

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA**

OPPOSITION BRIEF IN SUPPORT OF APPEAL

Case Number:	Z2023000505
Applicant:	Valemar Holdings LLC (represented by Holland & Knight LLP)
CZAB-10 Decision:	Approved 3-2 with conditions, February 24, 2026
Appellant:	Millenium Townhomes Homeowners Association
Relief Sought:	Reversal of CZAB-10 approval; denial of all five requests

I. INTRODUCTION

On February 24, 2026, the Community Zoning Appeals Board for Area 10 voted 3-2 to approve, with conditions, the application of Valemar Holdings LLC to rezone approximately 1.10 net acres at the southeast corner of SW 147th Avenue and theoretical SW 28th Street from RU-5 to RU-4, delete recorded restrictions, and grant companion non-use variances for the construction of a multi-family apartment building.

The Appellant respectfully submits that the CZAB's approval was error, and that the application should be **denied in its entirety**. The split vote itself reflects the Board's uncertainty—two of five members concluded that the application did not merit approval even with conditions. The Appellant asks this Commission to reach the same conclusion.

This brief sets forth the factual and legal basis for reversal. It demonstrates that the proposed rezoning is inconsistent with the established development trend in the area, constitutes impermissible spot zoning, and would place a high-density apartment building in a neighborhood that the Commission itself has designated for townhouse-scale development.

II. BACKGROUND

A. The Property and Existing Restrictions

The subject property is Tract A of the Millenium Subdivision, a 1.10 net acre (1.41 gross acre) parcel currently zoned RU-5 (Residential/Semi-Professional Office District). The property is landlocked, developed on three sides, with zero on-street parking available on adjacent roadways.

A **Declaration of Restrictions** was voluntarily proffered by the prior owner and accepted by the Board. The covenant limits the property to office uses and a maximum of **24 townhouse units**

with private garages. This restriction was not imposed by the government—it was the prior owner’s own vision for the property, recorded in Official Records Book 21417 and subsequently modified in Official Records Book 25570.

B. The Application

The applicant seeks five forms of relief:

- **Request #1:** Rezoning from RU-5 to RU-4 (High Density Apartment House District)
- **Request #2:** Deletion of the recorded Declaration of Restrictions
- **Request #3:** Non-use variance to permit 29.67% common open space (40% required)
- **Request #4:** Non-use variance to permit a 25-foot front setback (26’-6” required)
- **Request #5:** Non-use variance to permit parking spaces within 25 feet of the right-of-way along SW 147th Avenue

The original proposal was for a **four-story, 40-unit apartment building** consuming 99.14% of the maximum allowable floor area ratio, with an open space deficit of nearly 5,000 square feet.

C. The CZAB-10 Decision

The Board voted **3-2 to approve with conditions**, reducing the project to **33 units and three stories** and requiring compliance with all RU-4 requirements without variances. Two Board members voted for outright denial. The application had been previously **deferred from January 27, 2026**.

Zero formal protests were recorded, and zero waivers were granted. The staff recommendation was for approval subject to the proffered covenant. **The Appellant appeared in opposition and presented testimony at the hearing.**

III. GROUNDS FOR REVERSAL

ARGUMENT 1 THE REZONING IS INCONSISTENT WITH THE BCC’S OWN ESTABLISHED DEVELOPMENT TREND

This Commission has already spoken on the appropriate development pattern for this area. On Folio Numbers **30-4910-003-0481, 30-4910-003-0480, and 30-4910-003-0460**, the Board of County Commissioners approved **townhouses**—rejecting the applicant’s request for mixed-use development. Those parcels are in direct proximity to the subject property.

The BCC’s prior decisions established that the development trend in this area is townhouse-scale residential, not high-density apartment buildings. Approving a rezoning to RU-4 for a four-story apartment complex directly contradicts the pattern this Commission set.

The Appellant is not opposed to development of this property. A development **consistent with the established trend—townhouses, or a smaller building that complies with the zoning**

code without variances—would be appropriate. The applicant should build to the standard this Commission has established, not seek to override it.

ARGUMENT 2 THE REZONING CONSTITUTES SPOT ZONING

There is **no RU-4 zoning anywhere in the surrounding area**. The subject property is surrounded by RU-5 to the east, RU-1M(B) to the south, and commercial zoning to the north. Approving RU-4 on this single parcel creates an island of high-density residential zoning in a neighborhood that has no comparable designation.

Spot zoning occurs when a single parcel is singled out for treatment that is inconsistent with the surrounding zoning pattern and that serves primarily the interests of the property owner rather than the community. The rezoning of this landlocked 1.10-acre parcel to a density category that exists nowhere in the vicinity meets that definition.

This Commission should examine the zoning map and satisfy itself that no RU-4 district exists within the surrounding area. The record supports a finding of spot zoning.

ARGUMENT 3 THE BUILDING HEIGHT IS OUT OF CHARACTER WITH THE NEIGHBORHOOD

There is **no building in close proximity to the subject property that is 40 feet tall**. Not the shopping center (Plaza Alegre) to the north, which is a two-story commercial building with ground-floor retail and second-floor offices. Not the Millenium Townhomes to the south and east. Not any residential structure in the vicinity.

The original proposal was for a building at approximately 38 feet 8 inches—before accounting for stair tower parapets reaching 48 feet 4 inches. While the CZAB's conditions reportedly reduced the project to three stories, **no building in this area approaches even three stories in height**. Plaza Alegre to the north is two stories of commercial use. The Millenium Townhomes are two stories. The surrounding residential fabric is low-rise. Even at three stories, the proposed apartment building would be the tallest structure in the immediate area and substantially taller than anything adjacent to it.

The reduction from four to three stories, while an improvement, does not cure the fundamental incompatibility. The question is not whether the building can be made slightly shorter—it is whether a high-density apartment complex belongs on this site at all, given the established character of the neighborhood.

ARGUMENT 4 THE RESTRICTIONS WERE VOLUNTARILY PROFFERED AND SHOULD BE PRESERVED

The existing Declaration of Restrictions was **not imposed by the government**. The prior property owner voluntarily proffered a covenant limiting the site to office uses and a maximum of 24 townhouse units with private garages. The Board accepted that covenant as the owner's vision for future development of the property.

The applicant, Valemar Holdings LLC, purchased this property with full knowledge of the recorded restrictions. A change of ownership does not constitute a change of conditions justifying deletion of the covenant. The land has not changed. The neighborhood has not changed. The infrastructure has not changed. The only thing that has changed is the owner—and a new owner's desire for greater development intensity is not a hardship.

The Commission should ask: **what conditions have changed** to warrant deleting restrictions that the prior owner voluntarily placed on this property? The record does not support a finding that conditions have materially changed.

ARGUMENT 5 THE PROJECT CANNOT COMPLY WITH RU-4 REQUIREMENTS

The original 40-unit proposal required **three non-use variances** because the building could not comply with the RU-4 code it was requesting to be rezoned into:

- **Open space:** 29.67% provided where 40% is required—a deficit of 4,964 square feet
- **Front setback:** 25 feet provided where 26 feet 6 inches is required (building exceeds 35-foot height threshold)
- **Parking setback:** Off-street parking spaces located within 25 feet of the SW 147th Avenue right-of-way

The CZAB's condition of "no variances" acknowledges what the Appellant argued at the hearing: **this building is too large for this land**. But the appropriate remedy is not to approve the rezoning and hope the applicant can redesign the project—it is to deny the application and require the applicant to return with a proposal that fits the site and the neighborhood from the outset.

The applicant presented plans showing a building that consumed 99.14% of the allowable FAR. The applicant's own zoning legend confirmed the open space deficit. The applicant's own setback calculations confirmed the front setback violation. This is not a project that narrowly missed compliance—it is a project that was designed to exceed the limits and then seek forgiveness through variances.

Moreover, at three stories the maximum FAR under RU-4 drops from 1.0 to **0.80**, reducing the allowable floor area from 48,060 SF to approximately **38,448 SF**. To fit 33 units within that envelope, the average unit size would need to be approximately 1,165 square feet—and the building footprint at three stories would be **larger** than at four stories (approximately 12,816 SF vs. 9,828 SF), consuming more of the site and making the 40% open space requirement even more difficult to achieve. The Appellant submits that the conditions imposed by the CZAB may be internally contradictory—reducing height while requiring code compliance may be impossible on this constrained site.

ARGUMENT 6 THE SITE CONSTRAINTS MAKE HIGH-DENSITY DEVELOPMENT INAPPROPRIATE

The subject property is a **landlocked parcel developed on three sides with zero on-street parking**. The only vehicular access is via a 24-foot driveway on SW 147th Avenue, positioned

at the southern end of the property, which will create a traffic bottleneck impeding northbound traffic from Braddock to the south.

The parking lot setback from the south and east property boundaries is insufficient to prevent automobile headlight intrusion into the existing Millenium Townhomes community at night. Forty units—or even thirty-three units—of residential parking activity directly adjacent to existing homes, without adequate buffering, represents an unreasonable burden on the neighboring community.

The existing park infrastructure in the area is already insufficient. This application does nothing to alleviate the parks deficit and will only add demand. Parks, Recreation and Open Spaces was listed in the staff report without objection, but no new park facilities or contributions beyond standard impact fees were required.

ARGUMENT 7 THE 3-2 SPLIT VOTE REFLECTS THE WEAKNESS OF THE APPLICATION

The CZAB's own 3-2 vote demonstrates that this application did not command a clear consensus for approval. **Forty percent of the Board voted for denial.** The conditions imposed by the majority—reducing units from 40 to 33 and prohibiting all variances—reflect significant concerns about the project's compatibility with the site and the neighborhood.

When nearly half the board concludes that an application should be denied outright, and the approving majority must impose substantial conditions to make the project minimally acceptable, the application has not met its burden. This Commission should complete what two board members attempted and deny the application.

ARGUMENT 8 THE SITE CANNOT ACCOMMODATE WHEELCHAIR-ACCESSIBLE SCHOOL BUS SERVICE REQUIRED BY FEDERAL LAW

Multiple layers of federal and state law mandate that this development accommodate residents with disabilities, including children who require wheelchair-accessible school bus transportation:

- **Fair Housing Act, 42 U.S.C. § 3604(f)(3)(C):** Requires that all covered multifamily dwellings (four or more units) built for first occupancy after March 13, 1991 meet accessibility requirements, including an accessible building entrance on an accessible route and accessible common areas.
- **Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12131–12134:** Requires accessible routes and facilities in public and common-use areas. ADA Standards for Accessible Design (28 CFR Part 36) require accessible routes of at least 36 inches in width with passing spaces at intervals not exceeding 200 feet.
- **Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400–1482:** Requires public schools to provide transportation to children with disabilities as a related service under an Individualized Education Program. School districts **MUST** provide wheelchair-accessible bus service to the child's residence. This obligation is mandatory and cannot be declined because the site design is inadequate.

- **49 CFR Part 38 (ADA Transportation Vehicle Standards):** Wheelchair-accessible school buses must deploy a lift platform accommodating a wheelchair measuring at least 30 inches by 48 inches, with a design load of 600 pounds. The lift requires adequate curbside clearance for safe deployment.
- **Florida Building Code — Accessibility (F.S. § 553.501–513):** Florida’s accessibility implementation act incorporates federal ADA requirements and in some cases imposes more stringent standards. All new multifamily construction must comply.
- **Florida Statute § 1006.22 (School Bus Safety):** Governs school bus operations, routes, stops, and loading/unloading zones, including zones serving wheelchair students.

A standard wheelchair-accessible school bus is approximately 35 to 40 feet long. The wheelchair lift deploys from the side and requires a minimum clear area of approximately 5 feet of curbside clearance. This property has a **single 24-foot driveway** on SW 147th Avenue as its only vehicular access. SW 147th Avenue has no on-street parking. The site plan shows **no bus pull-off area and no designated school bus loading zone**.

When a wheelchair-accessible school bus stops to serve this building, it will either block the 24-foot driveway while deploying the wheelchair lift (preventing all resident ingress and egress), stop on SW 147th Avenue and deploy the lift into the travel lane (creating a traffic hazard), or have no safe place to stop at all. Under IDEA, the school district cannot refuse to provide service because the site design is inadequate. The bus will come. The question is whether there is a safe, ADA-compliant place for it to operate.

This issue was raised by a resident at the CZAB-10 hearing on February 24, 2026. The applicant’s attorney **did not respond to or counter this argument**. The Commission should require the applicant to demonstrate how wheelchair-accessible school bus service will be accommodated before approving any intensification of this site.

ARGUMENT 9 EMERGENCY VEHICLE ACCESS IS INADEQUATE FOR OPERATIONAL REALITIES

A retired law enforcement officer testified at the CZAB-10 hearing that, given the limited space on the site, **he would have to leave his patrol car outside the property** when responding to an emergency. The applicant’s attorney did not dispute this testimony.

Miami-Dade County Code § 14-68 requires fire department access roads with a minimum unobstructed width of 20 feet and vertical clearance of 13 feet 6 inches. Fire apparatus set-up sites must be a minimum of 21 feet wide and 47 feet long. The International Fire Code § 503 requires that all portions of the exterior wall of the first story be within 150 feet of a fire apparatus access road.

The fire department may have cleared the minimum technical requirements for fire apparatus access. However, **fire access is not the same as operational emergency access**. The site has a single 24-foot driveway with no secondary access and no on-street parking on SW 147th Avenue. Consider the real-world scenarios this creates:

- **Police response:** An officer responding to a domestic call, burglary, or medical emergency must park somewhere. A patrol car in the 24-foot driveway blocks the only entrance and exit for all 33 households. A second responding unit compounds the bottleneck.
- **Ambulance/EMS:** A stretcher requires a clear path from the building to the ambulance. If the ambulance occupies the driveway, no other vehicle can enter or leave the property.
- **Simultaneous response:** A fire truck is 8 to 10 feet wide. A single 24-foot driveway cannot simultaneously accommodate a fire truck, an ambulance, and resident vehicles attempting to evacuate. The site design creates a funnel.

The fire department review checks whether a fire truck CAN physically reach the building. It does not evaluate whether everyday emergency operations can function without blocking all resident access. That operational assessment is a planning judgment reserved for this Commission.

ARGUMENT 10 THE PROPERTY IS WITHIN THE WEST WELLFIELD INTERIM PROTECTION AREA

The subject property falls within the **West Wellfield Interim Protection Area**, a designated zone established under Miami-Dade County Code § 24-43 to protect the Biscayne Aquifer—the county’s primary drinking water supply.

The applicable legal framework includes:

- **Miami-Dade County Code § 24-43 (Wellfield Protection Ordinance):** Establishes wellfield protection areas around utility potable water supply wells. The ordinance prohibits new facilities that use, handle, generate, transport, or dispose of hazardous wastes within wellfield protection areas. Any changes to the official maps of cones of influence must be approved by the Board of County Commissioners by ordinance.
- **CDMP Policy CON-5A (Conservation Element):** Establishes stormwater management level-of-service standards with both flood protection and water quality components. The Conservation Element requires that water management systems recharging regional wellfields be protected and enhanced.
- **Florida Safe Drinking Water Act (F.S. § 403.850–864):** Establishes statewide requirements for protection of public drinking water supplies.
- **Florida Administrative Code Rule 62-521:** Establishes wellhead protection area delineation and land use criteria. Development within these zones must demonstrate no adverse impact on groundwater quality.
- **Federal Safe Drinking Water Act, 42 U.S.C. § 300f et seq.:** Requires states to develop wellhead protection programs. Miami-Dade’s wellfield protection ordinance implements these federal requirements at the local level.

Converting this 1.10-acre parcel from lower-density use (RU-5, office/townhouse) to a 33–40 unit apartment building within the wellfield protection area will significantly increase impervious surface coverage, increase stormwater runoff carrying automotive fluids and contaminants toward the wellfield, and substantially increase wastewater generation—all within the protection zone of the county’s public water supply.

The CZAB staff report does not include a specific wellfield impact analysis. The Department of Environmental Resources Management (DERM) **does not appear to have reviewed this application for wellfield protection compliance under § 24-43**. This may be the most significant omission in the review record. The Commission should not approve an intensification of use within a wellfield protection area without a DERM wellfield impact analysis.

ARGUMENT 11 DEPARTMENTAL “NO OBJECTION” REVIEWS WERE NARROW THRESHOLD CHECKS, NOT FINDINGS OF APPROPRIATENESS

The applicant will represent that every county department reviewed this application and had no objections. The Appellant respectfully submits that **“no objection” is not the same as “this project is appropriate.”** Every departmental review is a narrow, single-issue, threshold check. No department evaluates the whole picture. No department asks: “Is this the right project for this location?” That question is reserved for the elected body.

Traffic (Platting and Traffic Review): Checked whether the project generates enough vehicle trips to trigger a Level 2 or Level 3 traffic study based on a single road segment (Station #9825, SW 147th Avenue south of SW 24th Street). The project generated approximately 38 PM peak hour trips and fell below the threshold. No intersection analysis was performed. No study of the single driveway access point. No analysis of how 33 households enter and exit through one 24-foot driveway. A Level 1 review is a screening formula, not a traffic study.

Fire (Miami-Dade Fire Rescue): Checked whether a fire apparatus can physically reach the building—minimum road width, clearance, and proximity. Fire clearance is a binary question: can the truck get in? It does not evaluate whether police, ambulance, and fire can simultaneously access the site, or whether emergency response inherently blocks all resident egress through the single driveway.

Schools (MDCPS): Issued a concurrency determination confirming adequate school seat capacity. The review is a seat count, not a transportation safety assessment. It does not evaluate whether a school bus—let alone a wheelchair-accessible school bus required under IDEA—can safely access the property.

Water & Sewer (WASD): Checked whether water and sewer infrastructure capacity exists to serve the proposed units. WASD checks pipe capacity. It does not perform a wellfield impact analysis under Miami-Dade Code § 24-43. That responsibility falls to DERM, which does not appear to have reviewed this application for wellfield compliance.

Parks (PROS): Confirmed the applicant will pay the required park impact fee. An impact fee is a financial obligation, not a finding that park facilities in the area are adequate to serve additional residents.

ARGUMENT — ADVERSE FINANCIAL IMPACT: INSURANCE COST ESCALATION

The Millennium Townhomes Association has conducted an independent Adverse Impact Analysis documenting the quantifiable financial harm this development will impose on the existing community. Among the most significant findings is the projected escalation of insurance costs across three coverage categories that directly affect every homeowner in the adjacent community.

Florida's property insurance market is already in crisis, with carriers exiting the state and premiums increasing at double-digit annual rates. The proposed development introduces compounding risk factors that will accelerate these increases for Millennium Town Homes residents:

- **Master HOA policy (\$375/unit/year baseline):** Proximity to a 48-foot parapet wall increases wind-tunnel effects and debris risk during storms. Underwriters treat adjacent tall structures as material risk factors, typically adding 15–25% to wind and debris coverage. Shadow-induced moisture on shared walls creates chronic mold exposure that triggers recurring claims.
- **Individual HO-6 policies (\$400/unit/year baseline):** Increased shadow duration reduces natural drying, elevating interior humidity and mold risk. Mold remediation claims average \$15,000–\$30,000 per incident in South Florida. Even one or two community-wide claims can cause carriers to non-renew or impose mold exclusions.
- **Supplemental flood coverage (\$1,000/unit/year baseline):** The development converts approximately 0.44 acres of pervious surface to impervious coverage, dramatically increasing stormwater runoff toward the existing community. FEMA flood maps do not account for micro-drainage changes from adjacent development.

At a conservative 7% annual escalation—well below Florida's recent 10–12% annual increases—the combined insurance cost per unit rises from \$1,775 in Year 1 to over \$13,500 by Year 30. For the 24-unit Millennium Town Homes community, the cumulative 30-year cost exceeds \$3.4 million. These are costs that would not exist but for the proposed adjacent development.

The complete Adverse Impact Analysis, including interactive environmental simulations (shadow mapping, stormwater runoff, solar access reduction, wind analysis, noise propagation, and insurance cost projections) is available at <https://mille.us.kg> and submitted as an exhibit to this appeal. The Commission is invited to review the full analysis as evidence that this rezoning imposes direct, quantifiable financial harm on the existing residential community—harm that the CZAB failed to evaluate.

DERM (Environmental Resources Management): It is unclear whether DERM reviewed this application at all for wellfield protection compliance. The record does not contain a wellfield impact analysis under § 24-43.

Staff Recommendation: Based on technical code compliance and CDMP consistency. Staff does not evaluate neighborhood compatibility, whether CZAB conditions are achievable, or whether the site design creates operational problems for emergency services, school transportation, or daily resident life.

The Appellant submits that the detailed questions about school bus access, police and emergency response, wellfield protection, and operational traffic impacts have **never been answered by any reviewing entity**. The only body with the authority to demand those answers is this Commission.

IV. RELIEF REQUESTED

The conditions imposed by the CZAB—three stories, 33 units, no variances—may themselves be unachievable. At three stories, the RU-4 FAR limit of 0.80 constrains total floor area to approximately 38,448 square feet. The resulting larger footprint competes directly with the 40% open space requirement. Rather than leave the applicant, the neighboring community, and county staff to discover this impossibility during administrative site plan review, the Commission should resolve the matter now by denying the application outright.

The Appellant respectfully requests that the Board of County Commissioners:

- **REVERSE** the CZAB-10 decision of February 24, 2026;
- **DENY** Request #1 (rezoning from RU-5 to RU-4);
- **DENY** Request #2 (deletion of the Declaration of Restrictions);
- **DENY** Requests #3 through #5 (all non-use variances); and
- Direct the applicant to return with a development proposal that is **consistent with the established townhouse-scale development trend** in this area, compliant with applicable zoning requirements, and respectful of the voluntarily proffered restrictions on the property.

Respectfully submitted,

Steve Marquez

President, Millenium Townhomes Homeowners Association

Date: _____