

AGENDA
Planning Review Committee
Pinellas County Planning Department
310 Court Street, 1st Floor Conference Room
January 9, 2017 – 10:00 AM

Case Summary Review:

1. [\(Q\) Z/LU-3-2-17](#) (Clay & Pam, LLC)

Note: Q = Quasi-Judicial

CASE SUMMARY
CASE NO. Z/LU-3-2-17
(Quasi-Judicial)

PRC MEETING: January 9, 2017 @ 10:00 AM-1st Floor, Planning Conf Room

LPA HEARING: February 8, 2017 @ 9:00 AM-5th Floor, Board Assembly Room

BCC HEARING: March 21, 2017 @ 6:00 PM-5th Floor, Board Assembly Room

PPC HEARING: May 10, 2017 @ 1:00 PM-5th Floor, Board Assembly Room

FINAL DETERMINATION BY: June 6, 2017

APPLICANT'S NAME: Clay & Pam, LLC

REQUEST: Zone change from: R-4, One, Two & Three Family Residential
to: M-1, Light Manufacturing & Industry

Land Use change from: Residential Medium
to: Employment

CASE DESCRIPTION: Approximately 0.8 acre located 135 feet north of the northeast corner of the Florida Avenue and 9th Street intersection in Palm Harbor (a portion of parcel 01/28/15/88560/088/0300). A legal description is available in file upon request.

APPLICANT/ADDRESS: Clay & Pam, LLC
c/o Jan T. Govan, Attorney at Law
Govan Law Group, P.A.
542 Bay Avenue
Clearwater, FL 33756

REP/ADDRESS: Jan T. Govan, Attorney at Law
Govan Law Group, P. A.
542 Bay Avenue
Clearwater, FL 33756

NOTICES SENT TO: Clay & Pam, LLC, Jan T. Govan, Attorney at Law, Mike Meidel-Economic Development Council, DOT, Clint Herb-Pinellas County School Board, BCC Office & Surrounding Owners

EXISTING USE: Vacant

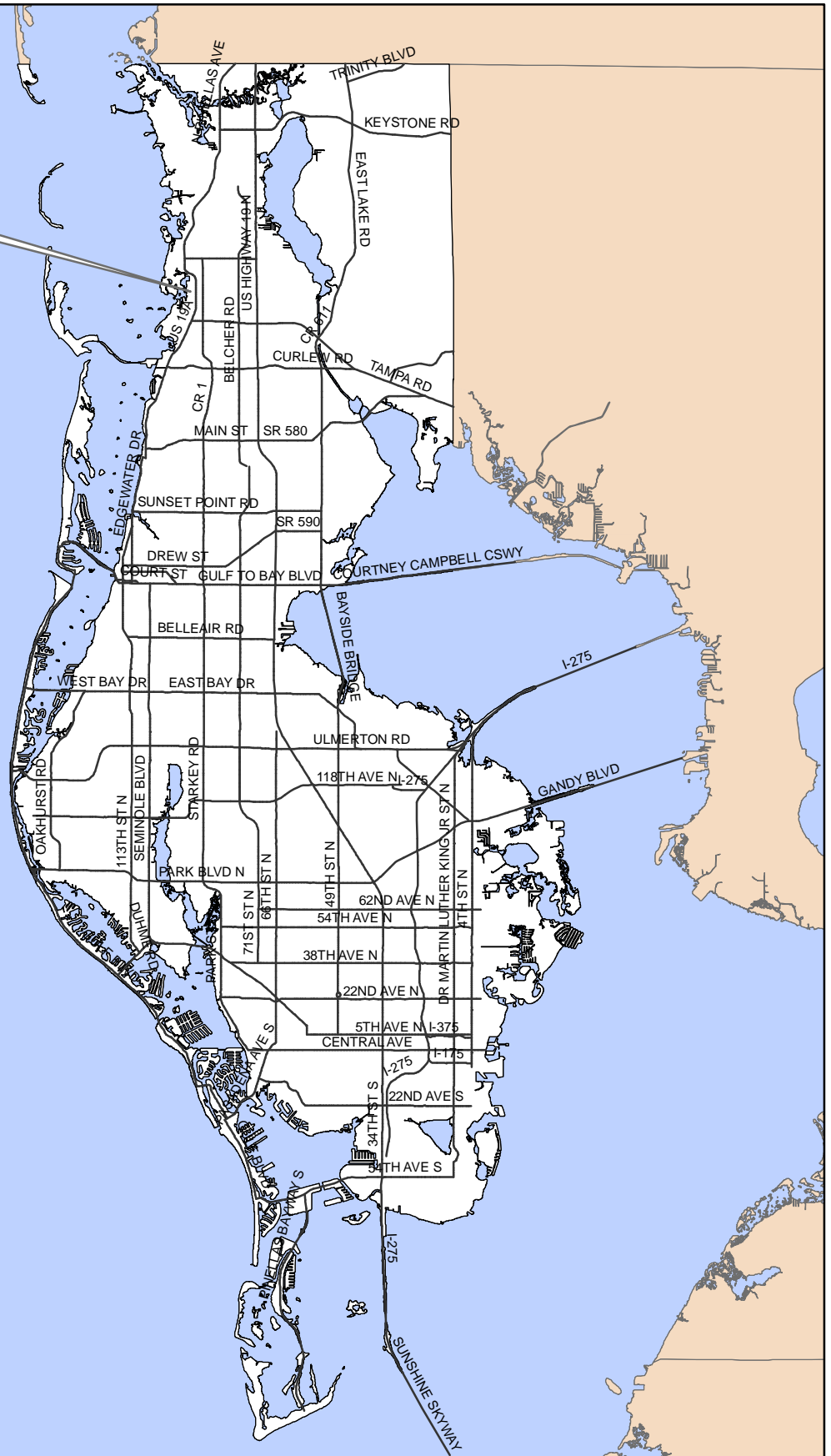
PROPOSED USE: Storage/Processing of Vehicles

LAND USE: Residential Medium

ZONING: R-4

Z16-000021

Z/LU-3-2-17



Surrounding Counties

Z/LU-3-2-17

Location Map

Zoning

Land Use

From: R-4, One, Two, Three Family Residential

To: M-1, Light Manufacturing and Industry District

From: RM, Residential Medium

To: E, Employment

PORTION OF PARCEL 01/28/15/88560/088/0300

Prepared by: Pinellas County Planning Department



Date: 12/20/2016



1 inch = 4.5 miles



Z/LU-3-2-17

**Current Land Use
& Zoning Map**

Zoning

Land Use

From: R-4, One, Two, Three Family Residential
To: M-1, Light Manufacturing and Industry District
From: RM, Residential Medium
To: E, Employment

PORTION OF PARCEL 01/28/15/88560/088/0300

Prepared by: Pinellas County Planning Department



Date: 12/21/2016



1 inch = 0.06 miles



Z/LU-3-2-17

Aerial Map

Zoning

Land Use

From: R-4, One, Two, Three Family Residential
To: M-1, Light Manufacturing and Industry District
From: RM, Residential Medium
To: E, Employment

PORTION OF PARCEL 01/28/15/88560/088/0300

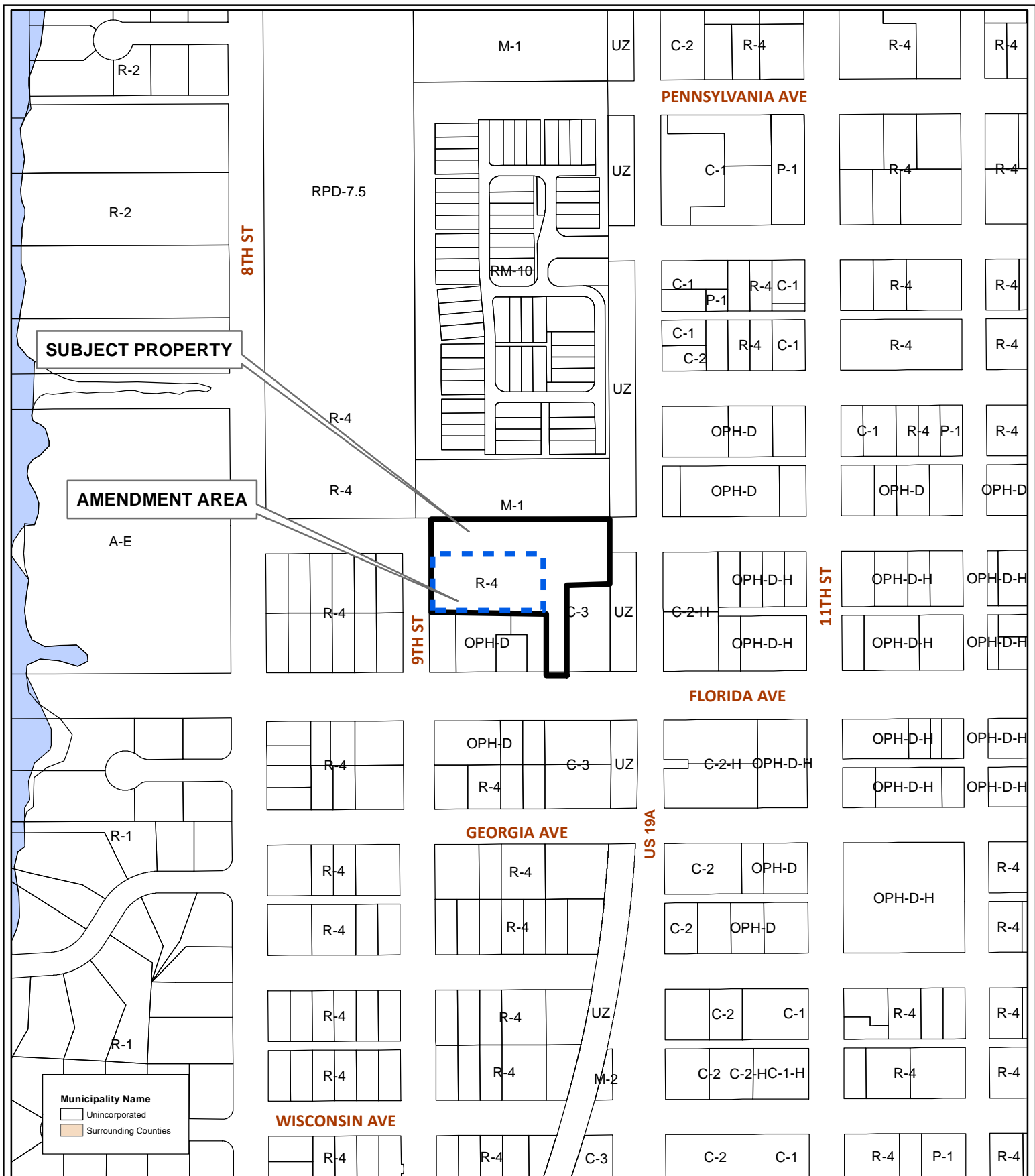
Prepared by: Pinellas County Planning Department



Date: 12/21/2016



1 inch = 0.06 miles



Z/LU-3-2-17

Municipality Map

Zoning

Land Use

From: R-4, One, Two, Three Family Residential
To: M-1, Light Manufacturing and Industry District
From: RM, Residential Medium
To: E, Employment

PORTION OF PARCEL 01/28/15/88560/088/0300

Prepared by: Pinellas County Planning Department



Date: 12/21/2016



1 inch = 0.06 miles



Z/LU-3-2-17 **Proposed Land Use & Zoning Map**

Zoning From: R-4, One, Two, Three Family Residential
To: M-1, Light Manufacturing and Industry District

Land Use From: RM, Residential Medium
To: E, Employment

PORTION OF PARCEL 01/28/15/88560/088/0300

Prepared by: Pinellas County Planning Department



Date: 12/21/2016



1 inch = 0.06 miles



DEPARTMENT OF PLANNING

Application for a Zoning and/or Land Use Change or for Consideration of a Development Agreement

☐ Zoning ☐ Land Use ☐ Zoning/Land Use/Conditional Use ☐ Development Agreement

for office use only:

CASE NO. Z/60-3-2-17 FILED: _____ BY: _____

PARCEL ID NO. 01-28-15-38560-038-0300 FILING FEE: \$ _____ FILING DEADLINE: _____

PRE-APP MTG: _____ LPA HEARING: _____ BCC HEARING: _____

Notice to applicant: Please read the following:

To assist you in completing this application and providing sufficient information upon which to base a decision on your request, please read the following:

1. Read the Application and instructions thoroughly; prior to filing this Application, the applicant and/or authorized representative is encouraged to call (727-464-3401) or visit the Zoning Division (located at 440 Court Street, 3rd Floor, downtown Clearwater, FL) to review the application and proposal with staff.
2. All items in the Application must be completed. Additional documents (see item 16 in the application) and a filing fee are required. Checks may be made payable to the Board of County Commissioners. Note that once the application is advertised, filing fees will not be returned. (information on filing fees is online at <http://www.pinellascounty.org/Plan>).
3. The current owner of the property for which the Application is being made must sign the Application. These signatures must be notarized prior to submittal.
4. The applicant is encouraged to file the application well in advance of the filing deadline. Note that Applications received past the deadline will be processed on the next scheduled cycle. Deadlines, hearing schedules, filing fees and other information are available online at <http://www.pinellascounty.org/Plan> or call (727) 464-3401 for more information.
5. The applicant or their authorized representative must be present at the public hearing(s). Failure to appear may result in a denial of the request.
6. It is recommended that the applicant or authorized representative contact the Zoning Section at (727) 464-3401 to schedule a Pre-Application meeting to discuss the proposed zoning and/or land use change or development agreement prior to submitting an application.

All information and documents required in the application, as well as the filing fee must be submitted at the time of application (see attached Fee Schedule). Incomplete applications will not be accepted by the Zoning Division of Planning & Development Services Department for processing. Please contact a Zoning Technician at (727) 464-3401 if you need additional assistance or information in order to complete the application.

Thank you!

PLANNING DEPARTMENT
APPLICATION FOR A ZONING AND LAND USE
CHANGE

1. Owner: Clay & Pam, LLC, a Florida Limited Liability Company

Mailing Address: Clay & Pam, LLC c/o Jan T. Govan,
Attorney at Law, Govan Law Group, P.A., 542 Bay Avenue
Clearwater, FL 33756

Daytime Phone: (727) 298-1101

Email: jangovan@govanlawgroup.com, and
ritawhaley@govanlawgroup.com

2. Representative's Name:

Jan T. Govan, Attorney at Law
Govan Law Group, P.A.
542 Bay Avenue
Clearwater, FL 33756

Daytime Phone: (727) 298-1101

Email: jangovan@govanlawgroup.com,
and ritawhaley@govanlawgroup.com
(copy to both emails is requested)

3. Disclosure Information (This information must be supplied pursuant to County Ordinance No. 74-15)

Information supplied pursuant to Application Questions:

A. If the owner is a corporation, partnership, or trust, list all persons (i.e. partners, corporate officers, all members of the trust) who are a party to such as well as anyone who may have a beneficial interest in the property which would be affected by any ruling on their application.

This subject property is owned by Clay and Pam, LLC, a Florida Limited Liability Company.

Clayton A. Miller and Pamela D. Miller are the managing members.

Specify interest held: Equal division of interest: 50% /50%

B. Is there an existing contract for sale of the subject property?
NO

C. Are there any options to purchase on the subject property?
NO

4. This hearing is being requested to consider:

Change of Zoning from R-4 (Residential Single Family 4 units per acre) to M-1 Light Manufacturing and industry district) to allow continuity with the existing adjacent cooperatively owned land to the north.

* Change of Land Use from RM (Residential Multi-family) to CG (Commercial General) or alternatively to (IL) Industrial Limited.

* E for Transit Oriented Development – Regional Center:
Category E: Employment Emphasis.

*** Note: The subject property is cooperatively owned with Days Collision Painting & Repair Inc. (Days) which employs 24 people throughout the year and has a usual complement of 14 people employed. The subject property is essential to the maintenance and growth of that business because any vehicle that cannot be brought to the property must be turned away. Any vehicle that is turned away equates to fewer people being employed. This subject property is integral to the operation to maintain full employment.**

5. Location of subject property (street address)

The Pinellas County Property Appraiser identifies this site address as: “Nebraska Avenue” only even though no part of Nebraska Avenue is adjacent to the subject property. Nebraska Avenue has been vacated and terminates at the western boundary of the northern property line and fails to connect with the subject property in any way.

This property does not have an accurate street address.

So why is there no street address? Because there is no street.

The subject property is completely landlocked to the North, South, and East. There is an adjacent dedicated right of way to the West of the subject property that borders on Lot 8 (one of the five lots) but the Right-of-way is totally undeveloped and impassible due to extensive large trees and other significant vegetation making access to Lot 8 currently impossible without extensive site work.

No public road frontage can be provided to Lot 8. Nor can Right-of-way public road frontage be provided to any of the other subject lots. There is no address to the subject property even if the individual lots are considered.

The subject property is a sub-property located within a larger property. There is no provision for access to public services, utilities, fire, ambulance or other emergency access except through the surrounding adjacent private property.

So in conclusion, the address of the subject property is unknown except as defined by the Pinellas County Property Appraiser only as: "Nebraska Avenue".

6. Legal Description of the subject property alone would be:

The sub-parcel that is zoned R-4:

Lots 4,5,6,7, and 8, together with the 10 feet of the vacated alley lying adjacent to lots 4,5,6,7 and 8, in Block 88, TOWN

OF SUTHERLAND, according to the Map filed March 29, 1888, in the Public Records of Hillsborough County, Florida of which Pinellas County was formerly a part

Pinellas County, Florida: Parcel Number of the subject property is: 01-28-15-88560-088-0300

However, for completeness we are providing the entire legal description of the property as transferred to Clay & Pam, LLC, on June 30, 2004, pursuant to the Warranty Deed recorded at: Public Records of Pinellas County, Florida, O.R. Book 13674, Page 728, recorded on 06/30/2004 is as follows:

Parcel 1:

Lots 1 to 8, inclusive of Lots 14, 15, and 16, together with the vacated alley between lots 1, 2, 3, 14, 15 and 16 and the North 10 feet of vacated alley lying adjacent to lots 4, 5, 6, 7 and 8, in Block 88, TOWN OF SUTHERLAND, according to the Map filed March 29, 1888, in the Public Records of Hillsborough County, Florida of which Pinellas County was formerly a part.

Parcel 3:

The vacated 80 foot right-of-way for Nebraska Avenue that lies North of Block 88, TOWN OF SUTHERLAND, in Section 2, Township 28, South, Range 15 East, lying and being in Pinellas County, Florida

LESS AND EXCEPT OUT PARCEL DESCRIPTION

The East 100 feet of the south 201 feet of Block 88, TOWN OF SUTHERLAND, according to the map filed March 29, 1888, in the Public Records of Hillsborough County, Florida, of which Pinellas County was formerly a part.

SUBJECT TO INGRESS AND EGRESS EASEMENT:

The West 15 feet of the East 115 feet of the South 201 feet of Block 88, TOWN OF SUTHERLAND, ACCORDING TO THE MAP FILED March 29, 1888, in the Public Records of Hillsborough County, Florida, of which Pinellas County was formerly a part.

Pinellas County, Florida: Parcel Number of the subject property is: 01-28-15-88560-088-0300

7. Size of Property subject to rezoning: 260 feet by 135 feet, (.805 of an Acre MOL)
8. Present zoning Classification: R-4
9. Present Land Use Map Designation: RM
10. Date Subject Property Acquired June 30, 2004

11. Existing structures and improvements on subject property

No permanent structures exist on this property.

The operational reality is that the subject property identified in this application is a part of the larger operation that encompasses the entire fenced in area and is used without practical utilization distinction since it was acquired in June 2004.

The land surface of the property is compacted shell/aggregate. There is a fence around the perimeter of the subject property to the North, South, East and West. The subject property is used by Days Collision Painting & Repair Inc. as a part of its operation and is entirely fenced in with controlled gate access.

The perimeter fence is required to secure the entire property due to Florida Highway Patrol, Pinellas County Sheriff and other law enforcement protocols for vehicles that are subject to towing and retention to secure, protect, and establish a chain of custody and control for vehicles that are to be used as evidence in crimes, vehicular deaths and other law enforcement objectives.

12. Proposed Structures and improvements will be: None

The use will remain the same as it was since acquisition in 2004.

The subject property was, is and will be used for storing and processing vehicles for repair and restoration or disposal after collisions, the storage of inventory and materials necessary to effect that repair or restoration, as storage for vehicles utilized for law enforcement purposes, for vehicles removed from properties under contract, for vehicles removed from roadways after collision, restoration and outdoor storage of customers vehicles, trailers and vessels of all types and classes towed onto or delivered to the subject property for public/governmental purposes and on behalf of private parties generally.

13. I/we Believe this application should be granted because (include in your statement sufficient reasons in law and fact to sustain your position) (if this request is for a determination of Vested Right/Appeal Determination, applicants are advised to review the procedural and substantive requirements of Pinellas County Ordinances 89-32 and 89-69) (attach Separate sheet if necessary).

1. The subject property, as vacant property, is ancillary in use to the operation of the adjacent property to the North continuously since its acquisition in 2004. It is cooperatively owned and controlled as part of the operation of Days Collision Painting & Repair Inc. (Days) The Days property was historically used as a lumber yard known as Yackle Lumber Yard, since 1977. After that it became the property of Palm Harbor Lumber, Inc. in 1994, until transferred to Days in 2004.)

The requested change in Zoning and Land Use designation will comply with the purpose and intent of the Pinellas County Land Development Code in that it will preserve and encourage the most appropriate historical use of the land. The requested change will deal effectively with future problems of the use and development of the subject land by providing a uniformity of Zoning and Land Use designations in the future which will continue to support the existing business and employment interests.

The adjacent northern property owned by Days is currently zoned M-1 (Light Manufacturing and Industrial District) with a current Land Use Code of IL (Industrial Light) and E for Transit Oriented Development – Regional Center: Category E: Employment Emphasis.

The subject property is a sub-parcel within a larger parcel that is utilized without practical distinction for the operation of Days daily business.

No permanent structures exist on the subject property.

The surface of the subject property is compacted shell/aggregate.

The adjacent Days property has been historically used for lumber yard purposes beginning in 1997 through 2004.

Currently, there is a fence around the perimeter of the subject property and the adjacent Days property that surrounds the entire areas comprising both the subject property and the Days

property. The entire property is completely fenced in to the North, South, East and West forming one visually indistinguishable property. The perimeter fence around the entirety of both properties is required to be in place and secured due to contractual relationships with the Florida Highway Patrol, use by the Pinellas County Sheriff and other Law Enforcement Agencies meeting established protocol for vehicles that are subject to towing and delivery to the property. The established fencing requirement is only part of the security needed to protect vehicles and establish a chain of custody for those vehicles that are to be used as evidence in crimes, vehicular deaths, collisions pursuant to law enforcement objectives.

The subject property and the adjacent Days property is entirely fenced in with controlled (locked) gated access to comply with the above law enforcement requirements. Other security measures are applied to the entirety of the subject property and Days without distinction. The other security measures employed on the subject property and Days property will not be further elaborated as part of this public document. Without disclosing additional security measures it is sufficient to state that such security measures are employed without distinction between the subject property and the Days property.

The operational reality is that the subject property identified in this application is a part of the larger operation that encompasses the entire fenced in area and is used without any practical distinction since it was first acquired in June 2004.

A change of Zoning and Land Use designations will not be apparent in any practical way as to use or appearance. The change of the Zoning and Land Use designation requested will result in no noticeable change in the use of the property. Nor will there be any adverse impact on any adjacent property owners who have experienced the actual use of the subject property since June 2004 as a storage and staging area for Days daily work.

2. There is no practical public Right-of-way access to the subject property.

This change in Zoning and Land Use designation will comply with the purpose and intent of the Pinellas County Land Development Code in that good order recognizing the existing use, access to law enforcement, access to fire prevention, access to water, sewer, other services will best be provided by recognition that the subject property is effectively land locked (a sub-parcel within a larger parcel). The R-4 residential zoning and RM Land use designation of this sub-parcel is out of sync with the surrounding properties Zoning and Land Use designations. Given the surrounding actual use of the subject property with no access to independent Right-of-way to the subject property development of this sub-parcel into single family residential units would be disastrous.

Although there is a dedicated Right-of-way to the West of the property it is undeveloped, impassible (full of mature trees) and

unavailable for access to any area of the subject property except to Lot 8 (one of five).

Right-of-way means the area of a highway, road, street or way reserved for public use, whether established by prescription, dedication, gift, purchase, eminent domain or any other legal means. Alleys are specifically excluded from this definition.

* Note: It is important to note that the property was subdivided in 1888. (Pinellas County, Florida was established on May 23, 1911 and this is the first plat recorded in Pinellas County.)

The subdivision designations of the subject property are only reflective of the legal description established in the last century and not the use of the property or subject to any practical reality which would be conducive to individual lot ownership in any meaningful way.

See: Map of Sutherland Florida, Public Records of Pinellas County, Florida, Plat Book 1, Page 1

The other four of five lots of the subject property: Lots 4, 5, 6, and 7, are completely land locked by the adjacent surrounding property within the entire parcel and to the North by Days and privately owned property to the South , with no direct access to Right-of-way by undeveloped 9th Street or otherwise.

Even if 9th Street were to be improved to make Lot 8 accessible the road improvement to Lot 8 would not benefit any other subject Lots (4,5,6,or 7) leaving those Lots continuously land locked as no road frontage would be established for these lots.

The subject property is not capable of development in its current Zoning and Land Use designations for residential use.

Pinellas County Code prohibits development unless there is access to a dedicated Right-of-way to each lot which is not the case here.

These lots are legally prohibited from individual development into residential use properties by the lack of access to Right-of-way and practically prohibited from develop by a lack of individual lot access to public utilities, fire and ambulance services. There is no practical or legal reason to continue the existing Zoning and Land Use designations. (R-4, RM).

See : Pinellas County Code of Ordinances, Part III Land Development Code, Article VI. Supplemental Regulations

Sec. 138-1279 Road Frontage

Except as otherwise provided in this chapter, no building shall be built, constructed, enlarged or structurally altered or moved on a lot, tract , or parcel of land which does not abut a dedicated public right-of way for a distance equal to the minimum lot width required in the zoning district in which the property is located.

Principal use means the most dominant use, building, or structure located on a lot or parcel.

3. Spot Zoning (Reverse Spot Zoning) is impermissible.

The requirement to maintain the current status (R-4, RM) is that those designations must be compatible in use with adjacent and nearby uses and/or zoning, compatibility of intensity of use.

The current status of the subject property does not meet that standard and the Zoning and Land Use designations must be changed.

As we addressed above there is no legal or practical application of the residential status of the subject property. Given the history of the subject property and the surrounding uses it is actually detrimental to the use and value of the subject property.

The solution is to change the Zoning and Land Use designations to provide a meaningful beneficial use. The following case is persuasive and instructive:

See: Palmer Trinity Private Sch., Inc. v. Vill. of Palmetto Bay, 31 So. 3d 260, 262-63 (Fla. 3d DCA 2010)

"Reverse spot zoning occurs when a zoning ordinance prevents a property owner from utilizing his or her property in a certain way, when virtually all of the adjoining neighbors are not subject to such a restriction, creating in effect, a veritable zoning island or zoning peninsula in a surrounding sea of contrary zoning classification. Reverse spot zoning is invalid, as it is confiscatory." *City of Miami Beach v. Robbins*, 702 So. 2d 1329, 1330 (Fla. 3d DCA 1997). The record establishes that Palmer Trinity is not afforded the same beneficial use and restrictions for Parcel B that are enjoyed by the owners of the surrounding properties. *Compare* §§ 33-234 to 236, *and* 33-279 to 283 *with* § 33-224 to 225, Miami-Dade County Zoning Code. Because the Village's refusal to grant the zoning change results in impermissible reverse spot zoning, the circuit court appellate

division's decision affirming the Village's denial of the zoning request [*263] constitutes a departure from the essential requirements of the law resulting in a miscarriage of justice.”

.....

In review Days adjacent northern property parcel is currently zoned M-1 (Light Manufacturing and Industrial District) that is currently zoned M-1 with a Land Use Code of IL Industrial Light and Transit Oriented Development – Regional Center: Category E: Employment Emphasis.

No permanent structures exist on subject property. The surface of the property is compacted shell/aggregate. The subject property and the adjacent property owned by Days Collision Painting & Repair Inc. is entirely fenced in with controlled gate access for the law enforcement and other security purposes. There is a fence around the perimeter of the subject property and the entire parcel to the North, South, East and West. The perimeter fence is secured and required to be secured, for a chain of custody to be provided due to Florida Highway Patrol and other law enforcement agencies protocol for vehicles that are subject to be used as evidence in crimes, vehicular deaths, collisions and other law enforcement objectives.

The operational reality is that the subject property identified in this application is a part of the larger operation that encompasses the entire fenced in area and is used without practical distinction since it was acquired in June 2004.

There is no change or other adverse impact on any adjacent property owner for the actual use of the subject property which will carry on as it has since June 2004.

This subject property lots 4,5,6,7, and 8 are the only portion of the contiguous property owned as a whole within this same parcel that contain other Zoning and Land Use designation. Only these five lots are subject to the R-4 zoning and RM Land Use designation and restrictions.

Clearly an R-4 residential use and RM Land Use is inappropriate for the subject property. When taken as a whole only those 5 lots that are zoned for (R-4, RM) are an island created by the uses surrounding the subject property .

To refuse the beneficial use of the property compatible to the other uses surrounding it (recognizing its actual use and nature since June 2004) would be an apparent “revers spot zoning” constitutes a departure from the essential requirements of the law resulting in a miscarriage of justice.

That circumstance can easily be corrected by granting the requested Zoning and Land Use designations.

Three generally described zoning references within the same parcel of land transferred by the same deed on June 30 2004.

Parcel 1: The subject parcel:

(Lots 4,5,6,7 and 8) R-4 Residential, Land Use RM.

Parcel 2:

Lots 1 to 8, inclusive of Lots 14, 15 and 16, together with the vacated alley between lots 1, 2, 3, 14, 15 and 16 and the North 10 feet of vacated alley lying adjacent to lots 4, 5, 6, 7 and 8, in Block 88, TOWN OF SUTHERLAND, according to the Map filed March 29, 1888, in the Public Records of Hillsborough County, Florida of which Pinellas County was formerly a part.

Lots 1, 2, 3, and lots 14, 15,16 are currently zoned C-3
Commercial Category 3
Land Use Code: CG

and,

Parcel 3:

The vacated 80 foot right-of-way for Nebraska Avenue that lies North of Block 88, TOWN OF SUTHERLAND, in Section 2, Township 28, South, Range 15 East, lying and being in Pinellas County, Florida

This Parcel 3, is currently zoned M-1 (Light manufacturing).
Land Use Code: IL and E Employment Emphasis

TOD-RC-E (Employment Emphasis) – Residential, those uses found in the Mixed Use,

Commercial and Public/Semi-Public Classifications, and those uses found in the Industrial Limited category. (Future Land Use Map Categories) FLUM .
http://www.pinellascounty.org/Plan/pdf_files/flutable.PDF

The adjacent property to the South of the subject property owned by persons who are not the applicants are currently Zoned and have the current Land Use designations of :

OPH-D (Old Palm Harbor Downtown)

Basically, OPH-D zoning is a redevelopment district that recognizes that eclectic nature of the historic development of “Sutherland” now called “Palm Harbor”, is antithetical to an identifiable area of economic importance designed to emphasize an identity describing a “special character and use” The lack of flexibility to establish the geographical identification with in the rigidly formed zoning districts would be a limiting factor to establish economic. To this end all of the properties establishing the southern border of the subject property are now zoned OPH-D which authorizes commercial uses.

The Pinellas Board of Adjustment has already gone on record that it recognizes the industrial/ commercial character of the subject property in granting a variance to a nearby land owner to open a Brewery.

This property is referred to herein as the
SCHWARTZ REAL ESTATE HOLDINGS, LLC property.

The Pinellas Board of Adjustment has already gone on record that it recognizes the industrial/ commercial character of the subject property. At its September 3, 2015 meeting when it considered the application of SCHWARTZ REAL ESTATE HOLDINGS, LLC the Pinellas Board of Adjustment went on record as follows:

During that meeting the following minutes were recorded relating to item #2, page 3 on the agenda:

Clearwater, Florida, September 3, 2015

The Board of Adjustment met in regular session in the County Commission Assembly Room,

Fifth Floor, Pinellas County Courthouse, 315 Court Street, Clearwater, Florida on this date with

the following members present: Stephen G. Watts, Chairman; Cliff Gephart, Vice-Chairman;

Alan C. Bomstein; Joe C. Burdette; John Doran; Gregory R. Pierce; and Deborah J. White.

Also present: Chelsea D. Hardy, Assistant County Attorney; Glenn Bailey, Planning Department

Zoning Manager; Todd F. Myers, Environmental Code Enforcement Director; other interested

individuals; and Michael P. Schmidt, Board Reporter, Deputy Clerk.

APPLICATION OF SCHWARTZ REAL ESTATE
HOLDINGS, LLC THROUGH
GREG DEICHMAN, REPRESENTATIVE, FOR A
VARIANCE (BA-11-9-15) –
PORTION OF APPLICATION RE CHURCH WITHDRAWN;
PORTION RE
RESIDENTIAL ZONING DISTRICT BOUNDARY LINE
GRANTED AS PER STAFF
RECOMMENDATION

Mr. Bailey referred to the application of Schwartz Real Estate Holdings, LLC through Greg Deichman for a variance to allow for the dispensing of alcoholic beverages within 150 feet of a residential zoning district boundary line and within 750 feet of a church, re property located at 993 Florida Avenue, Palm Harbor (BA-11-9-15), and reported that because the distance requirement from the church no longer requires a variance, due to changes in the County Code, only the distance from the residential district boundary line is being considered.

Mr. Bailey indicated that no correspondence relative to the application has been received, and presented the following staff recommendation:

Recommend Conditional Approval. Staff has no objection to the conditional approval of the request. The nearby residentially-zoned land is currently being used for commercial purposes. The request will pose no detrimental impact to the use. (Emphasis Added)

Approval of the request should be subject to the following conditions:

1. The applicant shall obtain all required permits and pay the appropriate impact and/or other fees.
2. The hours for alcohol service shall be as established in Chapter 6, Article II, of the Pinellas County Code, or as deemed appropriate by the Board.

IN CONCLUSION:

Given the history, use, limited access, the surrounding Zoning and Land Use Designations the logical, practical and legal conclusion is to grant the Application for rezoning to M-1, and Land Use designations to: IL and E.

14. Has any previous application relating to zoning or land use on this property been filed within the last year?

NO

15. Does applicant own any property contiguous to the subject property?

YES

If so, give complete legal description of contiguous property.
Surrounding property the North and East.

Parcel 1: The subject parcel:

(Lots 4,5,6,7 and 8) R-4 Residential, Land Use
RM.

Parcel 2: (Including Lots 4,5,6,7, & 8) in the Lots 1 to 8
description below as part of the whole parcel all of which is
contiguous in both Parcel 2 and Parcel 3 descriptions below.)

Lots 1 to 8, inclusive of Lots 14, 15 and 16, together with the
vacated alley between lots 1, 2, 3, 14, 15 and 16 and the North
10 feet of vacated alley lying adjacent to lots 4, 5, 6, 7 and 8, in
Block 88, TOWN OF SUTHERLAND, according to the Map
filed March 29, 1888, in the Public Records of Hillsborough
County, Florida of which Pinellas County was formerly a part.

Lots 1, 2, 3, and lots 14, 15, 16 are currently zoned C-3
Commercial Category 3
Land Use Code: CG

and,

Parcel 3:

The vacated 80 foot right-of-way for Nebraska Avenue that lies
North of Block 88, TOWN OF SUTHERLAND, in Section 2,
Township 28, South, Range 15 East, lying and being in Pinellas
County, Florida

This Parcel 3, is currently zoned M-1 (Light manufacturing).
Land Use Code: IL and E Employment Emphasis

TOD-RC-E (Employment Emphasis) – Residential, those uses found in the Mixed Use, Commercial and Public/Semi-Public Classifications, and those uses found in the Industrial Limited category. (Future Land Use Map Categories) FLUM .
http://www.pinellascounty.org/Plan/pdf_files/flutable.PDF

Sources for access to above references:

Land Use:

Confirmed with Pinellas County Staff on December 16, 2016.

Zoning Source:

Confirmed with Pinellas County Staff on December 16, 2016.

Pinellas County Ordinances.

Source:

https://www.municode.com/library/FL/pinellas_county/codes/code_of_ordinances?nodeId=PTIILADECO_CH138ZO_ARTVC_OINMUDI_DIV12OOLPAHAWNDI

Exhibits

Pinellas County Staff Print out of Subject Property

Plat of Sutherland. Pinellas County Plat Book 1, Page 1.

Warranty Deed to Clay and Pam LLC

Sunbiz Online record of Clay and Pam LLC

Minutes of Pinellas County Board of Adjustment September 3, 2015 Pages 1, 2, 3 Referencing Application of Schwartz Real Estate Holdings, LLC.

Palmer Trinity Private Sch., Inc. v. Vill. of Palmetto Bay, 31 So. 3d 260, 262-63 (Fla. 3d DCA 2010)

CERTIFICATION OF OWNERSHIP

I hereby certify that I have read and understand the contents of this application and that this application together with all supplemental data and information is true representation of the facts concerning this request that this application is made with my approval as owners and applicant, as evidenced by my signature appearing below. It is hereby acknowledged that the filing of this application does not constitute automatic approval of the request and further that if the request is approved, I will obtain all necessary permits and comply with all applicable orders, codes, conditions and rules and regulations pertaining to the use of the subject property, while under my ownership. I am aware that attendance by me or my authorized representative at all public hearings relative to this request is required and that failure to attend may result in a denial of the request. It shall be my responsibility to determine time and location of all hearing.

Clay and Pam, LLC,
a Florida Limited Liability
Company

By Pamela D. Miller
Pamela D. Miller
as Managing Member

STATE OF FLORIDA, COUNTY OF PINELLAS

Before me this 16th day of December, 2016
personally appeared Pamela D. Miller, as Managing Member of Clay and Pam,
LLC, a Florida Limited Liability Company, who being sworn, deposes and says
that the above is a true and correct certification

Personally Known ✓

Jan T. Govan
NOTARY PUBLIC

(seal)

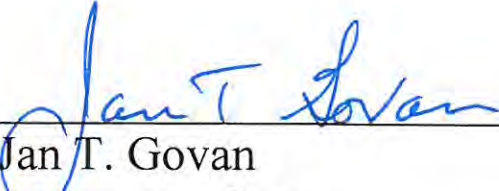


CERTIFICATION OF OWNERSHIP
of Subject Real Property

I, Jan T. Govan, Attorney at Law, hereby certify that the property subject to this Application legally described as:

Lots 4, 5, 6, 7, and 8, together with the 10 feet of the vacated alley lying adjacent to lots 4,5,6,7 and 8, in Block 88, TOWN OF SUTHERLAND, according to the Map filed March 29, 1888, in the Public Records of Hillsborough County, Florida of which Pinellas County was formerly a part

Is as of this date, December 16, 2015 the subject property is owned in fee simple by Clay and Pam, LLC, a Florida Limited Liability Company



Jan T. Govan
Attorney at Law
Florida Bar Number: 398012
Govan Law Group P.A.
542 Bay Avenue
Clearwater, FL 33756
Telephone: (727) 298-1101
Email:
jangovan@govanlawgroup.com
ritawhaley@govanlawgroup.com
Please address both emails.

PARCEL NO: 01-28-15-88560-088-0300

SEARCH 200 FT.

CURRENT ZONING: R-4 & LAND USE: RM

OCCUPIED BY: CLAY AND PAM, LLC
INTENDED USE:

The use will remain the same as it was since 2004. The subject property will be used for storing and processing vehicles for repair and restoration or disposal after collisions, the storage of inventory and materials necessary to effect that repair or restoration, as storage for vehicles utilized for law enforcement purposes, for vehicles removed from properties under contract, for vehicles removed from roadways after collision, restoration and outdoor storage of customers vehicles, trailers and vessels of all types and classes towed onto or delivered to the subject property for public/governmental purposes and on behalf of private parties generally.

REQUEST:

Change of Zoning from R-4 (Residential Single Family) to M-1 Light Manufacturing and industry district) to allow continuity with the existing adjacent land to the north cooperatively owned.

* Change of Land Use from RM (Residential Multi-family) to CG (Commercial General) or alternatively to (IL) Industrial Limited.

* E for Transit Oriented Development – Regional Center:
Category E: Employment Emphasis

AKA: (street address): No actual street address
Pursuant to Pinellas County Property Appraiser
0 Nebraska Avenue
Palm Harbor, FL 34683

Evacuation Zone “B” and “C”

Source: <http://egis.pinellascounty.org/apps/knowyourzone/>

Surrounding Property:

- **Sec. 134-337. - Notice of public meetings and public hearings.**

(a)

Notice of public hearing shall be as required by law. The board of county commissioners, however, recognizes the importance of community involvement in these proceedings. Therefore, it will be standard practice to provide the following additional notification:

(1)

Owners of property, as listed by the county property appraiser's office, located within 200 feet of the subject property will be mailed a notice of the upcoming public meeting and public hearings.

(2)

A sign giving notice of public hearings should be posted in a prominent location on the subject property.

(b)

Any request pertaining to residential zoning shall be forwarded to the county school district for comment.

(c)

Any adjacent local government and/or affected government agency will be informed of the proposal.

North

1. Clay and Pam LLC (80 feet)
2. Days Collision Painting and Repair $80 + 135 = 295$ feet
both at the following address
975 Florida Avenue
Palm Harbor, FL 34683-4224

East

1. Clay and Pam LLC (150 feet)
975 Florida Avenue
Palm Harbor, FL 34683-4224
2. Pinellas County $150+60 = 210$ feet
Attn: Special Accts
315 Court Street
Clearwater, FL 33756 – 5156
Pinellas Trail
4. Alternate U.S. 19 $150+60+ 100= 310$ feet
5. Bilmartex Inc $150 + 60 +100 + 125 = 435$ feet
65 Wood Cutter Lane
Palm Harbor FL 34683-3740

South

1. MOBILE AUTO GLASS REPAIR LLC 135 feet
925 FLORIDA AVE
PALM HARBOR FL 34683-4224

931 FLORIDA AVE

2. TENBROOK, DAVID S 135 feet
TENBROOK, DEBRA SUE
909 FLORIDA AVE
PALM HARBOR FL 34683-4224

909 FLORIDA AVE

3. SANTABARBARA MENNONE ASSOCIATES LLC 135 feet
2293 CIMARRON TER
PALM HARBOR FL 34683-4945

901 Florida Avenue Palm Harbor, Florida 100 feet

5. SHEILS, DENNIS A 135 + 100 + 100 = 235 feet
3094 ENISGLEN DR
PALM HARBOR FL 34683-2009

948 FLORIDA AVE

6. NAPOLI, BEVERLY E 135 + 100 + 100 = 235
feet
1717 MEXICO AVE
TARPON SPRINGS FL 34689-2225
922 FLORIDA AVE

7. SUNSET INVESTMENTS & MANAGEMENT LLC 135 + 100 + 100 = 235 feet
1745 OYSTER POINT WAY
PALM HARBOR FL 34683-3431

910 FLORIDA AVE

WEST

1. Unimproved Right-of-way for 60 feet
9th Street Pal Harbor Florida
2. SANTABARBARA MENNONE ASSOCIATES LLC 60 + 60 =
120feet
2293 CIMARRON TER
PALM HARBOR FL 34683-4945
889 Nebraska Ave.
3. RIX, PENNY 60+60+60 = 180 feet
872 NEBRASKA AVE
PALM HARBOR FL 34683-4027

872 Nebraska Ave
4. YARNALL, TRACEY LYNN 60+60+60+60 = 240
KELLEY, PAUL
KELLEY, HILDA
2592 ELDERBERRY DR
CLEARWATER FL 33761-2204

854 NEBRASKA AVE

CHECKLIST

If the request is for an Affordable Housing Density Bonus: NO

If the request is for a Nursing Home, Assisted Living, and Hospital: NO

Is the Development Agreement complete? Not Applicable to this Application.

FLORIDA



41

2700
0

WARRANTY DEED

THIS INDENTURE, made and executed this 15 day of June, 2004, by **DAVID L. LIMRIC**, a married man, hereinafter called the grantor, to **CLAY AND PAM, LLC**, a Florida limited liability company, whose post office address is 975 Florida Avenue, Palm Harbor, Florida 34683, hereinafter called the grantee:

(Wherever used herein the terms "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations)

WITNESSETH: That said grantor, for and in consideration of the sum of Ten and no/100 (\$10.00) Dollars, and other good and valuable considerations to said grantor in hand paid by said grantee, the receipt whereof is hereby acknowledged, has granted, bargained and sold to the said grantee, grantee's heirs, successors and assigns forever, the following described land, situate, lying and being in **HILLSBOROUGH** County, Florida, to-wit:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

SUBJECT TO EASEMENTS, COVENANTS, RESTRICTIONS AND RESERVATIONS OF RECORD (NONE OF WHICH ARE REIMPOSED HEREBY) AND TAXES FOR THE YEAR 2003 AND ALL SUBSEQUENT YEARS.

THE PROPERTY BEING TRANSFERRED IS NOT NOW NOR EVER HAS BEEN THE HOMESTEAD PROPERTY OF THE GRANTOR.

TOGETHER with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.


TO HAVE AND TO HOLD, the same in fee simple forever.

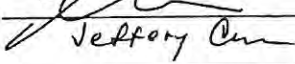
AND the grantor hereby covenants with said grantee that it is lawfully seized of said land in fee simple; that it has good right and lawful authority to sell and convey said land; that it hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances.

IN WITNESS WHEREOF, Grantor has caused these presents to be executed in its name, and

PREPARED BY AND RETURN TO:
KIMPTON, BURKE & BOBENHAUSEN, P.A.
28059 U.S. HIGHWAY 19 NORTH
SUITE 100
CLEARWATER, FL 34621

its corporate seal be affixed, by its proper officers there unto duly authorized, the day and year first above written.



RYAN J BURNS


Jeffery C. Limric



DAVID L. LIMRIC

STATE OF NH
COUNTY OF Carroll

I HEREBY CERTIFY, that on this 15 day of June, 2004, before me, a Notary Public, in and for the State of NH, duly commissioned and sworn, personally appeared **DAVID L. LIMRIC, a married man**, () who is personally known to me, or (☒) who has produced his driver's license as identification, and who executed the document herein described to be his free act and deed, and who (☒) did () did not take an oath.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my seal of office the day and year last above written.

My commission expires:



Notary Public

Ryan J. Burns
Notary Public
My Commission Expires
September 17, 2008

EXHIBIT "A"

LEGAL DESCRIPTION

PARCEL 1:

Lots 1 to 8, inclusive and Lots 14, 15 and 16, together with the vacated alley between Lots 1, 2, 3, 14, 15 and 16 and the North 10 feet of vacated alley lying adjacent to Lots 4, 5, 6, 7 and 8 in Block 88, together with the East vacated 10 feet of 9th Street adjacent to Lot 8 in Block 88, TOWN OF SUTHERLAND, according to the Map filed March 29, 1888, in the Public Records of Hillsborough County, Florida of which Pinellas County was formerly a part.

PARCEL 3:

The vacated 80 foot right-of-way for Nebraska Avenue that lies North of Block 88, TOWN OF SUTHERLAND, in Section 2, Township 28 South, Range 15 East, lying and being in Pinellas County, Florida.

LESS AND EXCEPT OUTPARCEL DESCRIPTION

The East 100.00 feet of the South 201.00 feet of Block 88, TOWN OF SUTHERLAND, according to the map filed March 29, 1888, in the Public Records of Hillsborough County, Florida, of which Pinellas County was formerly a part.

SUBJECT TO INGRESS AND EGRESS EASEMENT:

The West 15 feet of the East 115 feet of the South 201 feet of Block 88, TOWN OF SUTHERLAND, according to the map filed March 29, 1888, in the Public Records of Hillsborough County, Florida, of which Pinellas County was formerly a part.

Florida Department of State

DIVISION OF CORPORATIONS

[Department of State](#) / [Division of Corporations](#) / [Search Records](#) / [Detail By Document Number](#) /**Detail by Entity Name**

Florida Limited Liability Company

CLAY AND PAM, LLC

Filing Information

Document Number L04000030465
FEI/EIN Number 20-1156237
Date Filed 04/21/2004
State FL
Status ACTIVE
Last Event LC AMENDMENT
Event Date Filed 12/18/2014
Event Effective Date NONE

Principal Address

975 FLORIDA AVE.
PALM HARBOR, FL 34683 UN

Changed: 02/16/2012

Mailing Address

975 FLORIDA AVE.
PALM HARBOR, FL 34683

Changed: 03/04/2009

Registered Agent Name & Address

MILLER, CLAYTON A
1508 GEORGIA AVE.
PALM HARBOR, FL 34683

Authorized Person(s) Detail**Name & Address**

Title MGR

MILLER, CLAYTON A
1508 GEORGIA AVE.
PALM HARBOR, FL 34683

Title MGR

MILLER, PAMELA D

1508 GEORGIA AVE.
PALM HARBOR, FL 34683

Annual Reports

Report Year	Filed Date
2014	01/15/2014
2015	02/19/2015
2016	03/10/2016

Document Images

03/10/2016 -- ANNUAL REPORT	View image in PDF format
02/19/2015 -- ANNUAL REPORT	View image in PDF format
12/18/2014 -- LC Amendment	View image in PDF format
01/15/2014 -- ANNUAL REPORT	View Image in PDF format
03/08/2013 -- ANNUAL REPORT	View image in PDF format
02/16/2012 -- ANNUAL REPORT	View image in PDF format
03/03/2011 -- ANNUAL REPORT	View image in PDF format
02/11/2010 -- ANNUAL REPORT	View image in PDF format
03/04/2009 -- ANNUAL REPORT	View image in PDF format
01/23/2008 -- ANNUAL REPORT	View image in PDF format
02/08/2007 -- ANNUAL REPORT	View image in PDF format
04/05/2006 -- ANNUAL REPORT	View image in PDF format
02/09/2005 -- ANNUAL REPORT	View image in PDF format
04/21/2004 -- Florida Limited Liabilities	View image in PDF format

Clearwater, Florida, September 3, 2015

The Board of Adjustment met in regular session in the County Commission Assembly Room, Fifth Floor, Pinellas County Courthouse, 315 Court Street, Clearwater, Florida on this date with the following members present: Stephen G. Watts, Chairman; Cliff Gephart, Vice-Chairman; Alan C. Bomstein; Joe C. Burdette; John Doran; Gregory R. Pierce; and Deborah J. White.

Also present: Chelsea D. Hardy, Assistant County Attorney; Glenn Bailey, Planning Department Zoning Manager; Todd F. Myers, Environmental Code Enforcement Director; other interested individuals; and Michael P. Schmidt, Board Reporter, Deputy Clerk.

CALL TO ORDER

Chairman Watts called the meeting to order at 9:01 A.M.

PUBLIC HEARING ITEMS

Due notice having been given to interested persons pursuant to Comprehensive Zoning Ordinance No. 90-1, public hearings were held on the following applications. All persons planning to give testimony were duly sworn by the Deputy Clerk.

* * * *

Deviating from the agenda, Chairman Watts indicated that Item No. 10 would be heard at this time.

* * * *

#10 APPLICATION OF DAVID L. JACKAWAY THROUGH BRIAN O'CONNELL, REPRESENTATIVE, FOR A VARIANCE (BA-3-9-15) – WITHDRAWN

Mr. Bailey referred to the application of David L. Jackaway through Brian O'Connell for a variance to allow for the construction of a detached garage having a 15-foot setback from the property line along Florida Avenue where a 20-foot front setback is required, re property located at 1100 16th Street, Palm Harbor (BA-3-9-15), and reported that the application has been withdrawn.

1 APPLICATION OF KLOSTERMAN ROAD TRUST IN CARE OF LAWRENCE CROW THROUGH AHMAD KARAZOUN, REPRESENTATIVE, FOR A VARIANCE (BA-4-9-15) – WITHDRAWN

Mr. Bailey referred to the application of Klosterman Road Trust through Ahmad Karazoun for a variance to allow for the dispensing of alcoholic beverages within 200 feet of a school where 750 feet is required, re property located at 38652 U.S. Highway 19 North in the unincorporated area of Tarpon Springs (BA-4-9-15), and reported that the variance is no longer required due to changes in the County Code approved by the Board of County Commissioners on August 18; and that the application is being withdrawn by staff because the alcohol dispensing distance requirement no longer applies to colleges; whereupon, Mr. Watts related that the applicant can move forward without the approval of the Board of Adjustment.

2 APPLICATION OF SCHWARTZ REAL ESTATE HOLDINGS, LLC THROUGH GREG DEICHMAN, REPRESENTATIVE, FOR A VARIANCE (BA-11-9-15) – PORTION OF APPLICATION RE CHURCH WITHDRAWN; PORTION RE RESIDENTIAL ZONING DISTRICT BOUNDARY LINE GRANTED AS PER STAFF RECOMMENDATION

Mr. Bailey referred to the application of Schwartz Real Estate Holdings, LLC through Greg Deichman for a variance to allow for the dispensing of alcoholic beverages within 150 feet of a residential zoning district boundary line and within 750 feet of a church, re property located at 993 Florida Avenue, Palm Harbor (BA-11-9-15), and reported that because the distance requirement from the church no longer requires a variance, due to changes in the County Code, only the distance from the residential district boundary line is being considered.

Mr. Bailey indicated that no correspondence relative to the application has been received, and presented the following staff recommendation:

Recommend Conditional Approval. Staff has no objection to the conditional approval of the request. The nearby residentially-zoned land is currently being used for commercial purposes. The request will pose no detrimental impact to the use. Approval of the request should be subject to the following conditions:

1. The applicant shall obtain all required permits and pay the appropriate impact and/or other fees.

2. The hours for alcohol service shall be as established in Chapter 6, Article II, of the Pinellas County Code, or as deemed appropriate by the Board.

In response to the Chairman's call for the applicant, Greg Deichman, Palm Harbor, and Benjamin Nichols, Dunedin, appeared. Mr. Deichman stated that he wishes to open a microbrewery at the subject location; and that while the main goal of the business is to brew and sell craft beer, there will be an onsite tasting bar for the patrons. He related that there will be no outdoor seating, amplified music, or food served; that the business will likely be open from 2:00 P.M to 1:00 A.M. six days a week; that he anticipates there will be no more than 50 people on the premises at any one time; that sufficient parking exists; and that he has a site permit.

In response to the Chairman's call for objectors to the application, Dennis Shiels, Palm Harbor, stated his concerns relating to parking and noise and responded to queries by the members. Mr. Bomstein pointed out that the members are not considering a parking variance or the site plan, only issues regarding the proximity of the business to the residential neighborhood; whereupon, he suggested that Mr. Shiels contact Code Enforcement if he continues to have problems regarding parking and noise.

Messrs. Diechman and Nichols responded to the concerns of the objector and queries by the members, relating that there are 41 parking spaces allotted for brewery patrons and employees; that the most recent use of the building was as a golf cart warehouse; and that Mr. Shiels can contact either of them regarding any problems.

Thereupon, Mr. Bomstein moved, seconded by Mr. Doran, that the variance be granted as recommended by staff. Upon call for the vote, the motion carried unanimously.

3 APPLICATION OF DAN R. HORNE, SR. AND SUSAN J. HORNE FOR A VARIANCE (BA-1-9-15) – GRANTED WITH ADDITIONAL CONDITION

Public hearing was held on the application of Dan R. Horne, Sr. and Susan J. Horne for a variance to allow three after-the-fact accessory structures (shed, pergola, and orchid house) to remain, all three with 1-foot side setbacks, the pergola with a 3.5-foot rear setback, and the shed with a 6-foot rear setback, where 6-foot side setbacks and 10-foot rear setbacks are required, re property located at 1659 Woodridge Drive in the unincorporated area of Clearwater (BA-1-9-15).

A Palmer Trinity Private Sch., Inc. v. Vill. of Palmetto Bay, 31 So. 3d 260

Copy Citation

Court of Appeal of Florida, Third District

March 24, 2010, Opinion Filed

No. 3D09-1587

Reporter

31 So. 3d 260 * | [2010 Fla. App. LEXIS 3801 **](#) | 35 Fla. L. Weekly D 672

Palmer Trinity Private School, Inc., Petitioner, vs. Village of Palmetto Bay, Florida, et al., Respondents.

Subsequent History: Released for Publication April 9, 2010

Related proceeding at [Palmer Trinity Private Sch. v. Vill. of Palmetto Bay](#), 802 F. Supp. 2d 1322, 2011 U.S. Dist. LEXIS 90221 (S.D. Fla., 2011)

Related proceeding at [Palmetto Bay v. Palmer Trinity Private Sch.](#), 2012 Fla. App. LEXIS 10774 (Fla. Dist. Ct. App. 3d Dist., July 5, 2012)

Prior History: [\[**1\]](#) A Writ of Certiorari to the Circuit Court for Miami-Dade County, Appellate Division. Lower Tribunal No. 08-245-AP. [Mary Barzee Flores ▼](#), [Jacqueline Hogan Scola ▼](#), [Diane Ward ▼](#), Judges.

Core Terms

zoning, Village, Parcel, rezoning, properties, Ordinance, classification, site, circuit court, **spot zoning**

Case Summary

Procedural Posture

Petitioner landowner sought a writ of certiorari challenging respondent village's denial of its application to rezone its property. The appellate division of the Circuit Court for Miami-Dade County (Florida) denied the writ and affirmed the village's decision denying the landowner's rezoning application. The landowner sought review.

Overview

The landowner possessed two adjacent parcels of property within the village. Parcel A was approved as a preparatory school. Parcel B contained one home, and the remaining acreage was a mango grove. Part of parcel B had agricultural **zoning** and part of it had estate family **zoning**. The landowner sought to rezone Parcel B from agricultural and estate family **zoning** to modified single family (EU-M) **zoning**. The properties surrounding Parcel B, except for a strip of lots, were all **zoned** EU-M. In granting the writ, the court found that the village's refusal to grant the rezoning requests resulted in impermissible reverse **spot zoning**; certiorari should have been granted because the village's decision constituted a departure from the essential requirements of the law and resulted in a miscarriage of justice. Contrary to the Village's contention, there was no record justification for its refusal to rezone the property to a classification consistent with the surrounding properties. Thus, as a matter of law, the village's rezoning refusal was arbitrary, discriminatory, and unreasonable, which warranted issuance of a writ of certiorari.

Outcome

The court quashed the decision of the appellate division of the circuit court and granted the landowner's petition for certiorari.

▼ LexisNexis® Headnotes

Civil Procedure > [Appeals](#) ▼ > [Appellate Jurisdiction](#) ▼ > [State Court Review](#) ▼

Business & Corporate Compliance > ... > [Real Property Law](#) ▼ > [Zoning](#) ▼ > [Spot Zoning](#) ▼

HN1 A county's refusal to grant a change in **zoning**, which result in impermissible reverse **spot zoning**, is sufficient to warrant granting second tier certiorari review. *Shepardize - Narrow by this Headnote*

Business & Corporate Compliance > ... > [Real Property Law](#) ▼ > [Zoning](#) ▼ > [Spot Zoning](#) ▼

HN2 Reverse **spot zoning** occurs when a **zoning** ordinance prevents a property owner from utilizing his or her property in a certain way, when virtually all of the adjoining neighbors are not subject to such a restriction, creating in effect, a veritable **zoning** island or **zoning** peninsula in a

surrounding sea of contrary **zoning** classification. Reverse **spot zoning** is invalid, as it is confiscatory. Shepardize - Narrow by this Headnote

Business & Corporate Compliance > ... > Real Property Law ▼ > Zoning ▼ > Constitutional Limits ▼

HN3 A landowner is entitled to have its property **zoned** based on proper **zoning** concepts without regard to the one particular use which the owner might then intend to make of the various uses permitted under a **zoning** classification. A **zoning** authority's insistence on considering the owner's specific use of a parcel of land constitutes not **zoning** but direct governmental control of the actual use of each parcel of land which is inconsistent with constitutionally guaranteed private property rights. Shepardize - Narrow by this Headnote

Counsel: Bilzin Sumberg Baena Price & Axelrod and Stanley Price and Eileen Ball Mehta ▼, for petitioner.

Figueredo, Boutsis & Montalvo ▼ and H. James Montalvo ▼; W. Tucker Gibbs ▼, for respondents.

Judges: Before ROTHENBERG ▼, LAGOA ▼, and SALTER ▼, JJ.

Opinion by: LAGOA ▼

Opinion

[*261] LAGOA, J.

Palmer Trinity Private School, Inc. (hereinafter "Palmer Trinity") seeks second tier certiorari review of a circuit court appellate division decision affirming the Village of Palmetto Bay's (the "Village") decision to deny Palmer Trinity's application to rezone its property. Because the appellate division's decision is a departure from the essential requirements of law resulting in a miscarriage of justice, we grant the petition.

I. FACTUAL AND PROCEDURAL HISTORY

Palmer Trinity owns two adjacent parcels of property within the Village -- Parcel A and Parcel B. Palmer Trinity was initially approved in 1961 as the Palmer Preparatory School, and is located on Parcel A. Parcel B, the parcel at issue here, is a 32.5 acre property; there is one home on the property and the remaining

acreage [**2] is a mango grove. The northern half of Parcel B is **zoned** AU (agricultural **zoning** allowing one home per five acres) and the southern half is **zoned** EU-2 (estate single family **zoning** allowing one home per five [*262] acres). Palmer Trinity sought to rezone Parcel B from AU and EU-2 to EU-M (estate modified single family **zoning** allowing one home per 15,000 square feet).

The properties surrounding Parcel B were all originally **zoned** AU or EU-2, but they have been changed to less restrictive **zoning** classifications as the agricultural character of the area has changed over the years. Those properties, including Parcel A, are now classified EU-M. The only exceptions are a strip of lots to the east and west of Parcel B, which are **zoned** EU-1, [1.2] and the property to the south of Parcel B, which is in the Village of Cutler Bay. All of the properties, including Parcel A and Parcel B, are designated Estate Density Residential in the Village's comprehensive plan.

In its application to rezone the property, Palmer Trinity also requested a special exception and non-use variances concerning further development of the school on both parcels. At [**3] the hearing on the application, the consideration of the rezoning request was expressly bifurcated from the other application requests. Despite this procedure, the Village issued Ordinance 08-06, denying rezoning and stating that "the rezoning, if approved, would allow for the physical expansion of the Palmer Trinity school, . . . that the district boundary change, based upon the site specific development permitted by the application of Palmer Trinity, is not consistent with the Village's Comprehensive Plan and Future Land Use Map," and that "Palmer Trinity failed to adequately establish through its traffic studies that its site specific application is compatible and within the proper level of service, and failed to establish the proposition that the proposed use would not negatively impact the community. . . ." The circuit court appellate division per curiam denied certiorari review of the rezoning ordinance. This appeal ensued.

II. ANALYSIS

On appeal, Palmer Trinity contends that the circuit court appellate division departed from the essential requirements of law in upholding Ordinance 08-06 because the current **zoning** classification of the surrounding properties renders Parcel B an [**4] "island" or "peninsula" resulting in impermissible "reverse **spot zoning**." We agree. *See Richard Road Estates, LLC v. Miami-Dade County Bd. of County Comm'rs*, 2 So. 3d 1117, 1118 (Fla. 3d DCA 2009) (*HNI* county's refusal to grant a change in **zoning** resulted in impermissible reverse **spot zoning**, sufficient to warrant granting second tier certiorari review). *See also Debes v. City of Key West*, 690 So. 2d 700 (Fla. 3d DCA 1997).

HNI "Reverse **spot zoning** occurs when a **zoning** ordinance prevents a property owner from utilizing his or her property in a certain way, when virtually all of the adjoining neighbors are not subject to such a restriction, creating in effect, a veritable **zoning** island or **zoning** peninsula in a surrounding sea of contrary **zoning** classification. Reverse **spot zoning** is invalid, as it is confiscatory." *City of Miami Beach v. Robbins*,

Overview

The landowner possessed two adjacent parcels of property within the village. Parcel A was approved as a preparatory school. Parcel B contained one home, and the remaining acreage was a mango grove. Part of parcel B had agricultural **zoning** and part of it had estate family **zoning**. The landowner sought to rezone Parcel B from agricultural and estate family **zoning** to modified single family (EU-M) **zoning**. The properties surrounding Parcel B, except for a strip of lots, were all **zoned** EU-M. In granting the writ, the court found that the village's refusal to grant the rezoning requests resulted in impermissible reverse **spot zoning**; certiorari should have been granted because the village's decision constituted a departure from the essential requirements of the law and resulted in a miscarriage of justice. Contrary to the Village's contention, there was no record justification for its refusal to rezone the property to a classification consistent with the surrounding properties. Thus, as a matter of law, the village's rezoning refusal was arbitrary, discriminatory, and unreasonable, which warranted issuance of a writ of certiorari.

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The court quashed the decision of the appellate division of the circuit court and granted the landowner's petition for certiorari.

▼ LexisNexis® Headnotes

Civil Procedure > [Appeals](#) ▼ > [Appellate Jurisdiction](#) ▼ > [State Court Review](#) ▼

Business & Corporate Compliance > ... > [Real Property Law](#) ▼ > [Zoning](#) ▼ > [Spot Zoning](#) ▼

HN1 A county's refusal to grant a change in **zoning**, which result in impermissible reverse **spot zoning**, is sufficient to warrant granting second tier certiorari review. *Shepardize - Narrow by this Headnote*

Business & Corporate Compliance > ... > [Real Property Law](#) ▼ > [Zoning](#) ▼ > [Spot Zoning](#) ▼

HN2 Reverse **spot zoning** occurs when a **zoning** ordinance prevents a property owner from utilizing his or her property in a certain way, when virtually all of the adjoining neighbors are not subject to such a restriction, creating in effect, a veritable **zoning** island or **zoning** peninsula in a

surrounding sea of contrary **zoning** classification. Reverse **spot zoning** is invalid, as it is confiscatory. Shepardize - Narrow by this Headnote

Business & Corporate Compliance > ... > Real Property Law ▼ > Zoning ▼ > Constitutional Limits ▼

HN3 A landowner is entitled to have its property **zoned** based on proper **zoning** concepts without regard to the one particular use which the owner might then intend to make of the various uses permitted under a **zoning** classification. A **zoning** authority's insistence on considering the owner's specific use of a parcel of land constitutes not **zoning** but direct governmental control of the actual use of each parcel of land which is inconsistent with constitutionally guaranteed private property rights. Shepardize - Narrow by this Headnote

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Figueredo, Boutsis & Montalvo ▼ and H. James Montalvo ▼; W. Tucker Gibbs ▼, for respondents.

Judges: Before ROTHENBERG ▼, LAGOA ▼, and SALTER ▼, JJ.

Opinion by: LAGOA ▼

Opinion

[*261] LAGOA, J.

Palmer Trinity Private School, Inc. (hereinafter "Palmer Trinity") seeks second tier certiorari review of a circuit court appellate division decision affirming the Village of Palmetto Bay's (the "Village") decision to deny Palmer Trinity's application to rezone its property. Because the appellate division's decision is a departure from the essential requirements of law resulting in a miscarriage of justice, we grant the petition.

I. FACTUAL AND PROCEDURAL HISTORY

Palmer Trinity owns two adjacent parcels of property within the Village -- Parcel A and Parcel B. Palmer Trinity was initially approved in 1961 as the Palmer Preparatory School, and is located on Parcel A. Parcel B, the parcel at issue here, is a 32.5 acre property; there is one home on the property and the remaining

acreage [**2] is a mango grove. The northern half of Parcel B is **zoned** AU (agricultural **zoning** allowing one home per five acres) and the southern half is **zoned** EU-2 (estate single family **zoning** allowing one home per five [*262] acres). Palmer Trinity sought to rezone Parcel B from AU and EU-2 to EU-M (estate modified single family **zoning** allowing one home per 15,000 square feet).

The properties surrounding Parcel B were all originally **zoned** AU or EU-2, but they have been changed to less restrictive **zoning** classifications as the agricultural character of the area has changed over the years. Those properties, including Parcel A, are now classified EU-M. The only exceptions are a strip of lots to the east and west of Parcel B, which are **zoned** EU-1, [1] and the property to the south of Parcel B, which is in the Village of Cutler Bay. All of the properties, including Parcel A and Parcel B, are designated Estate Density Residential in the Village's comprehensive plan.

In its application to rezone the property, Palmer Trinity also requested a special exception and non-use variances concerning further development of the school on both parcels. At [**3] the hearing on the application, the consideration of the rezoning request was expressly bifurcated from the other application requests. Despite this procedure, the Village issued Ordinance 08-06, denying rezoning and stating that "the rezoning, if approved, would allow for the physical expansion of the Palmer Trinity school, . . . that the district boundary change, based upon the site specific development permitted by the application of Palmer Trinity, is not consistent with the Village's Comprehensive Plan and Future Land Use Map," and that "Palmer Trinity failed to adequately establish through its traffic studies that its site specific application is compatible and within the proper level of service, and failed to establish the proposition that the proposed use would not negatively impact the community. . . ." The circuit court appellate division per curiam denied certiorari review of the rezoning ordinance. This appeal ensued.

II. ANALYSIS

On appeal, Palmer Trinity contends that the circuit court appellate division departed from the essential requirements of law in upholding Ordinance 08-06 because the current **zoning** classification of the surrounding properties renders Parcel B an [**4] "island" or "peninsula" resulting in impermissible "reverse **spot zoning**." We agree. See *Richard Road Estates, LLC v. Miami-Dade County Bd. of County Comm'rs*, 2 So. 3d 1117, 1118 (Fla. 3d DCA 2009) (*HN1* county's refusal to grant a change in **zoning** resulted in impermissible reverse **spot zoning**, sufficient to warrant granting second tier certiorari review). See also *Debes v. City of Key West*, 690 So. 2d 700 (Fla. 3d DCA 1997).

HN2 "Reverse **spot zoning** occurs when a **zoning** ordinance prevents a property owner from utilizing his or her property in a certain way, when virtually all of the adjoining neighbors are not subject to such a restriction, creating in effect, a veritable **zoning** island or **zoning** peninsula in a surrounding sea of contrary **zoning** classification. Reverse **spot zoning** is invalid, as it is confiscatory." *City of Miami Beach v. Robbins*,

702 So. 2d 1329, 1330 (Fla. 3d DCA 1997). The record establishes that Palmer Trinity is not afforded the same beneficial use and restrictions for Parcel B that are enjoyed by the owners of the surrounding properties. Compare §§ 33-234 to 236, and 33-279 to 283 with § 33-224 to 225, Miami-Dade County Zoning Code. [2] Because the Village's refusal to grant [**5] the zoning change results in impermissible reverse spot zoning, the circuit court appellate division's decision affirming the Village's denial of the zoning request [*263] constitutes a departure from the essential requirements of the law resulting in a miscarriage of justice.

Contrary to the Village's contention, there is no record justification for its refusal to rezone the property to a classification consistent with the properties surrounding Parcel B. As a matter of law, such refusal therefore was "arbitrary, discriminatory [and] unreasonable." *Bd. of County Comm'rs v. Snyder*, 627 So. 2d 469, 476 (Fla. 1993).

In support of its position, the Village relies on findings that "the rezoning, if approved" would permit the physical expansion of the school, that the change based on the "site specific development" is not consistent with the comprehensive plan or future land map, and that Palmer's traffic [**6] studies failed to establish that the "site specific" application is compatible and within the proper level of service and would not negatively impact the community. [3] The Village, however, expressly stated that the school's expansion request was not at issue at the hearing, and that the Village did not consider the school's special exception or variance requests. [4] In effect, the Village denied the rezoning request, and implicitly denied the special exception, because it did not wish Palmer Trinity to use the property to expand its school within the parameters of the less restricted EU-M zoning classification.

The Village's actions were legally impermissible. *HN3* Palmer Trinity was "entitled to have [its] property zoned based on proper zoning concepts without regard to the one particular use which the owner might then intend to make of the various uses permitted under a zoning classification. A zoning authority's insistence on considering the owner's specific use of a parcel of land constitutes not zoning but direct governmental control of the actual use of each parcel of land which is inconsistent with constitutionally guaranteed private property rights." *Porpoise Point P'ship v. St. Johns County*, 470 So. 2d 850, 851 (Fla. 5th DCA 1985). See also *Debes*, 690 So. 2d at 702. Because the Village relied on Palmer Trinity's intended use of the property in denying the rezoning request, we further conclude that the circuit court appellate division's decision upholding Village Ordinance 08-06 constituted a departure [**8] from the essential requirements of the law resulting in a miscarriage of justice.

For these reasons, the decision of the appellate division is quashed.

Certiorari granted; decision quashed.

Footnotes

1 ¶ EU-1 is estate single family **zoning** allowing one home per one acre.

2 ¶

The Village's Planning and **Zoning** Powers Ordinance states that "[c]hapter 33 of the Miami-Dade Code entitled '**Zoning**' . . . shall be applied within the municipal boundaries of the Village of Palmetto Bay" See § 31-1(d) of the Village of Palmetto Bay Planning and **Zoning** Powers Ordinance.

3 ¶

We note that, in contrast, the Village staff **zoning** analysis recommendation as to the rezoning request stated:

The requested district boundary change to EU-M would be in keeping with the basic intent and purpose of the **zoning** and land use regulations. Approval of this application is in character with the existing use of the property, and is consistent with the Village's Comprehensive Plan. The properties surrounding the site are currently **zoned** EU-M, as a result the rezoning of the AU and EU-2 site to EU-M would make the parcels compatible with the neighboring properties.

4 ¶

To the [**7] contrary, Section 4 of the Ordinance states that "[t]he village council never considered the variance and special exception requests of the applicant as these requests required a separate public hearing and separate ruling, dependent on the village council approving the district boundary change."