

BOARD OF COUNTY COMMISSIONERS

DATE: November 27, 2012  
AGENDA ITEM NO. 21

Consent Agenda ☐

Regular Agenda ☐

Public Hearing ☒

County Administrator's Signature:

**Subject:**

Conditional Use Case No. (Q) CU-4-9-10 (Berati # 2, LLC)

**Department:**

Strategic Planning and Initiatives

**Staff Member Responsible:**

Larry Arrington, Director

**Recommended Action:**

I RECOMMEND THAT THE BOARD OF COUNTY COMMISSIONERS (BOARD) RESCIND THE CONDITIONAL USE AUTHORIZED IN CASE# CU-4-9-10 ON NOVEMBER 9, 2010 FOR AN OUTDOOR SOLID WASTE MANAGEMENT FACILITY.

**Summary Explanation/Background:**

A conditional use is a use that is permitted in a zoning district only after it is authorized by the Board of County Commissioners after a public hearing. Conditional uses may be essentially desirable, necessary or convenient to the community, its citizenry or to substantial segments thereof, but which by their nature or in their operation have potentially adverse or objectionable features that are occasionally attributable to such use. Such use must be consistent with the County's comprehensive plan adopted pursuant to state law, and may be permitted by the Board with special conditions to ensure the proper protection of surrounding properties from adverse impacts as set forth in article II, division 8 of the Pinellas County Land Development Code.

In 2010, the applicant requested approval of an outdoor solid waste management facility on property located on the west side of U.S. Highway 19 at the western terminus of Whitney Road. The request (Case# CU-4-9-10) was conditionally approved by the Board on November 9, 2010 with 9 conditions. The final condition #10 stated that "In the event one or more of the above listed conditions are not met, the Board of County Commissioners may rescind the conditional use permit". Subsequent to the approval in 2010, violations of the conditional use permit began occurring. These violations were documented by Pinellas County Code Enforcement and were subsequently brought before a special hearing magistrate, who hears and renders decisions on zoning code violations. In this instance, the special hearing magistrate rendered a decision on October 29, 2012 in which he has recommended to the Board that the conditional use permit for an outdoor solid waste management facility on the subject property be rescinded based on County documentation that 6 of the 9 stated conditions were not being met. Therefore, staff recommends that Conditional Use Case CU-4-9-10 (Berati #2, LLC) be rescinded based upon the special hearing magistrates' finding on October 29, 2012, that the subject conditional use does not meet the conditions established by the Board of County Commissioners on November 9, 2010. The applicant has not met six of the required conditions approved by the BCC as described below in **bold type**:

Conditions approved by the Board on November 9, 2010 for Case# CU-4-9-10:

1. Full site plan review. **A site plan was never filed.**
2. Hours of operation shall be Monday through Friday 7:00 a.m. to 7:00 p.m., Saturday 8:30 a.m. to 5:00 p.m. and closed on Sunday
3. There shall be no "grinding or mulching type of machinery" utilized in conjunction with the conditional use permit.
4. The "vegetative debris" shall be stored in the 60' x 35' storage bin area identified on a submitted plan, located 300 ft. east of the residentially zoned area. **The vegetative debris stored on the subject property exceeds the allowable area.**
5. The height of "vegetative debris" shall not exceed twelve feet in height. **The vegetative debris stored on the subject property exceeds twelve feet in height.**
6. The "vegetative debris" shall be removed every two days, and the area shall be sprayed to control fugitive dust. **The vegetative debris is not being removed every two days.**
7. Only "vegetative debris" shall be collected and transferred from this site. **Items beyond vegetative debris are being dumped on site, e.g. telephone poles.**
8. Any type of solid waste permits associated with this use shall be obtained by the applicant. **The status of the required Florida Department of Environmental Protection (DEP) Solid Waste permit is unknown.**
9. A six foot high opaque fence shall be placed along the west property line of the subject property and shall be maintained in good condition.
10. In the event one or more of the above listed conditions are not met, the Board of County Commissioners may rescind the conditional use permit.

**Fiscal Impact/Cost/Revenue Summary:**

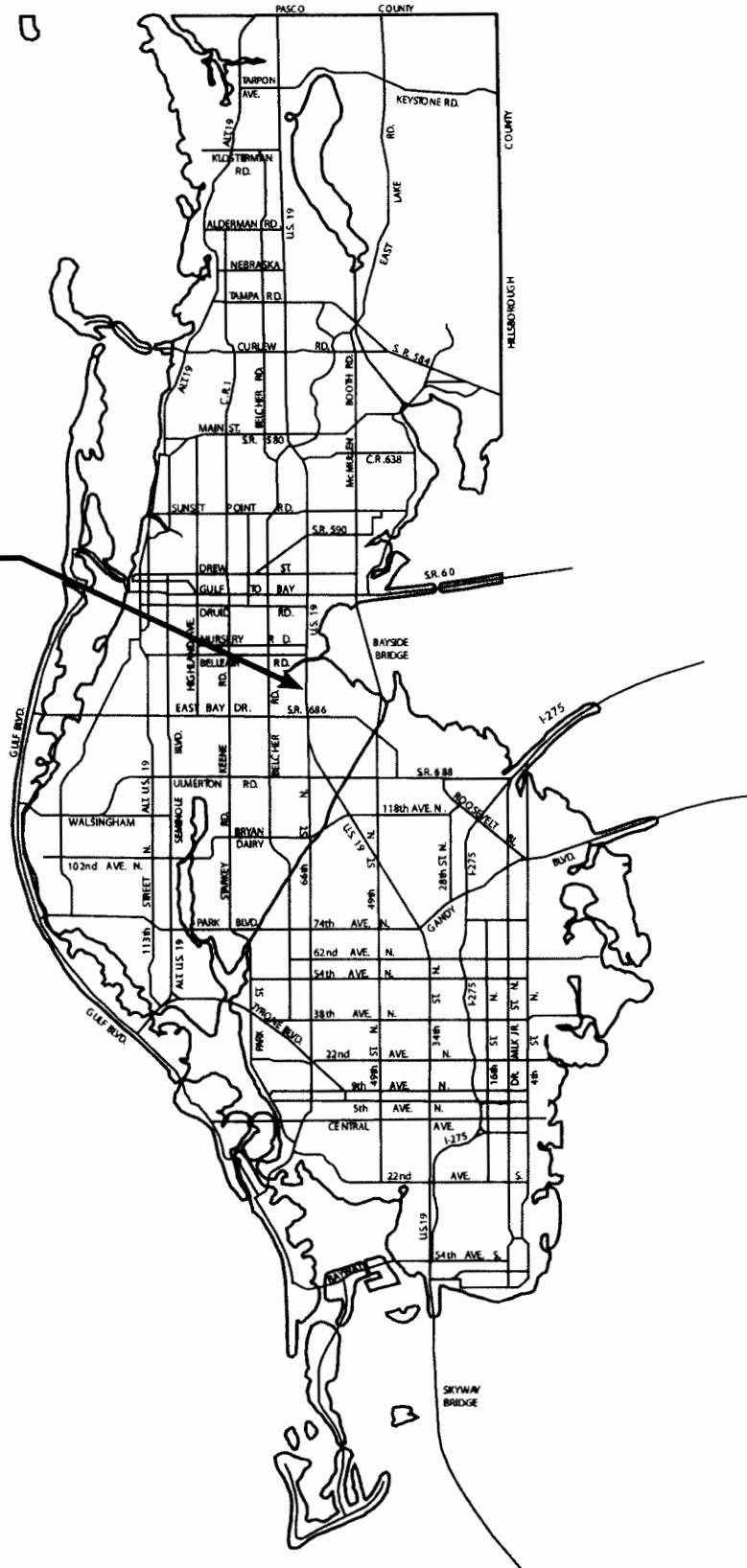
N/A

**Exhibits/Attachments Attached:**

Locator Maps, Special Magistrate Case # CM12-00055,-

# LOCATION MAP

CU-4-9-10



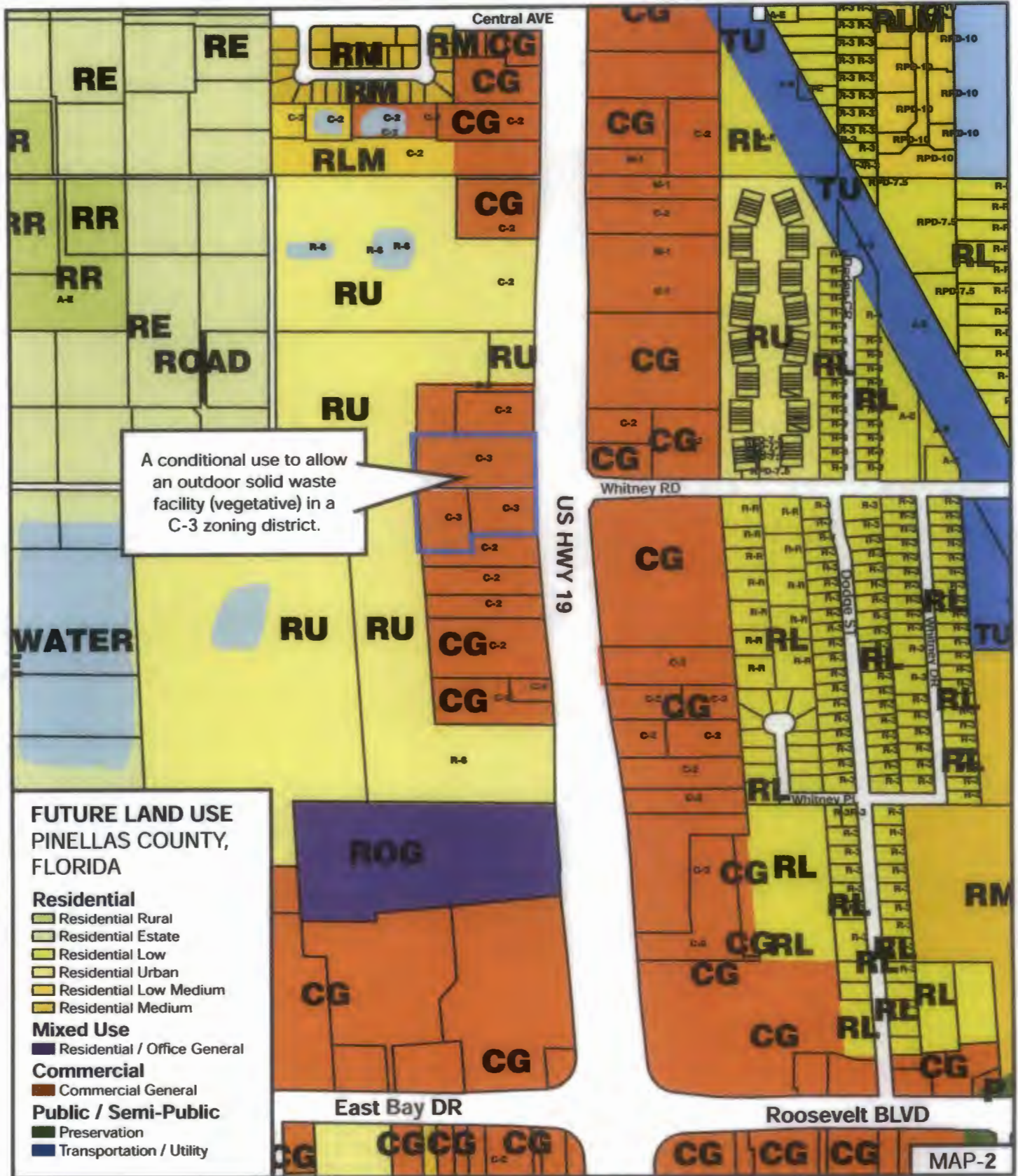
MAP-1

**CU-4-9-10**  
**LPA 18-9-10**

A conditional use to allow an outdoor solid waste facility (vegetative) in a C-3 zoning district.

Parcel I.D. 30/29/16/70326/400/3102 & 31/29/16/70344/100/0101 & 0102  
Prepared by: Pinellas County Planning Department July 2010





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LPA 18-9-10**

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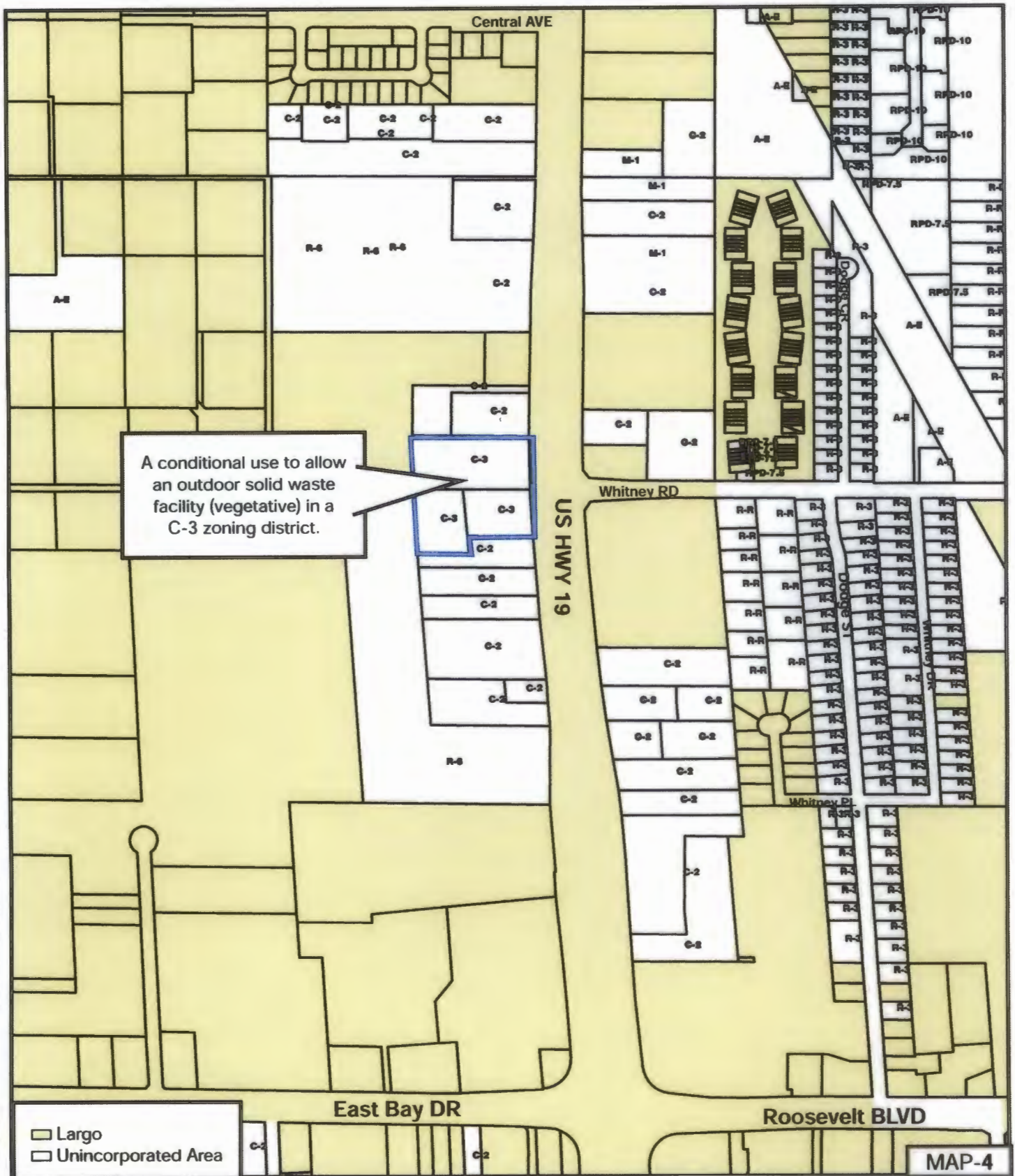
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 Prepared by: Pinellas County Planning Department July 2010



BEFORE PINELLAS COUNTY CODE ENFORCEMENT  
SPECIAL MAGISTRATE  
CASE NUMBER: CM12-00055

Pinellas County,  
Petitioner,

vs.

Berati #2 LLC  
2541 Hibiscus Dr.  
Belleair Beach, FL 33786-3523,  
Respondent(s).

ORDER ASSESSING AN ADMINISTRATIVE FINE UNTIL COMPLIANCE IS  
ACHIEVED

This case was heard before the Special Magistrate on October 29, 2012. The Petitioner, Pinellas County, appeared and was represented by G. Berutti, Senior Code Officer of Pinellas County Code Enforcement. The Respondent(s), Berati #2 LLC ("Owner(s)"), Bob Shehu did appear and was represented by Housh Ghovae.

**Findings of Fact**

Based upon the evidence and sworn testimony received, the Special Magistrate finds the following:

1. That the property located at 16692 US Highway 19 N., Clearwater, FL 33764 ("Property") contains the deficiencies as listed in the Affidavit of Violation, and Request for Hearing dated September 12, 2012, and each is herein incorporated by reference.
2. That Berati #2 LLC is/are the Owner(s) of record of the Property located at 16692 US Highway 19 N., Clearwater, FL 33764, Parcel ID 30/29/16/70326/400/3102.
3. That notice was mailed to Owner(s) on October 17, 2012, at the address listed in the tax collector's office for tax notices.
4. That on July 3, 2012 138-179 (Zoning), May 25, 2011 138-269 (Zoning), the Property was first inspected. As of October 24, 2012, the violations still existed.

5. That the Respondent failed to comply with the conditions of the Conditional Use Permit CU-4-9-10 approved by the Board of County Commissioners on October 26, 2010.
6. That previous notification of the aforementioned deficiencies was given as supported by the evidence received by this Special Magistrate.
7. That the County incurred costs for the prosecution of this case and expenses for the Special Magistrate to adjudicate it. The County expended \$90.95 for Officer time and \$6.95 for postage (certified mail, return receipt requested and first class postage) for a total of \$97.90.
8. That the Special Magistrate reasonably spent at least 3 hours at \$175.00 per hour to adjudicate this case for a cost of \$525.00.

### **Conclusions of Law**

9. The Special Magistrate concludes that the Property continues to be in violation of the Pinellas County Ordinance Code provision(s) listed in the Notice of Violation and Request for Hearing, despite prior notification and opportunity to cure afforded to the Respondent.
10. Failure to comply with the conditions of the Conditional Use Permit constitutes expiration of the approved use or subjects that Conditional Use to recession.
11. The County prevailed in the prosecution of this case and, pursuant to Section 2-623(g) of the Pinellas County Code, is entitled to recover all costs and expenses incurred.
12. The time that the Magistrate spent was necessary and reasonable.

### **It is therefore adjudged as follows:**

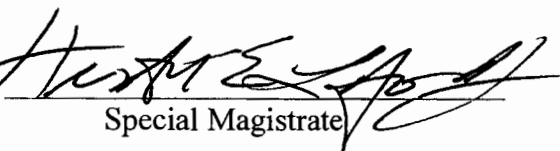
13. The Respondent(s) shall correct the violations on the aforementioned Property and come into compliance on or before 8:00 A.M. on December 13, 2012, or suffer an administrative fine in the amount of \$1000.00 per day for each violation of the Pinellas County Code, Section 138-179 (Zoning), for each day thereafter that the violation(s) continue to exist.
14. The Respondent(s) shall correct the violations on the aforementioned Property and come into compliance on or before 8:00 A.M. on December 13, 2012, or suffer an administrative fine in the amount of \$1000.00 per day for each violation of the Pinellas County Code, Section 138-269 (Zoning), for each day thereafter that the violation(s) continue to exist.
15. The Conditional Use Permit CU-4-9-10 approved by the Board of County Commissioners on October 26, 2010 is hereby rescinded.



16. Separate and distinct from the amount due or fine, the Respondent(s), shall pay within thirty (30) days of this order \$622.90 toward the County's costs and expenses for the Special Magistrate in the prosecution of this case.
17. The Respondent(s) must notify Pinellas County Code Enforcement, when the property is in compliance of all violations to stop the accrual of the daily fines. An inspection of the property will be made to verify all violations have been corrected and if so an affidavit of compliance will be filed to stop the daily fine. (727) 464-4761
18. Any aggrieved party may petition the Magistrate to reconsider or rehear any order resulting from a public hearing. This petition must be made in writing and filed with Pinellas County Code Enforcement, no later than thirty (30) days after the execution of the Order and prior to the filing of any appeal. The only grounds for a petition to reconsider or rehear are that there is newly discovered relevant evidence that was not available and known to the aggrieved party at the time of the public hearing, or that the Special Magistrate made a mistake in determination of a relevant fact. The Special Magistrate will not hear oral argument or evidence in determining whether to grant the petition to reconsider or rehear.
19. Upon the respondent's failure to timely comply or pay the appropriate fine for any untimely compliance, or pay the amount toward costs and expenses as set forth above, and after thirty (30) days referenced above, the County shall send the Respondent an Affidavit of Noncompliance by certified mail, return receipt requested.
20. If the Respondent fails to file a written objection within twenty (20) days from the date of mailing the Affidavit of Noncompliance, the Respondent shall be deemed to acknowledge the noncompliance with the Order.
21. Thereafter, a certified copy of this Order shall be recorded in the Official Records of the Clerk of the Circuit Court for Pinellas County, Florida, and once recorded shall constitute a lien against any real or personal property owned by the Respondent(s), superior to all other liens except a lien for taxes, pursuant to Chapter 162, Florida Statutes.

**Appeals:** Any aggrieved party may appeal this order to the Circuit Court. An appeal must be filed within thirty (30) days of the execution of this order.

DONE AND ORDERED THIS 7th day of November, 2012.

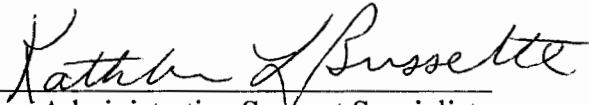
By   
Special Magistrate

I hereby certify that a copy of the foregoing Order Directing the Respondent to correct the violations of the Pinellas County Ordinance Code and assessing a Fine until Compliance is achieved was mailed to:

Berati #2 LLC  
2541 Hibiscus Dr.  
Belleair Beach, FL 33786-3523

and

Housh Ghovae  
Northside Engineering  
300 South Belcher Road  
Clearwater, FL 33765

  
\_\_\_\_\_  
Administrative Support Specialist

**NOTICE**

Administrative fines, costs and expenses, shall be paid by check or money order payable to Board of County Commissioners, and mailed to Pinellas County Code Enforcement, 440 Court St., 2<sup>nd</sup> Floor, Clearwater, FL 33756. Any amounts not paid may be enforced in the same manner as a court judgment.

CM12-00055