commissioner Marston.

2 Be advised of the time?

3 THE CLERK: 1:50 p.m.

4 THE CHAIRMAN: At 1:50, ah, next Monday. Discussion?

5 All in favor of that motion say "aye."

6 COMMISSIONER CHAPIN: Aye.

7 COMMISSIONER MARSTON: Aye.

8 THE CHAIRMAN: Opposed, say "no." Motion carries.

9 So a decision will be at 1:50 next Monday. Thank you for
10 appearing.

11 COMMISSIONER CHAPIN: That will be for a decision
12 only, not for --

13 THE CHAIRMAN: Decision only, no, no --

14 COMMISSIONER CHAPIN: No more comment.

15 THE CHAIRMAN: No debate, just a decision.

16 (At 3:15 o'clock p.m. the public hearing on this
17 matter was concluded.)

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C E R T I F I C A T E

STATE OF FLORIDA:

COUNTY OF ORANGE:

I, LINDA K. LUBITZ, RPR, being a Special Court Reporter, Ninth Judicial Circuit, Orange County, Florida, and a Stenotype Shorthand Reporter and Notary Public, State of Florida at Large, do hereby certify that I was authorized to and did report in shorthand the above and foregoing proceedings and that thereafter, my shorthand notes were transcribed and reduced to typewriting under my supervision; and that the pages numbered 3 through 36, inclusive, contain a full, true, and correct transcription of my shorthand notes taken therein

Done and signed this 2nd day of August, 1989, in the City of Orlando, County of Orange, State of Florida.

NOTARY PUBLIC

NOTARY PUBLIC, STATE OF FLORIDA
MY COMMISSION EXPIRES: NOV. 2, 1991
BONDED THROUGH NOTARY PUBLIC UNDERWRITERS.