

RESOLUTION NO. 05-93

ZONING APPLICATION 05-11-VPB-3/05-313

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO ZONING; APPROVING THE APPLICATION OF LOIS M. & PAUL R. NEIDHART, SR., TRUSTEES FOR REZONING FROM BU-1 (BUSINESS-NEIGHBORHOOD) & BU-1A (BUSINESS-LIMITED) TO BU-1A (BUSINESS-LIMITED) (PROPERTY LOCATED AT 15725 SOUTH DIXIE HIGHWAY); PROVIDING AN EFFECTIVE DATE.

WHEREAS, the applicant made application for district boundary change from BU-1 (Business-Neighborhood) & BU-1A (Business-Limited) to BU-1A (Business-Limited), as described in the Miami-Dade Department of Planning and Zoning Recommendation to the Village of Palmetto Bay, which is attached to this resolution; and,

WHEREAS, the village council of the Village of Palmetto Bay conducted a quasi-judicial hearing on the application at Southwood Middle School on November 14, 2005; and,

WHEREAS, the mayor and village council finds, based on substantial competent evidence in the record, that the application for district boundary change is consistent with the Land Use Plan Map of the Miami-Dade County comprehensive plan and compatible with the area; and,

WHEREAS, in 1955, a portion of the property was rezoned from BU-1 (Neighborhood Business) to BU-1A (Limited Business), which allowed for the erection of a billboard on the property; and,

WHEREAS, in 1973, another portion of the "master" property was rezoned from AU (Agricultural) to BU-1A (Limited Business); and,

WHEREAS, in 1974, another portion of the property was changed from RU-3 (Four Unit Apartment) and AU (Agricultural) to BU-1A (Limited Business); and,

WHEREAS, in 1978, a use variance was applied for to allow wine sales in baskets in a BU-1A and BU zone. In this case, the map and legal description attached to the resolution approving the zoning change did not match; the legal description indicated

another portion of the property; and the map indicated the portion of the property seeking the zoning change before the village council; and,

WHEREAS, in 1993, the property owner requested a district boundary change from BU-1 & BU-1A to entirely BU-1A, as well as several other zoning requests. This application was withdrawn; and,

WHEREAS, at some point the county zoning department changed the zoning map to reflect that the entire property is zoned BU-1A, and the county's zoning maps reflect the entire property as BU-1A but the resolution approving the zoning change has not been discovered as, due to Hurricane Andrew and its aftermath, certain county zoning documents were lost or destroyed; and,

WHEREAS, the properties to the left and right of the property are zoned BU-1A; and,

WHEREAS, in BU-1A zoning districts, unlike a BU-1 zoned property, the property owner can provide a drive thru, and the "master property" under discussion already has a drive thru located on the property, but, in a different location, on that portion of the property which is zoned BU-1A; and

WHEREAS, based on the foregoing finding, the mayor and village council determined to grant the application, as provided in this resolution.

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

Section 1. A hearing on the present application was held on November 14, 2005 in accordance with ordinance. no. 02-03, entitled "Quasi-judicial hearing procedures." Pursuant to the hearing, the village council makes the following findings of fact, conclusions of law and order.

Section 2. Findings of fact.

1. The above referenced whereas clauses are incorporated by reference.
2. The applicants are Lois M. Neidhart and Paul R. Neidhart, Sr., Trustees. The property is BU-1 and BU-1A (fast food restaurant and parking lot) located at 15725 South Dixie Highway consisting of 0.8502 net acres.
3. The applicant requests re-zoning from BU-1 (Business-Neighborhood) & BU-1A (Business-Limited) to BU-1A (Business-Limited).

4. The village council adopts the above whereas clauses, and the portions of the cover sheet to, and the county recommendation, entitled Zoning Hearings History, Comprehensive Development Master Plan (CDMP), Neighborhood Characteristics, Site and Buildings and Neighborhood Services as its findings of fact.

Section 3. Conclusions of law.

1. The village council adopts the portions of the county recommendation, entitled Pertinent Requirements/Standards and Analysis as its conclusions of law.
2. The village council further concludes that the application for district boundary change is consistent with the Land Use Plan Map's business and office designation. The requested BU-1A zoning will be compatible with the surrounding area that consists of similar commercial uses and will provide additional services to the community as well as the surrounding neighborhood and will be consistent with the Land Use Plan map of the Comprehensive Development Master Plan.

Section 4. Order.

The village council accepts the county and staff recommendation at page 5. The application for zone change to BU-1A is approved.

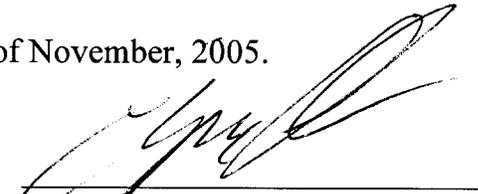
Section 5. Record.

The record shall consist of the notice of hearing, the applications, documents submitted by the applicant and the applicant's representatives to the Miami-Dade County Department of Planning and Zoning and the Palmetto Bay Department of Community Development in connection with the applications, the County and Village recommendation and attached cover sheet and documents, the testimony of sworn witnesses and documents presented at the quasi-judicial hearing, and the audio recording and minutes of the hearing. The record shall be maintained by the village clerk.

Section 6. This resolution shall take effect immediately upon approval.

PASSED and ADOPTED this 14th day of November, 2005.

Attest: 
Meighan Pier
Village Clerk


Eugene P. Flinn, Jr.
Mayor

APPROVED AS TO FORM:


Eve A. Boutsis,
Village Attorney

FINAL VOTE AT ADOPTION:

Council Member Ed Feller	<u>YES</u>
Council Member Paul Neidhart	<u>ABSTAIN</u>
Council Member John Breder	<u>YES</u>
Vice-Mayor Linda Robinson	<u>YES</u>
Mayor Eugene P. Flinn, Jr.	<u>YES</u>

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MIAMI-DADE COUNTY DEPARTMENT OF PLANNING AND ZONING
RECOMMENDATION TO THE VILLAGE OF PALMETTO BAY

APPLICANT: Paul R. Neidhart Sr. & Lois M. Neidhart, Trs. PH: Z05-313 (05-2-VPB-3)

SECTION: 28-55-40

DATE: November 14, 2005

ITEM NO.: 3

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A. INTRODUCTION

o REQUEST:

BU-1 and BU-1A to BU-1A

o SUMMARY OF REQUEST:

This application is requesting to change the zoning on the subject property from BU-1, neighborhood business, and BU-1A, limited business district, to BU-1A, limited business district.

o LOCATION:

15725 South Dixie Hwy, Village of Palmetto Bay, Florida.

o SIZE: 0.8502 net acres

o IMPACT:

The rezoning of the property will allow the applicants to provide a greater variety of limited business uses to the community than are currently permitted. However, the rezoning will bring additional activity and noise into the area.

B. ZONING HEARINGS HISTORY:

In 1973, the Zoning Appeals Board recommended, pursuant to Resolution 4ZAB-352-73, to the Board of County Commissioners to approve a rezoning from AU, agricultural zoning district, to BU-1A, Limited Business district for the southern 100 feet of the subject property. The Board of County Commissioners approved the request pursuant to Resolution Z-248-73.

C. COMPREHENSIVE DEVELOPMENT MASTER PLAN (CDMP):

The Adopted 2005 and 2015 Land Use Plan designates the subject property as being within the Urban Development Boundary for **business and office**.

D. NEIGHBORHOOD CHARACTERISTICS:

ZONING

LAND USE PLAN DESIGNATION

Subject Property:

BU-1 and BU-1A; fast food restaurant
and parking lot

Business and Office

Surrounding Properties:

NORTH: BU-1A; retail center

Business and Office

SOUTH: BU-1; commercial building

Business and Office

EAST: BU-1A; office building

Business and Office

WEST: GU; golf course

Parks and Recreation

The subject parcel is located 15725 South Dixie Highway. This parcel is surrounded by BU-1A zoned properties on the eastern side of US-1. A golf course lies to the west and is zoned GU.

E. SITE AND BUILDINGS:

Site Plan Review:

(No plans submitted)

Scale/Utilization of Site:

Acceptable

Location of Buildings:

N/A

Compatibility:

Acceptable

Landscape Treatment:

N/A

Open Space:

N/A

Buffering:

N/A

Access:

Acceptable

Parking Layout/Circulation:

N/A

Visibility/Visual Screening:

N/A

Energy Considerations:

N/A

Roof Installations:

N/A

Service Areas:

N/A

Signage:

N/A

Urban Design:

N/A

F. PERTINENT REQUIREMENTS/STANDARDS:

Section 33-311(F)

In evaluating an application for a **district boundary change**, the Board shall take into consideration, among other factors the extent to which:

- (1) The development permitted by the application, if granted, conforms to the Comprehensive Development Master Plan for Miami-Dade County, Florida; is consistent with applicable area or neighborhood studies or plans, and would serve a public benefit warranting the granting of the application at the time it is considered;
- (2) The development permitted by the application, if granted, will have a favorable or unfavorable impact on the environmental and natural resources of Miami-Dade County, including consideration of the means and estimated cost necessary to minimize the adverse impacts; the extent to which alternatives to alleviate adverse impacts may have a substantial impact on the natural and human environment; and whether any irreversible or irretrievable commitment of natural resources will occur as a result of the proposed development;
- (3) The development permitted by the application, if granted, will have a favorable or unfavorable impact on the economy of Miami-Dade County, Florida;
- (4) The development permitted by the application, if granted, will efficiently use or unduly burden water, sewer, solid waste disposal, recreation, education or other necessary public facilities which have been constructed or planned and budgeted for construction;
- (5) The development permitted by the application, if granted, will efficiently use or unduly burden or affect public transportation facilities, including mass transit, roads, streets and highways which have been constructed or planned and budgeted for construction, and if the development is or will be accessible by public or private roads, streets or highways.

G. NEIGHBORHOOD SERVICES:

DERM	No objection*
Public Works	No objection
Parks	No objection
MDTA	No objection
Fire Rescue	No objection
Police	No objection
Schools	No comment

*Subject to the conditions indicated in their memorandum.

H. ANALYSIS:

The subject property is located at the 15725 South Dixie Hwy. The applicants are seeking a district boundary change from BU-1, Neighborhood Business District, and BU-1A, Limited Business District, to BU-1A, Limited Business District.

The Department of Environmental Resources Management (DERM) has no objections to this application and indicates that it meets the minimum requirements of Chapter 24 of the Code of Miami-Dade County. However, the applicants will have to comply with all DERM

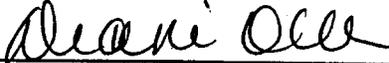
conditions as set forth in their memorandum pertaining to this application. The **Public Works Department** has **no objections** to this application. Additionally, this application meets traffic concurrency criteria.

This application will allow the applicants to provide additional commercial services to the community. Staff notes that the proposed BU-1A zoning district allows all the permitted uses within the BU-1 zoning district. BU-1A zoning district permits, in addition to BU-1 uses, automobile service stations, bait and tackle shops, banks with drive thru facilities, convention halls, grocery stores, motorcycle sales and repairs, restaurants with drive thru facilities, variety stores, and other uses as indicated in the Zoning Code. The proposed BU-1A zoning is consistent with the Land Use Plan Map's **business and office** designation. The requested BU-1A zoning will be **compatible** with the surrounding area which consists of similar commercial uses and will provide additional services to the community as well as the surrounding neighborhood and will be **consistent** with the LUP map of the CDMP. As such, staff recommends approval of the rezoning to BU-1A.

I. **RECOMMENDATION:** Approval.

J. **CONDITIONS:** None.

DATE INSPECTED: 10/17/05
DATE TYPED: 10/13/05
DATE REVISED: 10/28/05; 11/01/05; 1/02/05
DATE FINALIZED: 11/03/05
DO:QW:AJT:MTF:LVT:JV:JED


Diane O'Quinn Williams, Director
Miami-Dade County Department of
Planning and Zoning

Village of Palmetto Bay
Department of Community Development
Recommendation:

The applicant is requesting the rezoning of a parcel from BU-1 to BU-1A. It is recommended that the application be approved to be consistent with zoning of surrounding commercial parcels.


Arleen Weintraub, Director
Community Development

Memorandum



Date: October 11, 2005

To: Diane O'Quinn-Williams, Director
Department of Planning and Zoning

From: Jose Gonzalez, P.E., Assistant Director
Environmental Resources Management

A handwritten signature in black ink, appearing to read "Jose Gonzalez".

Subject: #Z2005000313
Paul R. Neldhart & Lois M. Neidhart, Trustee
15725 S. Dixie Highway
District Boundary Change from BU-1 to BU-1A
(BU-1) (0.85 Ac.)
28-55-40

The Department of Environmental Resources Management (DERM) has reviewed the subject application and has determined that it meets the minimum requirements of Chapter 24 of the Code of Miami-Dade County, Florida (the Code). Accordingly, DERM may approve the application, and the same may be scheduled for public hearing.

Potable Water Supply and Wastewater Disposal:

Public water and public sanitary sewers can be made available to the subject property. Therefore, connection of the proposed development to the public water supply system and sanitary sewer system shall be required in accordance with Code requirements.

Notwithstanding the foregoing, in light of the fact that the County's sanitary sewer system has limited sewer collection, transmission, and treatment capacity, no new sewer service connections can be permitted, unless there is adequate capacity to handle the additional flows that this project would generate. Consequently, final development orders for this site may not be granted if adequate capacity in the system is not available at the point in time when the project will be contributing sewage to the system. Lack of adequate capacity in the system may require the approval of alternative means of sewage disposal. Use of an alternative means of sewage disposal may only be granted in accordance with Code requirements, and shall be an interim measure, with connection to the public sanitary sewer system required upon availability of adequate collection/transmission and treatment capacity.

Stormwater Management:

All stormwater shall be retained on site utilizing properly designed seepage or infiltration drainage structures. Drainage plans shall provide for full on-site retention of the stormwater runoff of a 5-year/1-day storm event. Pollution Control devices shall be required at all drainage inlet structures.

Site grading and development shall comply with the requirements of Chapter 11C of the Code.

Air Quality:

In the event of any kind of renovation or demolition activity, an asbestos survey from a Florida-licensed asbestos consultant is required. If said survey shows friable asbestos materials in amounts larger than prescribed by federal law (260 linear feet of pipe insulation/thermal system insulation [TSI] or 160 square feet of surfacing material), then those materials must be removed/abated by a Florida-licensed

asbestos abatement contractor. A notice of asbestos renovation or demolition form must be filed with the Air Quality Management Division of DERM for both the abatement (renovation) work and the demolition activity at least 10 working days prior to starting the field operations.

Hazardous Materials Management:

Due to the nature of uses allowed in the proposed zoning classification, the applicant may be required to obtain DERM approval for management practices to control the potential discharge and spillage of pollutants associated with some land uses permitted in the requested zoning district. The applicant is advised to contact the DERM Industrial Facilities Section concerning required management practices.

Operating Permits:

Section 24-18 of the Code authorizes DERM to require operating permits from facilities that could be a source of pollution. The applicant should be advised that due to the nature of some land uses permitted under the proposed zoning classification, operating permits from DERM may be required. It is therefore suggested that the applicant contact DERM concerning operating requirements.

Wetlands:

The subject property does not contain jurisdictional wetlands as defined by Section 24-5 of the Code; therefore, a Class IV Wetland Permit will not be required.

The applicant is advised that permits from the Army Corps of Engineers (305-526-7181), the Florida Department of Environmental Protection (561-681-6600) and the South Florida Water Management District (1-800-432-2045) may be required for the proposed project. It is the applicant's responsibility to contact these agencies.

Tree Preservation:

Tree removal permit number 2005-027 was issued to Bank Atlantic on March 9, 2005. All approved tree removal and replanting must be completed prior to the scheduled expiration date of this permit on March 9, 2006. The applicant is advised that a Miami-Dade County Tree Removal Permit is required prior to the removal or relocation of any other trees on the subject property.

The applicant is advised to contact DERM staff for permitting procedures and requirements prior to development of site and landscaping plans.

Enforcement History:

DERM has reviewed the permits and enforcement database and the enforcement case tracking system and has found one closed enforcement case for the subject property. The following is a summary of this closed enforcement case associated with the subject folio:

Miami Subs Grill # 39 - Permit # GDO 544

On 03/27/2002 a uniform civil violation notice (UCVN) was issued to the facility for failure to renew the operating permit. The case was subsequently closed due to compliance on September 23rd 2002.

In summary, the application meets the minimum requirements of Chapter 24 of the Code and therefore, it may be scheduled for public hearing; furthermore, this memorandum shall constitute DERM's written approval to that effect as required by the Code.

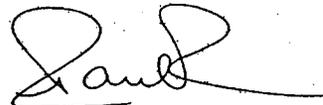
cc: Lynne Talleda, Zoning Evaluation- P&Z
Ron Connally, Zoning Hearings- P&Z
Franklin Gutierrez, Zoning Agenda Coordinator-P&Z

PUBLIC WORKS DEPARTMENT COMMENTS

Applicant's Names: PAUL R. NEIDHART SR. & LOIS M. NEIDHART, TRS

This Department has no objections to this application.

This application meets the traffic concurrency criteria for an Initial Development Order because it was evaluated and approved previously under Waiver of Plat (D-22017).



Raul A Pino, P.L.S.

31-OCT-05



Memorandum

Date: 30-SEP-05
To: Diane O'Quinn Williams, Director
 Department of Planning and Zoning
From: Herminio Lorenzo, Fire Chief
 Miami-Dade Fire Rescue
Subject: Z2005000313

Fire Prevention Unit:

Not applicable to Fire Water Engineering site requirements.

Service Impact/Demand:

Development for the above Z2005000313
 located at 15725 S DIXIE HWY
 in Police Grid _____ is proposed as the following:

_____	dwelling units	_____	square feet
single		Industrial	
_____	dwelling units	_____	square feet
multifamily		Institutional	
_____	square feet	_____	square feet
commercial		nursing home	

Based on this development information, estimated service impact is: ___ alarms-annually.

Existing services:

The Fire station responding to an alarm in the proposed development will be:

Planned Service Expansions:

The following stations/units are planned in the vicinity of this development:

Fire Planning Additional Comments:

Not applicable to service impact analysis.

DATE: 10/20/05

REVISION 1

TEAM METRO

ENFORCEMENT HISTORY

PAUL R. NEIDHART SR. & LOIS M.
NEIDHART, TRS

15725 SOUTH DIXIE HWY,
PALMETTO BAY, FLORIDA

APPLICANT

ADDRESS

Z2005000313

HEARING NUMBER

CURRENT ENFORCEMENT HISTORY:

10/20/05 No Violations Found. OK.

DISCLOSURE OF INTEREST*

If a **CORPORATION** owns or leases the subject property, list principal stockholders and percent of stock owned by each. [Note: Where principal officers or stockholders consist of other corporation(s), trust(s), partnership(s) or similar entities, further disclosure shall be made to identify the natural persons having the ultimate ownership interest].

CORPORATION NAME: _____

<u>NAME AND ADDRESS</u>	<u>Percentage of Stock</u>
RECEIVED 205-313 SEP 21 2005	
ZONING HEARINGS SECTION MIAMI-DADE PLANNING AND ZONING DEPT BY <u>fe</u>	

If a **TRUST or ESTATE** owns or leases the subject property, list the trust beneficiaries and percent of interest held by each. [Note: Where beneficiaries are other than natural persons, further disclosure shall be made to identify the natural persons having the ultimate ownership interest].

TRUST/ESTATE NAME: PAUL NEIDHART + LOIS NEIDHART

<u>NAME AND ADDRESS</u>	<u>Percentage of Interest</u>
<u>PAUL NEIDHART 15800 SW 79 Ave</u>	<u>50%</u>
<u>LOIS NEIDHART "</u>	<u>50%</u>

If a **PARTNERSHIP** owns or leases the subject property, list the principals including general and limited partners. [Note: Where partner(s) consist of other partnership(s), corporation(s), trust(s) or similar entities, further disclosure shall be made to identify the natural persons having the ultimate ownership interests].

PARTNERSHIP OR LIMITED PARTNERSHIP NAME: _____

<u>NAME AND ADDRESS</u>	<u>Percent of Ownership</u>

If there is a **CONTRACT FOR PURCHASE** by a Corporation, Trust or Partnership, list purchasers below, including principal officers, stockholders, beneficiaries or partners. [Note: Where principal officers, stockholders, beneficiaries or partners consist of other corporations, trusts, partnerships or similar entities, further disclosure shall be made to identify natural persons having ultimate ownership interests].

NAME OF PURCHASER: _____

NAME, ADDRESS AND OFFICE (if applicable)	Percentage of Interest
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Date of contract: _____

If any contingency clause or contract terms involve additional parties, list all individuals or officers, if a corporation, partnership or trust:

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205-313
SEP 21 2005

ZONING HEARINGS SECTION
MIDDMORE PLANNING AND ZONING DEPT
BY PC

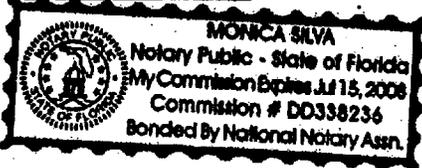
NOTICE: For changes of ownership or changes in purchase contracts after the date of the application, but prior to the date of final public hearing, a supplemental disclosure of interest is required.

The above is a full disclosure of all parties of interest in this application to the best of my knowledge and belief.

Signature: Paul Dechant Bob Reichart
(Applicant)

Sworn to and subscribed before me this 19 day of September, 2005. Affiant is personally known to me or has produced personally known to me as identification.

[Signature]
(Notary Public)



My commission expires July 15, 2008.

*Disclosure shall not be required of: 1) any entity, the equity interests in which are regularly traded on an established securities market in the United States or another country; or 2) pension funds or pension trusts of more than five thousand (5,000) ownership interests; or 3) any entity where ownership interests are held in a partnership, corporation or trust consisting of more than five thousand (5,000) separate interests, including all interests at every level of ownership and where no one (1) person or entity holds more than a total of five per cent (5%) of the ownership interest in the partnership, corporation or trust. Entities whose ownership interests are held in a partnership, corporation, or trust consisting of more than five thousand (5,000) separate interests, including all interests at every level of ownership, shall only be required to disclose those ownership interest which exceed five (5) percent of the ownership interest in the partnership, corporation or trust.

If there is a **CONTRACT FOR PURCHASE** by a Corporation, Trust or Partnership, list purchasers below, including principal officers, stockholders, beneficiaries or partners. [Note: Where principal officers, stockholders, beneficiaries or partners consist of other corporations, trusts, partnerships or similar entities, further disclosure shall be made to identify natural persons having ultimate ownership interests].

NAME OF PURCHASER: BANK ATLANTIC

NAME, ADDRESS AND OFFICE (if applicable)	Percentage of Interest
<u>4150 SW 28 WAY</u>	<u>100</u>
<u>FORT LAUDERDALE, FL 33312</u>	

Date of contract: JANUARY 11, 2005

If any contingency clause or contract terms involve additional parties, list all individuals or officers, if a corporation, partnership or trust:

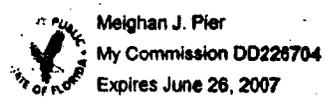
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The above is a full disclosure of all parties of interest in this application to the best of my knowledge and belief.

Signature: Paul Heidhart Lois Heidhart
(Applicant)

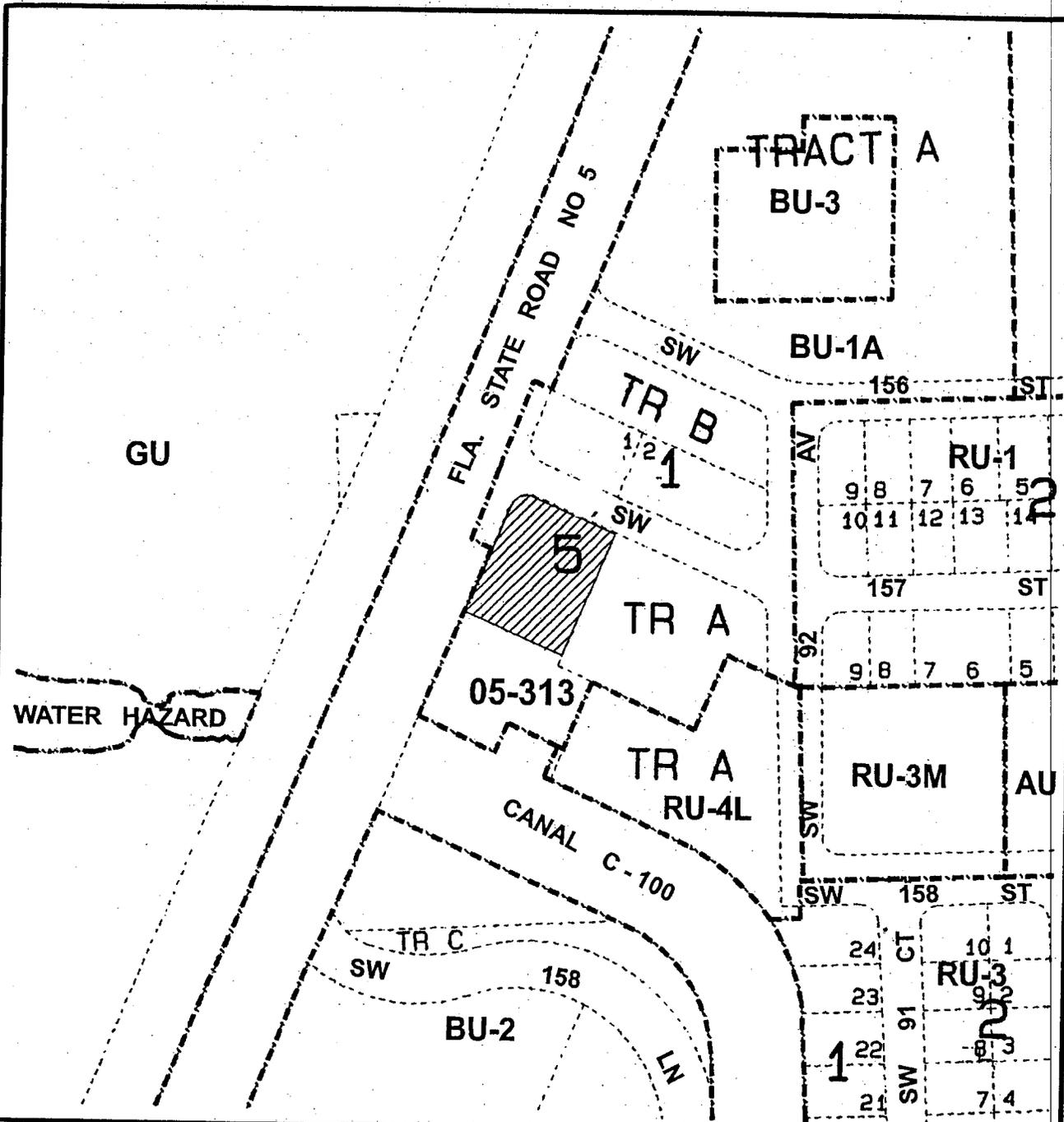
Sworn to and subscribed before me this 8th day of November, 2005. Affiant is ^(s) are personally known to me or has produced _____ as identification.

Meighan J. Pier
(Notary Public)



My commission expires 6/26/2007

*Disclosure shall not be required of: 1) any entity, the equity interests in which are regularly traded on an established securities market in the United States or another country; or 2) pension funds or pension trusts of more than five thousand (5,000) ownership interests; or 3) any entity where ownership interests are held in a partnership, corporation or trust consisting of more than five thousand (5,000) separate interests, including all interests at every level of ownership and where no one (1) person or entity holds more than a total of five per cent (5%) of the ownership interest in the partnership, corporation or trust. Entities whose ownership interests are held in a partnership, corporation, or trust consisting of more than five thousand (5,000) separate interests, including all interests at every level of ownership, shall only be required to disclose those ownership interest which exceed five (5) percent of the ownership interest in the partnership, corporation or trust.



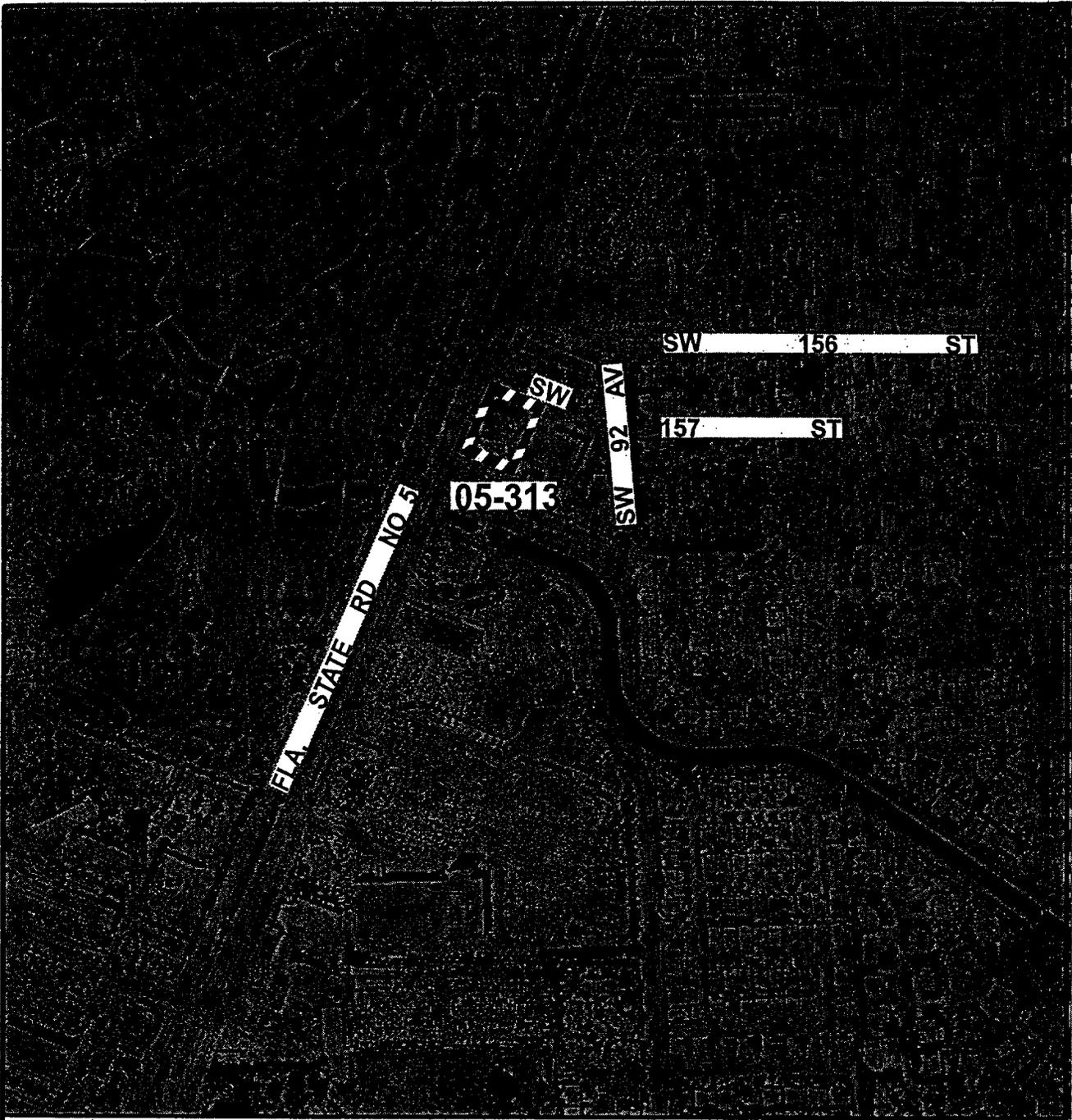
**MIAMI-DADE COUNTY
HEARING MAP**

Section: 28 Township: 55 Range: 40
 Process Number: 05-313
 Applicant: PAUL R NEIDHART SR & LOIS M NEIDHART
 Zoning Board: VPB
 District Number: 8
 Drafter ID: KEELING
 Scale: 1:200'



SUBJECT PROPERTY





**MIAMI-DADE COUNTY
AERIAL**

**Section: 28 Township: 55 Range: 40
Process Number: 05-313
Applicant: PAUL R NEIDHART SR & LOIS M NEIDHART TRS
Zoning Board: VPB
District Number: 8
Drafter ID: KEELING
Scale: NTS**



SUBJECT PROPERTY

