

## Scott Reale

---

**From:** Richard Dewitt <rdewitt@govlawgroup.com>  
**Sent:** Thursday, July 20, 2023 2:52 PM  
**To:** Martha Lawson  
**Cc:** Scott Reale  
**Subject:** Zoning Board of Appeals - File # LN-476 - Opposition to Variance - SES WPB, LLC  
**Attachments:** JNK Full Resume-May 2023.pdf; LN-476 Opposition to Variance 23-11000011.docx.pdf

**EXTERNAL Email:** Do not reply, click links, or open attachments unless you recognize the sender's **EMAIL ADDRESS** as legitimate and know the contents are safe.

Ms. Lawson/Mr. Reale:

This firm represents Trax Joint Venture, Inc. ("Trax"), an adjacent property owner (1840 – 1870 NW 21<sup>st</sup> Street) to the proposed project – SES WPB, LLC - 1820 NW 21<sup>st</sup> Street, LN-476 , and is strongly opposed to the proposed Variance Request.

This letter serves to place the City on notice that Trax is hereby filing as a party intervenor/affected person, for the Special Exception and Variance request, scheduled for the Zoning Board of Appeals Meeting on July 20, 2023. As an intervenor/affected party, Trax shall receive the same rights and privileges afforded to the applicant, including but not limited to, the right to make a reasonable presentation and to cross-examine witnesses.

Florida courts have uniformly held that "neighboring property owners affected by zoning changes have standing to challenge the changes." See *Rinker Materials Corp. v. Metropolitan Dade County*, 528 So.2d 904 (Fla. 3d DCA 1987). Courts have also held that affected parties must be given "a fair opportunity to be heard in accord with the basic requirements of due process, including the right to present evidence and to cross-examine adverse witnesses." *Bd. of County Comm'n of Hillsborough County*, 332 So.2d 651 (Fla. 2d DCA 1976) Lastly, in *Lee County v. Sunbelt Equities, IL Ltd. Partner*, 619 So.2d 996, 1002 (Fla. 2d DCA 1993), the Court ruled, "in quasi-judicial proceedings, the parties must be able to present evidence, cross-examine witnesses, and be informed of all the facts upon which the commission' acts."

The rights of Trax, an adjacent property owner, will be adversely affected by the granting of the Special Exception and Variance.

Attached, please find an evaluation of the Variance Criteria from our expert planner, Jeff Katims, AICP, CNU-A, Senior Planning Manager with TranSystems Corp. Mr. Katims opines that the Applicant fails to meet the mandatory Variance criteria. Please provide a copy of this correspondence, along with Mr. Katims' memorandum and CV to the board members and make a part of the agenda back up and record for File LN-476.

Please confirm receipt.

Thank you,

RJD



**Richard J. Dewitt, Esq.**

[rdewitt@govlawgroup.com](mailto:rdewitt@govlawgroup.com)

O: **954.909.0593** | M: **786.510.0535**

200 S. Andrews Ave. | Suite 601 | Fort Lauderdale, FL 33301



**TranSystems**

3230 Commercial Blvd., Suite 450  
Fort Lauderdale, FL 33309  
Tel (954) 653 4700

www.transystems.com

July 20, 2023

Richard DeWitt, Esq.  
Government Law Group  
200 S. Andrews Avenue, Suite 601  
Fort Lauderdale, FL 33301

Subject: Variance request for proposed concrete recycling use 1820 NW 21<sup>st</sup> Street, Pompano Beach

Dear Mr. DeWitt:

I have reviewed the petition for variance from the 1,000 distance separation requirement between outdoor waste-related service uses and evaluate the request below.

The crux of the petitioner’s variance justification is that the proposed concrete recycling use is not specifically listed in the zoning regulations as a waste-related service use and is not sufficiently similar to such uses, and for that reason, the distance separation requirement between such uses, for which the variance is sought, should not apply.

The matter before the Zoning Board of Appeals (“Board”) is not a determination of the proper use classification for the proposed concrete recycling use. Pursuant to Section 155.4601, the authority for such determinations rests solely with the Director, and is binding. Accordingly, I find that the petitioner has not met the burden of proof for the granting of a variance. Section 155.2420 provides that, “A Variance application shall be approved only on a finding that there is competent substantial evidence in the record that all of the following standards [listed and evaluated below] are met. Section 155.2420 further provides that,” Variances are to be sparingly exercised and only in rare instances and under exceptional circumstances to relieve undue and unique hardships to the landowner.”

Evaluation of variance criteria:

- a. There are extraordinary and exceptional conditions (such as topographic conditions, narrowness, shallowness, or the shape of the parcel of land) pertaining to the particular land or structure for which the Variance is sought, that do not generally apply to other lands or structures in the vicinity.**

The petitioner has not claimed, let alone demonstrated, that there are extraordinary and exceptional conditions that pertain to the land or structure on the subject property. The

code provides the following examples of such conditions: "...exceptional topographical conditions or the narrowness, shallowness, or shape of a specific parcel of land."

This criterion does not pertain to use, yet the petitioner has addressed this criterion completely on the basis of the specific proposed use. This criterion forms the foundation for further required findings below, such that the extraordinary and exceptional condition pertaining to *land or structure* prohibits or unreasonably restricts the utilization of the land or structure (*not for a specific use*), and that the variance is necessary to overcome the exceptional circumstance to allow *reasonable use of the land or structure (not to allow a specific desired use)*. Accordingly, the petitioner has failed to satisfy this requirement, and given the foundational stature of this requirement, cannot satisfy the requirements of b., c., d. and e.

**b. The extraordinary and exceptional conditions referred to in paragraph a., above, are not the result of the actions of the landowner.**

This criterion simply requires that the extraordinary and exceptional conditions in a., above, *pertaining to the land or structure* were not caused or created by the landowner. Since the petitioner made no claim of such conditions, the petitioner has failed to satisfy this requirement.

**c. Because of the extraordinary and exceptional conditions referred to in paragraph a., above, the application of this Code to the land or structure for which the Variance is sought would effectively prohibit or unreasonably restrict the utilization of the land or structure and result in unnecessary and undue hardship.**

Again, the petitioner does not claim that there are extraordinary and exceptional conditions pertaining to the land or structure, nor that reasonable use of the land or structure cannot be made. The petitioner has failed to satisfy this requirement.

**d. The Variance would not confer any special privilege on the landowner that is denied to other lands or structures that are similarly situated.**

Location of the proposed waste recycling use within 1,000 feet of another open-air, waste-related use or junkyard, without having established an extraordinary and exceptional condition pertaining to the *land or structure*, would confer a special privilege upon the landowner that is not generally authorized for similarly situated lands or structures. The petitioner has failed to satisfy this requirement.

**e. The extent of the Variance is the minimum necessary to allow a reasonable use of the land or structure.**

The petitioner has not claimed, nor established, that the variance is necessary to allow reasonable use of the land or structure. The sole reason for the variance is to authorize *one specific use* to occupy the subject property and structures thereon, neither of which have

extraordinary or exceptional conditions that prevent their reasonable use. The petitioner has failed to satisfy this requirement.

**f. The Variance is in harmony with the general purpose and intent of this Code and preserves its spirit.**

Section 115.1103 - General Purpose and Intent, articulates the general purpose and intent of the Code. The petition for variance lists intent statements that it claims the request is in harmony with, but provides no competent substantial evidence or any analysis at all as to how the variance is in harmony with such intent statements. The petitioner has failed to satisfy this requirement.

**g. The Variance would not adversely affect the health or safety of persons residing or working in the neighborhood, be injurious to property or improvements in the neighborhood, or otherwise be detrimental to the public welfare.**

The *minimum* required 1,000 foot distance separation between outdoor waste service uses is designed to prevent a concentration of such uses within the I-1X district for the benefit of the public welfare. The petitioner merely states that the required distance separation does not prevent detriments to the public welfare but does not provide substantial competent evidence that reducing the separation between two such uses from *at least* 1,000 feet to only 620 feet is not detrimental to the public welfare. The petitioner has failed to satisfy this requirement.

**h. The Variance is consistent with the comprehensive plan.**

The petitioner cited a handful of comprehensive plan policies and stated that the requested variance is consistent with them, with no analysis. The listed policies are general and do not have clear applicability to the variance request. The petitioner has failed to satisfy this requirement.

Jeff Katims, AICP, CNU -A

Senior Planning Manager  
TranSystems Corp.

**JEFFREY N. KATIMS, AICP, CNU-A**

**PROFESSIONAL QUALIFICATIONS**

**EDUCATION**

Master's Degree: Urban and Regional Planning  
Florida State University, Tallahassee, FL

Bachelor of Arts Degree: Psychology  
State University of New York, College at Oneonta, Oneonta, NY

Virginia Polytechnic Institute  
Academy for the New Urbanism, Form-Based Codes Institute

University of Miami, School of Architecture  
Principles and Practices of New Urbanism, CNU Accreditation

Office of the Attorney General  
Florida Crime Prevention Training Institute

**PROFESSIONAL MEMBERSHIPS OR DESIGNATIONS**

**American Institute of Certified Planners (AICP)**

Membership Number 012252 – Effective 1996  
This is the highest level of earned professional planning certification

**American Planning Association (APA) – National Chapter**

Membership Number 076051 - Effective 1990

**Florida American Planning Association (FAPA)**

Membership effective 1990

**Broward County Section of American Planning Association (BAPA)**

Membership effective 1993

**Congress for the New Urbanism-Accredited**

Membership effective 2009

**Florida Planning and Zoning Association**

Membership effective 2014

**PROFESSIONAL AFFILIATIONS**

Urban Land Institute (1999-2001)  
Florida League of Cities, Broward County Technical Advisory Committee Secretary (1997-1998)

**AWARDS OR RECOGNITIONS**

City of Hallandale, FL – Employee of the Year Award, 1995

**TEACHING OR LECTURING**

Guest Panelist – Florida Chapter of the American Planning Association Annual Conference, West Palm Beach, FL (2018), *Context Sensitive Sign Regulations*

Guest Panelist—Florida Planning & Zoning Association Annual Conference, Naples, FL  
*Effective and Defensible Sign Regulations*

Guest Panelist –Miami-Dade County League of Cities Conference (2015)  
*Sign Regulation after Reed v. Town of Gilbert*

Guest Panelist—Florida Planning & Zoning Association Annual Conference, Orlando, FL  
*One Size Fits All: Incentive Zoning Districts for Strip Commercial Areas*

### **AUTHORED ZONING CODES AND LAND DEVELOPMENT REGULATIONS**

City of Marco Island, FL  
*Audited Code of Ordinances (2023)*

City of West Palm Beach, FL  
*Prepared sign code (expected adoption summer 2023)*

City of Pinellas Park, FL  
*Updated sign regulations (expected adoption summer 2023)*

Town of Southwest Ranches, FL  
*Prepared planned business district regulations (2020)*

City of Boynton Beach, Palm Beach County, FL  
*Prepared Community Standards Ordinance (2019)*

City of New Port Richey, Pasco County, FL  
*Prepared new sign provisions (2017)*

City of Boca Raton, Palm Beach County, FL  
*Prepared sign code (2017)*

Town of Lauderdale-By-The-Sea  
*Updated zoning regulations (2017)*

City of Delray Beach, Palm Beach County, FL  
*Prepared amendments to land development regulations (2016)*

City of Parkland, Broward County, FL  
*Rewrote entire land development code (2015)*

City of Wilton Manors, Broward County, FL  
*Prepared form based code for Transit Oriented Corridor (2012)*

City of Coconut Creek, Broward County, FL  
*Prepared sign code (2011)*

City of Dania Beach, Broward County, FL  
*Rewrote entire land development code (2010)*

City of Miami Gardens, Miami Dade County, FL  
*Updated land development regulations (2010)*

City of Dania Beach, Broward County, FL  
*Prepared form based code (2009)*

City of Plant City, Hillsborough County, FL  
*Prepared form based code (2009)*

Town of Davie, Broward County, FL  
*Prepared form based code(2008)*

City of Pinellas Park, Pinellas County, FL  
*Prepared comprehensive update to zoning regulations (2005)*

Town of Southwest Ranches, Broward County, FL  
*Prepared new land development code (2004)*

Town of Lauderdale-By-The-Sea. Broward County, FL  
*Prepared unified zoning and land development regulations (2003)*

City of Wilton Manors, Broward County, FL  
*Rewrote entire land development code (2003)*

City of Boynton Beach, Palm Beach County, FL  
*Prepared new zoning districts to implement redevelopment plan (2001)*

Town of Davie, Broward County, FL  
*Prepared the Griffin Corridor District and other new zoning standards and land development regulations (1996-2001)*

#### **CO-AUTHORED ZONING CODES AND LAND DEVELOPMENT REGULATIONS**

Village of Estero, Lee County, FL  
*Consulted with Village to evaluate and revise proposed regulations for new zoning regulations (2016)*

Town of Loxahatchee Groves. Palm Beach County, FL  
*Assisted in preparing the entire unified zoning and land development regulations (2010)*

Miami Shores Village. Miami-Dade County, FL  
*Assisted in preparing the unified zoning and land development regulations (2008)*

#### **AUTHORED REDEVELOPMENT PLANS AND COMPREHENSIVE PLANS**

“Evaluation and Appraisal Amendments” to the Comprehensive Plan, Sunny Isles Beach, FL (2022)

“Evaluation and Appraisal Amendments” to the Comprehensive Plan, Aventura, FL (2022)

“Evaluation and Appraisal Amendments” to the Comprehensive Plan, Hallandale Beach, FL(2018)

“Evaluation and Appraisal Report of the Comprehensive Plan, Southwest Ranches, FL (2016)

“Regional Activity Center,” Pompano Beach, FL (2010)

“Regional Activity Center,” Dania Beach, FL (2009)

“Regional Activity Center,” Davie, FL (2008)

“Evaluation and Appraisal Report” of the Comprehensive Plan. Miami Shores Village, FL (2005)

“Evaluation and Appraisal Report” of the Comprehensive Plan. North Miami Beach, FL (2005)

“Evaluation and Appraisal Report” of the Comprehensive Plan. Sunrise, FL (2005)

“Evaluation and Appraisal Report” of the Comprehensive Plan. Parkland, FL (2005)

“Evaluation and Appraisal Report” of the Comprehensive Plan. Tamarac, FL (2005)

“Southwest Ranches Comprehensive Plan.” Review and commentary on proposed provisions. Town of Southwest Ranches, FL (2002)

“Town of Davie Comprehensive Plan Evaluation and Appraisal Report Amendments.” Davie, FL (1996)

“City of Hallandale Beach Comprehensive Plan Evaluation and Appraisal Report.”(Future Land Use Element and Coastal Element). Hallandale Beach, FL (1996)

“County Line Road Corridor Plan.” Hallandale Beach, FL (1995)

“Fashion Row District Plan.” Hallandale Beach, FL (1993)

**CO-AUTHORED COMPREHENSIVE PLANS**

“Comprehensive Plan: Future Land Use Element,” City of Margate, FL (2021)

“Evaluation and Appraisal Amendments” to the Comprehensive Plan, City of Parkland, FL (2015)

“Comprehensive Plan”, City of Parkland, FL (2015)

“Comprehensive Plan”, City of North Miami, FL (2015)

“Local Activity Center,” Tamarac, FL (2010)

“Comprehensive Plan”, City of North Miami, FL (2008)

“Comprehensive Plan”, City of North Miami Beach, FL (2007)

“Comprehensive Plan”, Miami Shores Village, FL (2007)

“Evaluation and Appraisal Report” of the Comprehensive Plan. Sunrise, FL (2006)

“Evaluation and Appraisal Report” of the Comprehensive Plan. Parkland, FL (2006)

“Evaluation and Appraisal Report” of the Comprehensive Plan. Tamarac, FL (2006)

“Evaluation and Appraisal Report” of the Comprehensive Plan. Wilton Manors, FL (2006)

“Evaluation and Appraisal Report” of the Comprehensive Plan. Miami Shores Village, FL (2005)

“Evaluation and Appraisal Report” of the Comprehensive Plan. North Miami Beach, FL (2005)

“Southwest Ranches Comprehensive Plan “Review and commentary on proposed provisions. Town of Southwest Ranches, FL (2002)

“Federal Highway Corridor Community Redevelopment Plan.” Boynton Beach, FL (2001)

“Evaluation and Appraisal Amendments” of the Comprehensive Plan. Davie, FL (1997)

**OTHER AUTHORED DOCUMENTS AND MONOGRAPHS**

“Potable Water Level of Service Standards”, (Minch, Katims) *Florida Planning* (2009)

“Concurrency Management System for North Miami Beach (2004)

“Justification for the Davie Regional Activity Center.” (1997)

“County Line Road Corridor Plan.” (1995)

“Fashion Row Plan.” (1994)

“Albany-Dougherty County Paratransit Plan.” (1992)

#### **EXPERT WITNESS TESTIMONY**

Mr. Katims has qualified an expert witness in Circuit Court in the 17<sup>th</sup> Judicial District. He has served as an expert witness in or for the following municipalities, with the nature of the matter shown:

Town of Southwest Ranches, FL (2020) (*zoning and land use*) (*representing Town*)

City of Fort Lauderdale, FL (2020) (*zoning and land use*) (*representing private client*)

City of Hallandale Beach, FL (2018) (*property related dispute*) (*representing private client*)

City of Fort Lauderdale, FL (2017) (*zoning and land use*) (*representing private client*)

City of Miami Beach, FL (2016) (*zoning and land use*) (*representing private client*)

City of Fort Lauderdale, FL (2016) (*zoning and land use*) (*representing private client*)

City of Hollywood, FL (2013) (*eminent domain*) (*representing private client*)

City of Hollywood, FL (2014) (*eminent domain*) (*representing private client*)

City of Hollywood, FL (2015) (*eminent domain*) (*representing private client*)

City of Pompano Beach, FL (2013) (*land use amendment challenge*) (*representing private client*)

City of Oakland Park, FL (2006) (*zoning and land use*) (*representing private client*)

Highlands County, FL (2005) (*zoning and land use*) (*representing private client*)

City of North Miami Beach (2005) (*zoning and land use*) (*representing City*)

#### **PROFESSIONAL EXPERIENCE**

Jeff Katims, AICP, CNU-A has 30 years of public and private sector experience in urban planning, zoning and land use, including providing expert witness testimony. He is a Senior Planning Manager with TranSystems Corp’s. land planning practice group, which provides professional planning, zoning, land use and expert witness consulting services to the public and private sectors.

Mr. Katims has current extensive experience in all phases of planning, zoning and land use matters. He has consulted for more than 35 local governments and scores of private clients in addition to his early public sector career. His current experience routinely includes undertaking land use plan amendments; rezonings; variances; development research; zoning code and land development code preparation, interpretation and application; and, providing expert witness testimony. Mr. Katims has qualified as an expert witness in State of Florida Administrative Hearings and Circuit Court in the 17<sup>th</sup> Judicial District. He also serves as the planning and zoning official for the Town of Southwest Ranches, Florida, including serving as the Town’s expert witness in quasi-judicial land use matters, as necessary.

Prior to his private sector consulting career, Mr. Katims worked from 1996 to 2001 for the Town of Davie, where he was ultimately the Planning and Zoning Manager. In that capacity, he was responsible for preparing and administering the comprehensive plan, the zoning code and land development regulations.

He also reviewed and made recommendations for numerous land use related applications, many of them in a quasi-judicial setting as an expert witness for the Town. These applications included site development plans, land use plan amendments, rezonings, variances, special permits, plats and delegation requests.

Prior to joining the Town of Davie, Mr. Katims worked from 1993 to 1996 for the City of Hallandale Beach as Associate Planner. In this capacity, he undertook a variety of planning projects. Mr. Katims was responsible for analyzing development requests; writing and implementing segments of the comprehensive plan; amending and administering the zoning code; and, preparing redevelopment plans and assisting in their implementation.

Before relocating to Florida, Mr. Katims provided professional planning services to the Albany Dougherty Planning Commission in Albany, Georgia from 1991 to 1993. For this City/County Planning Commission, he administered multiple city and county zoning and subdivision regulations; analyzed land development applications; and, prepared and implemented the County's first ADA Paratransit Plan.