ATTACHMENT XXVII

Applicant's Exhibits
October 10, 2023

Daniela Baquero-Meza

From: Andria Wingett
Sent: Wednesday, October 11, 2023 2:15 PM
To: Daniela Baquero-Meza
Subject: FW: [EXT]Bet Midrash Application for Zoning Relief - Oct. 18 City Commission Hearing
Attachments: Bet Midrash - Documents for Oct. 18, 2023 Zoning Relief Hearing.pdf

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From: Andria Wingett
Sent: Wednesday, October 11, 2023 10:16 AM
To: Jason Gordon <jg@jgordonlegal.com>; Tasheema Lewis <TLEWIS@hollywoodfl.org>; Anand Balram <ABALRAM@hollywoodfl.org>; Douglas Gonzales <DGONZALES@hollywoodfl.org>; Barbara Riesberg <briesberg@taylorenglish.com>; Steven Jones <sjones@taylorenglish.com>; Steve Zelkowitz <szelkowitz@taylorenglish.com>; Gus Zambrano <GZAMBRANO@hollywoodfl.org>; George R. Keller JR CPPT <GKELLER@hollywoodfl.org>; James Brako <JBRAKO@hollywoodfl.org>; Behar, Bobby <RBehar@gunster.com>; Diaz de la Portilla, Miguel <mdportilla@gunster.com>; Patricia Cerny <PCERNY@hollywoodfl.org>
Subject: RE: [EXT]Bet Midrash Application for Zoning Relief - Oct. 18 City Commission Hearing

Mr. Gordon,

The city is in receipt of your information. Should you have any questions please contact Barbara Riesberg.

Andria Wingett

From: Jason Gordon <jg@jgordonlegal.com>
Sent: Tuesday, October 10, 2023 10:15 PM
To: Andria Wingett <AWingett@hollywoodfl.org>; Tasheema Lewis <TLEWIS@hollywoodfl.org>; Anand Balram <ABALRAM@hollywoodfl.org>; Douglas Gonzales <DGONZALES@hollywoodfl.org>; Barbara Riesberg <briesberg@taylorenglish.com>; Steven Jones <sjones@taylorenglish.com>; Steve Zelkowitz <szelkowitz@taylorenglish.com>; Gus Zambrano <GZAMBRANO@hollywoodfl.org>; George R. Keller JR CPPT <GKELLER@hollywoodfl.org>; James Brako <JBRAKO@hollywoodfl.org>; Behar, Bobby <RBehar@gunster.com>; Diaz de la Portilla, Miguel <mdportilla@gunster.com>
Subject: [EXT]Bet Midrash Application for Zoning Relief - Oct. 18 City Commission Hearing

Ms. Wingett:

Attached please find Bet Midrash's documents for the Oct. 18, 2023 hearing on the Zoning Relief Request including its list of witnesses.

Jason Gordon, Esq.
Law Offices of Jason Gordon, P.A.
3440 Hollywood Blvd., Suite 415
Hollywood, FL 33021
Ph: 954-241-4207
Fax: 954-241-4236

BET MIDRASH'S LIST OF WITNESSES FOR OCTOBER 18, 2023 HEARING ON ZONING RELIEF REQUEST

1. Crain Atlantis
   1193 Newport Center Dr.
   Deerfield Beach, FL 33442

2. Hector Hocsman, AIA
   Urbanica Architecture & Development
   901 Pennsylvania Ave., Suite 3
   Miami Beach, FL 33139

3. Craig Peregoy
   Dynamic Traffic, LLC
   100 N.E. 5th Ave., Suite B2
   Delray Beach, FL 33483

2006 Special Exception Criteria	**2023 Special Exception Criteria**
a. That the use is **compatible with the existing natural environment and other properties within the vicinity**;	a. The proposed use must be **consistent** with the principles of the City's Comprehensive Plan.
b. That there will be **adequate provision for safe traffic movement**, both vehicular and pedestrian, both internal to the use and in the area which will serve the use;	b. The proposed use must be **compatible** with the existing land use pattern and designated future uses **and with the existing natural environment and other real properties within the vicinity.**
c. That there are **adequate setbacks, buffering, and general amenities** in order to control any adverse effects of noise, light, dust and other potential nuisances; and	c. That there will be **provisions for safe traffic movement**, both vehicular and pedestrian, both internal to the use and in the area which will serve the use.
d. That the land area is **sufficient, appropriate and adequate for the use as proposed**.	d. That there are **setbacks, buffering, and general amenities** in order to control any **adverse effects of noise, light, dust and other potential nuisances**.
	e. The proposed use, singularly or in combination with other Special Exceptions, must not be detrimental to the health, safety, or appearance of the neighborhood or other adjacent uses by reason of any one or more of the following: the number, area, location, height, orientation, intensity or relation to the neighborhood or other adjacent uses.
	f. The subject parcel must be **adequate in shape and size to accommodate the proposed use.**
	g. The proposed use will be **consistent** with the definition of a Special Exception and will meet the standards and criteria of the zoning classification in which such use is proposed to be located, and all other requirements for such particular use set forth elsewhere in the zoning code, or otherwise adopted by the City Commission.

2023 Special Exception Criteria	**Lady J v. City of Jacksonville Criteria**
a. The proposed use must be **consistent with the principles of the City's Comprehensive Plan**;	(i) Will be **consistent with the Comprehensive Plan**, including any subsequent plan adopted by the Council pursuant thereto.
b. The proposed use must be **compatible with the existing land use pattern** and designated future uses **and with the existing natural environment** and other real properties within the vicinity;	(ii) Will be **compatible with the existing contiguous uses or zoning and compatible with the general character of the area**, considering population density, design, scale and orientation of structures to the area, property values, and existing similar uses or zoning.
c. That there will be **provisions for safe traffic movement**, both vehicular and pedestrian, both internal to the use and in the area which will serve the use;	(iv) Will not have a **detrimental effect on vehicular or pedestrian traffic**, or parking conditions, and will not result in the generation or creation of **traffic inconsistent with the health, safety and welfare of the community**.
d. That there are setbacks, buffering, and general amenities in order to control any **adverse effects of noise, light, dust and other potential nuisances**;	(vi) Will not result in the creation of objectionable or **excessive noise, lights, vibrations, fumes, odors, dust or physical activities**, taking into account existing uses or zoning in the vicinity.
e. The proposed use, singularly or in combination with other Special Exceptions, must not be **detrimental to the health, safety, or appearance of the neighborhood or other adjacent uses** by reason of any one or more of the following: the number, area, location, height, orientation, intensity or relation to the neighborhood or other adjacent uses;	(v) Will not have a **detrimental effect on the future development of contiguous properties or the general area**, according to the Comprehensive Plan, including any subsequent amendment to the plan adopted by the Council.
g. The proposed use will be **consistent with the definition of a Special Exception and will meet the standards and criteria of the zoning classification in which such use is proposed to be located, and all other requirements for such particular use set forth elsewhere in the zoning code, or otherwise adopted by the City Commission.**	(ix) Will be **consistent with the definition of a zoning exception, and will meet the standards and criteria of the zoning classification in which such use is proposed to be located, and all other requirements for such particular use set forth elsewhere in the Zoning Code, or otherwise adopted by the Planning Commission**.

KeyCite Yellow Flag - Negative Treatment
Disagreed With by Merrimack Congregation of Jehovah's Witnesses v. Town of Merrimack, D.N.H., March 31, 2011

436 F.Supp.2d 1325
United States District Court,
S.D. Florida.

HOLLYWOOD COMMUNITY SYNAGOGUE, INC., Plaintiff,

v.

CITY OF HOLLYWOOD, FLORIDA, and Sal Oliveri, individually, Defendants.

United States of America, Plaintiff,

v.

City of Hollywood, Defendant.

Nos. 04–61212CIV, 05–60687CIV.
|
June 26, 2006.

Synopsis

Background: Synagogue sued city, claiming that denial of special exception providing for continued operations out of single family houses located in area zoned residential violated its federal and state rights. The District Court, 430 F.Supp.2d 1296, granted motion to dismiss in part. Synagogue moved for partial summary judgment.

Holdings: The District Court, Lenard, J., held that:

[1] availability of other areas of city did not preclude claim that regulations in residential areas violated synagogue's First Amendment rights;

[2] ordinance was unconstitutional prior restraint on places of worship;

[3] city was liable to synagogue in § 1983 action;

[4] unconstitutional portion could not be severed; and

[5] city was required to issue exception, allowing for continued operation of synagogue.

Motion granted in part, denied as moot in part.

West Headnotes (8)

[1] **Constitutional Law** Zoning and Land Use

A content-neutral zoning ordinance is valid, under First Amendment, subject to reasonable time, place and manner restrictions, if it is narrowly tailored to serve a substantial government interest and if it allows for reasonable alternative avenues of expression. U.S.C.A. Const.Amend. 1.

[2] **Constitutional Law** Zoning and land use

A zoning ordinance that touches upon activities protected by the First Amendment must contain narrow, objective, and definite standards to guide city officials in their review of variance applications. U.S.C.A. Const.Amend. 1.

[3] **Constitutional Law** Religious organizations

Zoning and Planning Churches and religious uses

Availability of other areas of city, in which to hold religious services, did not preclude claim that ordinance provisions governing grant of special exception to operate synagogue in desired location, which allegedly provided decision making official with excessive discretion to grant or deny application, was prior restraint on religious rights of synagogue members. U.S.C.A. Const.Amend. 1.

[4] **Constitutional Law** Religious organizations

Zoning and Planning Churches and religious uses

Zoning ordinance, requiring special exception in order to conduct religious services in designated area, was unconstitutional prior restraint on places of worship; broad and imprecise criteria

for evaluating requests for exceptions, including requirements that use be "compatible with" natural environment, that there be "adequate provision" for safe traffic movement, and "adequate setbacks, buffering, and general amenities ... to control ... potential nuisances," and that land area be "sufficient, appropriate, and adequate to the use," allowed decision makers to encourage some places of worship while discouraging others. U.S.C.A. Const.Amend. 1.

[5] **Civil Rights** Property and housing

Single act of city commission, in denying synagogue's application for special exception to allow operation of place of worship in single-family district, pursuant to zoning ordinance that was unconstitutionally vague, constituted municipal policy or practice sufficient to impose liability on city under § 1983 for violation of synagogue's right to free exercise of religion. U.S.C.A. Const.Amend 1; 42 U.S.C.A. § 1983.

1 Case that cites this headnote

[6] **Statutes** Effect of Partial Invalidity; Severability

Under Florida law, an unconstitutional portion of a challenged statute should be excised, leaving the rest intact and in force, when doing so does not defeat the purpose of the statute and leaves in place a law that is complete.

[7] **Zoning and Planning** Churches and religious uses

Portion of zoning ordinance, setting forth procedure for obtaining special exceptions allowing for otherwise forbidden uses, found to be unconstitutionally vague in violation of First Amendment, could not be severed from balance of ordinance, leaving no variance mechanism; result would be contrary to purpose of ordinance, which was to generally allow places of worship in single family districts, subject to controls. U.S.C.A. Const.Amend. 1.

[8] **Zoning and Planning** Churches and religious uses

Following determination that ordinance under which synagogue was denied special exception to conduct services in single family residential zone was unconstitutionally vague, in violation of First Amendment, city was required to issue exception, subject only to objective and definite requirements that synagogue build six foot soundproofing wall at rear of property, and install approved three sided dumpster. U.S.C.A. Const.Amend. 1.

Attorneys and Law Firms

***1327** Franklin L. Zemel, Esq., Arnstein & Lehr, Fort Lauderdale, FL, for Plaintiff Hollywood Community Synagogue.

Sean R. Keveney, Esq., United States Department of Justice, Civil Rights Division, Washington, DC, for Plaintiff United States.

Chad B. Hess, Esq., Thomas J. McCausland, Esq., Conroy Simberg Ganon Krevans & Abel, P.A., Hollywood, FL, for Defendant City of Hollywood.

William T. Boyd, Esq., Boyd Mustelier Smith & Parker, Miami, FL, for Defendant Sal Oliveri.

ORDER GRANTING PLAINTIFF HOLLYWOOD COMMUNITY SYNAGOGUE'S MOTION FOR PARTIAL SUMMARY JUDGMENT (D.E. 225)

LENARD, District Judge.

THIS CAUSE is before the Court on Plaintiff Hollywood Community Synagogue's Motion for Partial Summary Judgment ("Motion," D.E. 190), filed on March 21, 2006. On April 20, 2006, Defendant City of Hollywood ("Defendant" or "the City") filed a Response. ("Response," D.E. 243.) On May 2, 2006, Plaintiff filed a Reply. ("Reply," D.E. 260.) On May 25, 2006, the City filed a Notice of Supplemental Authority. ("Supplement," D.E. 301.) On June 1, 2006, Plaintiff filed a Memorandum of Law in Opposition to Defendant's Supplement. ("Response to the Supplement,"

D.E. 319.) Having considered the Motion, the Response, the Reply, the Supplement, the Response to the Supplement, and the record, the Court finds as follows:

I. Factual and Procedural Background

On September 15, 2004, Plaintiff Hollywood Community Synagogue (hereinafter "HCS" or "the Synagogue") filed a Complaint against Defendants City of Hollywood and Sal Oliveri (Case No. 04–61212–CIV–LENARD, D.E. 14), alleging violations of numerous federal constitutional rights and statutes, including the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. § 2000cc *et seq.* (hereinafter "RLUIPA"). On April 26, 2005, Plaintiff United States of America filed a Complaint against Defendant City of Hollywood (Case No. 05–60687–CIV–LENARD, D.E. 1), requesting declaratory and injunctive relief based upon Defendant's alleged violation of RLUIPA. On June 16, 2005, the Court issued an Order consolidating these cases and administratively closing the higher-numbered case (Case No. 04–61212–CIV–LENARD, D.E. 75; Case No. 05–60687–CIV–LENARD, D.E. 14), finding that they involved common questions of law and fact.

On December 2, 2005, Plaintiff HCS was granted leave to file a Second Amended Complaint. (D.E. 124.) This Second Amended Complaint (D.E. 125) contains 19 counts and is the operative complaint for purposes of Plaintiff's Motion. Unless otherwise specified, the legal claims and facts that follow are taken from the allegations contained in the Second Amended Complaint in the consolidated case.

Plaintiff HCS is a synagogue with its principal place of business at 2215–2221 N. 46th Avenue, Hollywood, Florida 33021. (D.E. 125, at ¶ 6.) Defendant City of Hollywood is a city municipality authorized by the State of Florida to regulate the use of land and structures within the City's borders, consistent with law. (*Id.* at ¶ 7.) Defendant Sal Oliveri is a City Commissioner for the City of Hollywood, representing the area of Hollywood Hills. (*Id.* at ¶ 8.)

In 1999, Yosef Elul, then-President of the Synagogue, purchased two residences, located at 2215 and 2221 N. 46th Avenue, Hollywood, in a single-family district. (*Id.* at ¶ 15.) In such single-family districts, a ***1328** place of worship[1] may operate only if granted a Special Exception. (*Id.* at ¶ 19.) After the purchase of the land by Yosef Elul, the Director of Planning for the City of Hollywood advised the Synagogue that it needed to apply for a Special Exception as a place of worship but assured Synagogue representatives that such Special Exception would be granted. (*Id.* at ¶¶ 19–20.)

In May of 2001, Alan Razla, on behalf of Mr. Elul, applied for a Special Exception as a place of worship. (*Id.* at ¶ 21.) The Board of Appeal and Adjustments (hereinafter "BAA") granted a six-month Special Exception. (*Id.*) Four months later, in September of 2001, Defendant Oliveri filed an appeal with the City Commission of the BAA's grant of the Special Exception. (*Id.* at ¶ 22.) The Commission heard the appeal and subsequently granted the Synagogue a one-year Special Exception, which included certain conditions that limited parking and capacity. (*Id.*) Plaintiff United States notes that, upon information and belief, Defendant City of Hollywood had never previously imposed a time limit on a special exception for a religious use and had only once before imposed a time limit on a special exception for a non-religious use. (Case No. 05–60687–CIV–LENARD, D.E. 1, at ¶ 20.)

In August of 2002, Arthur Eckstein, on behalf of the Synagogue, applied to the Development Review Board (hereinafter "DRB," formerly known as the BAA) for a Special Exception. (D.E. 125, at ¶ 30.) In September of 2002, the DRB granted a six-month Temporary Special Exception subject to certain enumerated conditions and found that, subject to those conditions,[2] the use of the property as a place of worship was compatible with the existing natural environment and other properties within the vicinity. (*Id.* at ¶¶ 30, 31(A).) After the DRB hearing, Defendant Oliveri filed an appeal with the Commission. (*Id.* at ¶ 32.) In October 2002, the Commission denied Oliveri's appeal and allowed HCS the six-month Temporary Special Exception. (*Id.* at ¶ 33.)

In March of 2003, the DRB granted the Synagogue a Permanent Special Exception subject to the satisfaction of certain conditions[3] within 180 days. (*Id.* at ¶ 37.) Defendant Oliveri filed another appeal. ***1329** (*Id.* at ¶ 38.) On June 5, 2003, 53 days after the Permanent Special Exception was granted, the Commission, after considerable debate, reversed the decision of the DRB. (*Id.* at ¶ 39.) Among other things, the Commission claimed that the Synagogue was "too controversial." (*Id.* at ¶ 41.) "Controversiality" is not identified by the City Code as a factor to be evaluated when considering whether to grant a Special Exception. (*Id.* at ¶ 44.) Plaintiff United States notes that, upon information and belief, Defendant City of Hollywood had never previously denied a request by a place of worship to operate in either a single-family or multiple-family residential zone. (Case No. 05–60687–CIV–LENARD, D.E. 1, at ¶ 28.)

On October 16, 2003, Defendant City of Hollywood sent HCS a letter notifying the congregation that it was to cease holding services and other related activities at its current location within one week. (Case No. 05–60687–CIV–LENARD, D.E. 1, at ¶ 30.) During a July 7, 2004, meeting, the City Commission voted to direct the City Attorney to file a lawsuit to stop further organized religious services from taking place at HCS, despite the fact that this item was not on the agenda and no notice had been provided to HCS or the public that such a vote would take place. (Case No. 05–60687–CIV–LENARD, D.E. 1, at ¶ 32.) On or about July 16, 2004, the City filed suit against the Synagogue in Broward County Circuit Court, Case No. 04–11444(21), seeking declaratory and injunctive relief against the Synagogue for operating as a place of worship without a Special Exception. (D.E. 125, at ¶ 57.)

In its Second Amended Complaint, Plaintiff HCS alleges the following 18 Counts against the City of Hollywood: I) damages for violation of the Synagogue's right to free exercise of religion; II) injunctive relief for violation of the Synagogue's right to free exercise of religion; IV) damages for violation of RLUIPA (42 U.S.C. § 2000cc(a)(1)—substantial burden); V) injunctive relief for violation of RLUIPA (42 U.S.C. § 2000cc(a)(1)—substantial burden); VI) damages for violation of RLUIPA (42 U.S.C. § 2000cc(b)(1)—unequal terms); VII) injunctive relief for violation of RLUIPA (42 U.S.C. § 2000cc(b)(1)—unequal terms); VIII) damages for violation of RLUIPA (42 U.S.C. § 2000cc(b)(2)—discrimination); IX) injunctive relief for violation of RLUIPA (42 U.S.C. § 2000cc(b)(2)—discrimination); X) damages for violation of the Florida Religious Freedom Restoration Act of 1998 (Florida RFRA); XI) injunctive relief for violation of the Florida RFRA; XII) damages for violation of the Equal Protection Clause; XIII) injunctive relief for violation of the Equal Protection Clause; XIV) damages for violation of the Substantive Due Process Clause of the Fourteenth Amendment; XV) injunctive relief for violation of the Substantive Due Process Clause of the Fourteenth Amendment; XVI) promissory estoppel; XVII) facial equal protection challenge to Article V of the City of Hollywood Code of Ordinances; XVIII) as applied equal protection challenge to Article V of the City of Hollywood Code of Ordinances; and XIX) preliminary injunctive relief. (D.E. 125, at ¶¶ 60–151.)

Plaintiff HCS's Second Amended Complaint also asserts two claims against Defendant Sal Oliveri, individually, for damages stemming from the alleged violation of Plaintiff's First and Fourteenth Amendment Rights to Free Exercise of Religion (Count III) and from the alleged violation of Plaintiff's Fourteenth Amendment Right to Equal Protection (Count XII). (*Id.* at ¶¶ 72–80, 113–121.)

Plaintiff United States' Complaint contains substantially similar facts to Plaintiff HCS's Second Amended Complaint and requests that the Court grant injunctive ***1330** and declaratory relief against Defendant City of Hollywood for violations of RLUIPA, 42 U.S.C. § 2000cc(b)(1)-(2), based on the City's treatment of HCS on less than equal terms with non-religious assemblies and on discrimination against HCS on the basis of religion or religious denomination. (Case No. 05–60687–CIV–LENARD, D.E. 1, at page 6.)

On May 10, 2006, the Court issued an Order Granting in Part and Denying in Part Defendant City of Hollywood's Motion to Dismiss HCS' Second Amended Complaint. (D.E. 272.) Therein, the Court: 1) dismissed with prejudice those parts of Counts I and II that relate to an alleged City policy of regularly granting applications for Special Exceptions; 2) dismissed Counts IV, V, X, and XI with prejudice; 3) dismissed Count XIX without prejudice; and 4) denied Defendant's Motion with respect to all other Counts. (*Id.* at 61–62.)

II. Plaintiff HCS's Motion for Partial Summary Judgment

In its Motion (D.E. 190), Plaintiff HCS moves for partial summary judgment, arguing that Article V, Sections 5.3 and 5.7 of the City's Zoning and Land Development Regulations (ZLDR) are unconstitutional on their face and as applied to the Synagogue.[4] (*Id.* at 2–2.) The Synagogue asserts that this determination does not require any factual findings or review of testimony, but may be made entirely on the basis of the law. (*Id.* at 13.) First, HCS maintains that Section 5.3.G. of the City's ZLDR is facially void because it gives City officials unbridled and unfettered discretion in their review of Special Exception applications. (*Id.*) The Synagogue contends that this Section contains four subjective criteria to be applied in reviewing an application for a Special Exception and that, even if the City Commission finds that all four criteria have been met, it still has the discretion to deny the application. (*Id.* at 5–6.)

Second, the Synagogue argues that Section 5.3.G.1. constitutes a prior restraint on activities protected by the First Amendment and is unconstitutional on its face and as

applied to HCS. (*Id.* at 3, 16.) HCS maintains that, although prior restraints must contain standards that are precise, definite, and objective in order to guide government officials, the City's Special Exception zoning criteria employ terms such as "compatibility," "vicinity," "adequate provision," and "sufficient, appropriate, and adequate" that are vague, subjective, and imprecise. (*Id.* at 8.) Thus, HCS argues that the Special Exception provisions threaten the right to free exercise of religion. (*Id.* at 16.)

In its Response (D.E. 243), Defendant City of Hollywood argues that the amount of discretion afforded a zoning board in determining particular land uses is extremely high because zoning is an inherently discretionary system. (*Id.* at 2.) The City thus maintains that Plaintiff has not established grounds for summary judgment on its facial or as-applied challenges. (*Id.*) Defendant agrees that the adjudication of this Motion does not require the Court to make factual determinations or consider testimony regarding witnesses' interpretations of the ZLDR sections at issue. (*Id.* at 13.)

Defendant City of Hollywood contends that Section 5.3G.2. is not facially void for "unbridled discretion" because the DRB or Commission, after reviewing an application for a Special Exception, has only three options: it may grant the application, ***1331** grant the application with conditions, or deny the application. (*Id.* at 5.) Defendant further argues that the four criteria used to evaluate such applications require specific findings. (*Id.* at 8.) Moreover, Defendant maintains that Section 5.3.G. of the ZLDR should be reviewed in light of the purpose of the zoning district in question, *i.e.,* in light of the section's purpose of protecting the character of single-family neighborhoods. (*Id.* at 6.)

Defendant also argues that Plaintiff's as-applied challenge is without merit because the zoning ordinances in question do not operate as a prior restraint on Plaintiff's First Amendment rights. (*Id.* at 15.) Defendant asserts that the ZLDR neither directly regulates the content of Plaintiff's protected activity nor operates as a licensing scheme and, thus, the zoning scheme should be reviewed under the more permissive standard of time, place, and manner restrictions for content-neutral regulations. (*Id.* at 15–16, 18.) Defendant then maintains that, because the ordinances are narrowly tailored to the City's substantial interest in preserving the quality of urban life and because the ordinances leave Plaintiff significant alternative avenues of expression, Plaintiff's Motion should be denied. (*Id.* at 19–20.)

In its Reply (D.E. 260), Plaintiff reiterates that the zoning scheme provides Defendant City of Hollywood unbridled discretion to grant or deny a Special Exception permit, even if all four criteria are met, and that it makes no difference that the City must make some kind of decision on every application. (*Id.* at 2–3.) Plaintiff further maintains that the Special Exception procedure constitutes a prior restraint on the exercise of First Amendment activity because applicants must obtain a permit before operating in certain parts of the City. (*Id.* at 4.) Thus, there exists a heavy presumption against the constitutional validity of the procedure, one that may only be overcome by narrow, objective, and definite standards, standards that are absent here. (*Id.*) Moreover, argues Plaintiff, this infirmity is not cured by the fact that Defendant provides alternate for a for the exercise of First Amendment activity. (*Id.* at 7.) Instead, Plaintiff argues that the prior restraint analysis is triggered by the existence of official discretion to deny use of a given forum for First Amendment protected activity. (*Id.* at 8.) Finally, Plaintiff asserts that, even if the Court was to construe Section 5.3.G. of the ZLDR as a content-neutral time, place and manner restriction, the Section is still unconstitutional because it does not contain precise and objective standards to guide the City's decisionmaking. (*Id.* at 10.)

In its Supplement (D.E. 301), Defendant argues that, in the event that the Court determines that the standards governing the Special Exception procedure are invalid, a conditional use "becomes a prohibited one since the obvious reason for making it a special exception use is to prohibit it in the absence of the specified approval." (*Id.* at 2–3.) Since the terms would then be considered too indefinite, the City argues that Board would be unable to grant a Special Exception to the Synagogue and thus, even if the Plaintiff's motion for partial summary judgment is granted, the Court cannot order that HCS be granted a Special Exception. (*See id.* at 2–3.)

In the Response to the Supplement (D.E. 319), the Synagogue argues that Defendant's position is lacking in legal support and represents a "disturbing tactic" on the part of the City. (*Id.* at 2.) First, Plaintiff argues that the authorities relied upon by the City are factually distinguishable because they do not concern the First Amendment. (*Id.*) Next, Plaintiff argues that, if the Special Exception provisions are declared unconstitutional, the proper ***1332** remedy is to allow the Synagogue to remain in its present location. (*See id.* at 3, 7–8.) In support of this argument, Plaintiff states that other provisions of the Code consider special exception uses,

including places of worship, as generally suitable in single-family neighborhoods. (*Id.* at 7.)

III. The Hearing

On May 23, 2006, the Court held a hearing ("the Hearing," *see* D.E. 298), at which the Parties were provided an opportunity to present their arguments. During the Hearing, Plaintiff HCS emphasized its position that the zoning ordinances in question constituted a prior restraint on protected First Amendment activity and, as such, the ordinances are required to contain clear and precise standards. (*Id.* at 3:1–12.) Plaintiff further argued the standards currently in place allow the Commission to use their unfettered discretion and to base their decisions on any criteria they choose, including "controversiality," as was cited as a basis for rejecting the Synagogue's application. (*Id.* at 4:2–6.) Plaintiff noted that, even though the City code states that a place of worship is, "generally suitable in this district," the Synagogue was denied a Special Exception because it was purportedly not compatible with its surroundings. (*Id.* at 5:21–6:6.) Thus, HCS maintained that, because it is impossible to know what criteria need to be met to obtain a Special Exception, the provisions are unconstitutionally vague. (*Id.* at 5:11–19; 12:6–17.)

Defendant City of Hollywood responded that no prior restraint can be found here. (*Id.* at 14:7.) Defendant defined a prior restraint as a governmental attempt to control the content of expression and further asserted that the City's zoning ordinances are not prior restraints because they do not require every place of worship in all zoning districts to get permission before operating. (*Id.* at 15:3–8, 16:18–17:2.) Because a place of worship need apply for a permit only if it wants to operate in residential neighborhoods, the City contended that there was no licensing scheme or prior restraint. (*Id.* at 17:9–16.) Instead, Defendant argued that its zoning regulations were narrowly tailored to the substantial government interest of zoning and preserving the quality of urban life. (*Id.* at 20:8–18.) Thus, the City asserted that its regulations were governed by the permissive time, place, and manner restriction standards, and that this only mandated that decisions not be left up to the whim of the decisionmaker. (*Id.* at 23:8–24:3.) The City argued that, while its standards allow some elasticity, they do not leave the decision to the whim of the decisionmaker. (*Id.* at 24:20–23.)

Plaintiff responded that the City established a system in which places of worship were deemed generally acceptable subject to a Special Exception, but provided unlimited discretion to officials to decide whether to grant such an Exception. (*Id.* at 32:15–33:8.)

Upon questioning by the Court, the City stipulated that the substantial government interest justifying the zoning ordinances in question is twofold: the City's interest in zoning, generally, and the purpose of protecting the character of single-family neighborhoods, as stated in ZLDR § 4.1A. (*Id.* at 39:23–40:2.) The City argued that the provisions were narrowly tailored because they applied only to places of worship wanting to operate in residential districts. (*Id.* at 42:14–25.) Defendant further maintained that the zoning ordinances do not constitute a prior restraint because there are places in the City of Hollywood where the Synagogue can practice their First Amendment protected activities without having to ask the City for permission or a Special Exception. (*Id.* at 41:2–22.) Finally, Defendant City conceded that, if the Court ***1333** found the zoning ordinances at issue to constitute a prior restraint, the holding of *Lady J. Lingerie, Inc. v. City of Jacksonville,* 176 F.3d 1358 (11th Cir.1999), would control in this case. (*Id.* at 58:14–59:3.)

IV. Analysis

A. Standard of Review

On a motion for summary judgment, the court is to construe the evidence and factual inferences arising therefrom in the light most favorable to the nonmoving party. *Adickes v. S.H. Kress & Co.,* 398 U.S. 144, 157, 90 S.Ct. 1598, 26 L.Ed.2d 142 (1970). Summary judgment can be entered on a claim only if it is shown "that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c). The Supreme Court has explained the summary judgment standard as follows:

> [T]he plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be no genuine issue as to any material fact, since a complete failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts immaterial.

Celotex Corp. v. Catrett, 477 U.S. 317, 322–23, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). The trial court's function at this juncture is not "to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine

issue for trial." *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 249–50, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). A dispute about a material fact is genuine if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. *Anderson,* 477 U.S. at 248, 106 S.Ct. 2505; *see also Barfield v. Brierton,* 883 F.2d 923, 933 (11th Cir.1989).

The party asking for summary judgment "always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of the 'pleadings, depositions, answers to interrogatories, and admissions of file, together with affidavits, if any,' which it believes demonstrate the absence of a genuine issue of material fact." *Celotex,* 477 U.S. at 323, 106 S.Ct. 2548. Once this initial demonstration under Rule 56(c) is made, the burden of production, not persuasion, shifts to the nonmoving party. The nonmoving party must "go beyond the pleadings and by [his] own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.' " *Id.* at 324, 106 S.Ct. 2548; *see also* Fed.R.Civ.P. 56(e). In meeting this burden the nonmoving party "must do more than simply show that there is a metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.,* 475 U.S. 574, 586, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986). That party must demonstrate that there is a "genuine issue for trial." *Id.* at 587, 106 S.Ct. 1348. An action is void of a material issue for trial "[w]here the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party." *Id.*

Plaintiff HCS and Defendant City of Hollywood agree that the Court need not make any factual findings or examine any testimony in considering the instant motion and that the Court may issue its ruling after reviewing the text of the challenged portions of the zoning regulations in light of the applicable legal standards. After reviewing the record, the Court agrees that no genuine issue exists for trial and that partial summary judgment ***1334** may be granted as a matter of law. Accordingly, the Court will now turn to the text of the City's ZLDR in question.

B. The City's Zoning and Land Development Regulations (ZLDR)

Hollywood Community Synagogue is located in a "Single Family District" in the City of Hollywood. Section 4.1 of the ZLDR specifies that the purpose of Single Family Districts is "to protect the character of the single family neighborhoods." (D.E. 191, Ex. B at 4.1.) The "Main Permitted Uses" in such districts are "[s]ingle family detached dwelling[s]." (*Id.*) The "Special Exceptions" in such districts are "[e]ducational facilities[,][p]laces of worship, meeting halls and similar nonprofit uses and ham radio antennas." (*Id.*)

Section 5.3.G. of the ZLDR, entitled "Special exceptions," is the primary provision at issue and contains the following language:

> Certain uses are listed as special exceptions in the Zoning and Land Development Regulations and are permitted in zoning districts subject to the approval of the Development Review Board. These uses are considered generally suitable for the districts in which listed. However, the character and nature of the uses may necessitate controls and safeguards on the manner of establishment and operation which would best serve the interests of the community and the owners of the property in question.

(D.E. 191, Ex. A at 5.3.G.) Section 5.3.G.1., entitled "Review of petitions for special exceptions," provides that all petitions for Special Exceptions shall be reviewed by the DRB, which may grant the petition if it makes all of the following findings:

> a. That the use is compatible with the existing natural environment and other properties within the vicinity;
>
> b. That there will be adequate provision for safe traffic movement, both vehicular and pedestrian, both internal to the use and in the area which will serve the use;
>
> c. That there are adequate setbacks, buffering, and general amenities in order to control any adverse effects of noise, light, dust and other potential nuisances; and
>
> d. That the land area is sufficient, appropriate and adequate for the use as proposed.

(*Id.* at A at 5.3.G.1(a)-(d).) The ensuing section, entitled "Decision of the Board," provides:

> In considering a petition for a special exception, the Board may grant the special exception, grant the special exception with appropriate conditions when the Board determines such conditions... are necessary to further the purpose of the zoning district or compatibility with other property within the vicinity, or deny the special exception.

(*Id.* at A at 5.3.G.2.) Finally, pursuant to Section 5.7.A., the City Commission may request a hearing on any application which, upon its determination, requires additional review to ensure that, *inter alia,* development standards and criteria have been met. (D.E. 125, at ¶ 138.[5]) Section 5.7.B. provides the Commission shall apply the same standards and criteria employed by the DRB and shall approve, approve with

conditions, or deny the application. (D.E. 125, at ¶ 138; Hearing Transcript at 24:20–23, 28:1–12.)

***1335 C. Plaintiff's Facial and As–Applied Challenges**

[1] Plaintiff first raises a facial challenge to the City's zoning scheme. Generally, content-neutral zoning regulations are reviewed under the deferential "time, place, and manner" standards that were delineated by the Supreme Court in *City of Renton v. Playtime, Theatres, Inc.,* 475 U.S. 41, 50–54, 106 S.Ct. 925, 89 L.Ed.2d 29 (1986). Under these standards, "a zoning ordinance is valid if it is narrowly tailored to serve a substantial government interest and [if] it allows for reasonable alternative avenues of expression." *Lady J. Lingerie, Inc. v. City of Jacksonville,* 176 F.3d 1358 (citing *Int'l Eateries of America, Inc. v. Broward County, Fla.,* 941 F.2d 1157, 1161–65 (11th Cir.1991) and *City of Renton,* 475 U.S. at 50–52, 106 S.Ct. 925.) A city's interest "in attempting to preserve the quality of urban life" is a substantial government interest that "must be accorded high respect." *City of Renton,* 475 U.S. at 50, 106 S.Ct. 925.

[2] A zoning ordinance that touches upon activities protected by the First Amendment must also contain "narrow, objective, and definite standards" to guide city officials in their review. *See Camp Legal Defense Fund, Inc. v. City of Atlanta,* 451 F.3d 1257, 1279 (11th Cir.2006) (citing *Shuttlesworth v. City of Birmingham,* 394 U.S. 147, 151, 89 S.Ct. 935, 22 L.Ed.2d 162 (1969)). Absent such standards, the ordinance grants "unbridled discretion" to city officials and fails to " 'prevent[ ] the official from encouraging some views and discouraging others through the arbitrary' grant of an exemption."[6] *Camp,* at 1279 (*quoting Forsyth County v. Nationalist Movement,* 505 U.S. 123, 133, 112 S.Ct. 2395, 120 L.Ed.2d 101 (1992)); *see also Thornhill v. State of Alabama,* 310 U.S. 88, 97–98, 60 S.Ct. 736, 84 L.Ed. 1093 (1940) (stating that the lack of objective criteria "readily lends itself to harsh and discriminatory enforcement by local prosecuting officials, against particular groups deemed to merit their displeasure"). "A government regulation that allows arbitrary application is inherently inconsistent with a valid time, place, and manner regulation because such discretion has the potential for becoming a means of suppressing a particular point of view." *Id.* (internal citations omitted).

Out of these concerns regarding the dangers of censorship, the Supreme Court has developed a long line of jurisprudence aimed at fostering the legitimate goals of lawmaking while curbing the threats of arbitrary enforcement. Yet, in reaching the proper balance, the Supreme Court has consistently emphasized that an ordinance that "makes the peaceful enjoyment of freedoms which the Constitution guarantees contingent upon the uncontrolled will of an official—as by requiring a permit or license which may be granted or withheld in the discretion of such official—is an unconstitutional censorship or prior restraint upon the enjoyment of those freedoms." *Shuttlesworth,* 394 U.S. at 151, 89 S.Ct. 935.

A "prior restraint" is a restriction on expression that is imposed before the expression occurs. *United States v. Frandsen,* 212 F.3d 1231, 1236–37 (11th Cir.2000); *see also Ward v. Rock Against Racism,* 491 U.S. 781, 795 n. 5, 109 S.Ct. 2746, 105 L.Ed.2d 661 (1989); *Camp,* at 1283 ("[t]he term 'prior restraint' is used to describe administrative and judicial orders forbidding certain communications when issued in advance of the time that such communications occur (citing ***1336** *Alexander v. United States,* 509 U.S. 544, 553, 113 S.Ct. 2766, 125 L.Ed.2d 441 (1993) (internal quotations omitted))." "Classic prior restraints have involved judge-issued injunctions against the publication of certain information." *Cooper v. Dillon,* 403 F.3d 1208, 1215 (11th Cir.2005). "Prior restraints have also been found where the government has unbridled discretion to limit access to a particular public forum." *Id.*

[3] Defendant City of Hollywood first argues that, because places of worship can operate in other districts in the City without applying for a special exception, no prior restraint exists here. The Court finds that this assertion is in direct conflict with established Supreme Court precedent. In *Schneider v. State of New Jersey,* 308 U.S. 147, 163, 60 S.Ct. 146, 84 L.Ed. 155 (1939), the Supreme Court rejected the argument that anti-canvassing ordinances, which restricted canvassing only in streets and alleys, were valid because they did not prohibit the distribution of printed matter in other public places. The *Schneider* Court found that streets were the natural and proper places for dissemination of information and that "one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place." *Id.* at 163, 60 S.Ct. 146. Further, in *Southeastern Promotions, Ltd. v. Conrad,* 420 U.S. 546, 555, 95 S.Ct. 1239, 43 L.Ed.2d 448 (1975), the Supreme Court found that a decision to deny the petitioner's request to use a municipal facility for a theater production constituted a prior restraint, even though the denial did not prevent petitioner from using another theater in the city.

Accordingly, the existence of alternative fora for expression does not justify an otherwise impermissible prior restraint. *Id.* at 555, 95 S.Ct. 1239.

[4] Next, Defendant contends that Section 5.3.G. of the ZLDR sufficiently restricts the discretion of City regulators and is therefore a valid time, place, and manner restriction. After careful consideration of this ordinance, the Court cannot agree. Instead, the Court finds that Section 5.3.G.1. constitutes an unconstitutional[7] prior restraint because it lacks "narrow, objective, and definite standards" to guide city officials in their review of applications for a Special Exception and thus provides City officials unbridled discretion in their consideration of the application. *See Lady J. Lingerie, Inc. v. City of Jacksonville,* 176 F.3d 1358, 1362 (11th Cir.1999) (noting that "some measure of discretion is acceptable, but ... virtually any amount of discretion beyond the merely ministerial is suspect").

In *Lady J. Lingerie,* the Eleventh Circuit Court of Appeals considered and invalidated a similar licensing scheme. 176 F.3d at 1362. There, the City of Jacksonville created a zoning scheme that allowed adult entertainment establishments to operate as of right in only one zone; such establishments were allowed to operate in a second zone only if the zoning board granted a zoning exception after consideration of nine enumerated criteria.[8] ***1337** *Id.* at 1361. The Eleventh Circuit characterized these criteria as "run-of-the-mill zoning considerations" that concerned compatibility with contiguous uses, environmental impact, and effect of pedestrian traffic. *Id.* at 1362. After examining these factors, the Eleventh Circuit held that none was precise or objective and that "all of them—individually and collectively—empower the zoning board to covertly discriminate against adult entertainment establishments under the guise of general 'compatibility' or 'environmental' considerations." *Id.* Specifically, in place of objective requirements, *e.g.,* there must be X number of doors per square foot, the provisions used broad, subjective language, such as buildings must "be sufficiently accessible to permit entry by" rescue services. *Id.* Because these criteria were being applied to establishments that are entitled to First Amendment protections, the Eleventh Circuit held that the licensing scheme was unconstitutional.

The criteria contained in Section 5.3.G.1. are as, if not more, broad and imprecise as those found in *Lady J. Lingerie.* The Section directs the DRB to determine whether the use is "compatible with" the natural environment and other properties; whether there will be "adequate provision" for safe traffic movement or "adequate setbacks, buffering, and general amenities...to control...potential nuisances"; and whether the land area is "sufficient, appropriate, and adequate for the use." (D.E. 191, Ex. A at 5.3.G.1.) As in *Lady J. Lingerie,* the Court finds that none of these criteria is "precise and objective" and that all of them empower the DRB, or the Commission on appeal, to covertly discriminate against places of worship under the guise of "compatibility" or other intangible considerations. *Lady J. Lingerie,* 176 F.3d at 1362. Moreover, the Special Exception procedure employed here is even more constitutionally invidious, as it provides City officials the discretion to deny a Special Exception even if all four enumerated criteria are met. (D.E. 191, Ex. A at 5.3.G.) Nothing in the ordinance or its application prevents City officials from encouraging some places of worship while discouraging others through the arbitrary grant or denial of a Special Exception. ***1338** *See Forsyth County v. Nationalist Movement,* 505 U.S. 123, 133, 112 S.Ct. 2395, 120 L.Ed.2d 101 (1992). Because Plaintiff HCS, as a place of worship, is entitled to the protections of the Free Exercise clause of the First Amendment, the provision of such unbridled discretion to City officials is constitutionally impermissible.[9]

Accordingly, for the reasons stated above, the Court finds that the zoning scheme established in Section 5.3.G., as it relates to places of worship, is void on its face, and summary judgment is therefore **GRANTED** in favor of Plaintiff HCS on Count XVII of the Second Amended Complaint.

Last, because the Court has found the City's zoning scheme unconstitutional, it does not reach Plaintiff's argument that the provisions are also unconstitutional as applied to HCS. *See Cafe Erotica of Florida, Inc. v. St. Johns County,* 360 F.3d 1274, 1293 (11th Cir.2004); *Weaver v. Bonner,* 309 F.3d 1312, 1318 n. 9 (11th Cir.2002) (finding that an as-applied challenge is rendered moot if the underlying statute is deemed unconstitutional). Therefore, Plaintiff's as-applied equal protection claim, contained in Count XVIII of the Second Amended Complaint, is **DENIED as moot**.

D. Impact on Counts I and II

[5] In Counts I and II of the Second Amended Complaint, Plaintiff HCS seeks damages and injunctive relief, respectively, as a result of the City's violation of HCS's First and Fourteenth Amendment rights pursuant to 42 U.S.C. § 1983. In these counts, the Synagogue alleges, *inter alia,* that the City's denial of the Special Exception violated the Synagogue's constitutional rights to free exercise of religion

and freedom of assembly for purposes of worship and teaching. (D.E. 125, at 19.)

In order to obtain relief under Section 1983, Plaintiff must demonstrate that conduct under color of state law, complained of in the civil rights suit, violated its rights, privileges, or immunities under the Constitution or laws of the United States. *Whitehorn v. Harrelson,* 758 F.2d 1416, 1419 (11th Cir.1985). Moreover, the Supreme Court has placed strict limitations on municipal liability under Section 1983. *Gold v. City of Miami,* 151 F.3d 1346, 1350 (11th Cir.1998), *citing Monell v. Department of Social Servs.,* 436 U.S. 658, 691, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978). There is no respondeat superior liability upon which to inculpate a municipality for the wrongful actions of its employees or agents. *Monell,* 436 U.S. at 691, 694, 98 S.Ct. 2018. Thus, a municipality can only be held liable if an official policy or custom ***1339** of that municipality causes a constitutional violation. *Id.* at 694–95, 98 S.Ct. 2018. Moreover, it is not enough for the plaintiff to merely identify conduct properly attributable to the municipality; the plaintiff must also demonstrate that, through deliberate conduct, the municipality is the moving force behind the alleged injury. *Board of County Com'rs v. Brown,* 520 U.S. 397, 404, 117 S.Ct. 1382, 137 L.Ed.2d 626 (1997).

The Supreme Court in *Pembaur v. City of Cincinnati,* 475 U.S. 469, 106 S.Ct. 1292, 89 L.Ed.2d 452 (1986), held that municipal liability may be imposed for a single decision by municipal policymakers under appropriate circumstances. *Id.* at 480, 106 S.Ct. 1292. However, any such single act must still be made pursuant to an existing, unconstitutional official municipal policy to properly attribute such conduct to the municipality pursuant to *Monell. Id.* at 478 n. 6, 479–81, 106 S.Ct. 1292; *City of Oklahoma City v. Tuttle,* 471 U.S. 808, 823–824, 105 S.Ct. 2427, 85 L.Ed.2d 791 (1985). The Eleventh Circuit has summarized the Supreme Court's guiding principles, to be employed when evaluating the single action of an official policymaker is sufficient to give rise to municipal liability, as follows: (1) whether the action is officially sanctioned or ordered by the municipality; (2) whether the action is taken by officers with final policymaking authority; (3) whether this final policymaking authority is granted by state law, including valid local ordinances and regulations; (4) whether the challenged action was taken pursuant to a policy adopted by the officials responsible for making policy in that particular area of the city's business, as determined by state law. *Martinez v. City of Opa–Locka,* 971 F.2d 708, 713 (11th Cir.1992) (citations and quotation marks omitted). In its Order of May 10, 2006, the Court ruled that Plaintiff had demonstrated all four factors from *Martinez,* and had thus stated a claim for relief under 42 U.S.C. § 1983 based upon the single act by the Commission of reversing the DRB pursuant to the City's zoning ordinances. (D.E. 272, at 31–32.)

The Court has determined herein that the City's zoning ordinance relating to Special Exceptions for places of worship is unconstitutionally vague on its face in violation of Plaintiff HCS's First Amendment right to free exercise of religion. It is undisputed that the City applied this zoning ordinance to the Synagogue in denying its application for a Special Exception. The Court has, moreover, already determined that this single act of denying HCS's application constituted a municipal policy or practice sufficient to invoke municipal liability. The Court further finds that this denial pursuant to an unconstitutional ordinance was the moving force behind the violation of Plaintiff's constitutional rights. Finding no genuine issues of material fact as to this claim, the Court concludes that Plaintiff HCS is entitled to summary judgment as to the portions of Counts I and II in which Plaintiff claims that the City violated its constitutional rights through the single act of the Commission's denial of a Special Exception.

E. Remedy

In Counts I, II, XVII, and XVIII, the Synagogue requests, *inter alia,* that the Court enter judgment against the City, direct that it be granted a Special Exception, award damages to the Synagogue, and declare the portions of Article V of the City of Hollywood Code of Ordinances relating to Special Exceptions unconstitutionally vague. (D.E. 125 at ¶¶ 69, 71, 141.)

The City, in its Supplement, argues that it may still prevent the Synagogue from operating as a place of worship in its present location even if the Special Exception procedures are deemed unconstitutional. ***1340** Essentially, the City maintains that if the Special Exception provisions are excised from the ZLDR, no special exceptions could be granted in single-family districts and the only the permitted principals uses would be allowed.

The primary issue now before the Court is whether the City's Special Exception provision may be severed from the rest of the ZLDR and what impact such severance would have on places of worship. The City is correct that severability of local ordinances is a question of state law. *City of Lakewood v. Plain Dealer Pub. Co.,* 486 U.S. 750, 772, 108 S.Ct.

2138, 100 L.Ed.2d 771 (1988); *Mayflower Farms, INC. v. Ten Eyck,* 297 U.S. 266, 274, 56 S.Ct. 457, 80 L.Ed. 675 (1936). However, the Florida District Court of Appeals cases provided by the City provide no support for its conclusion that, in the First Amendment context, the invalidation of the Special Exception provisions transform all conditional uses into prohibited uses.

The Eleventh Circuit has held that Florida law clearly favors the severance of invalid portions of a law from the valid ones, where possible. *Coral Springs Street Systems, Inc. v. City of Sunrise,* 371 F.3d 1320, 1347 (11th Cir.2004). The doctrine of severability is derived from the doctrine of separation of powers and is designed to show great deference to the legislative prerogative to enact laws. *Id.* However, severability is not possible where an illegal provision has tainted the remainder of the statute. *Id.* The severability determination is made by examining the invalidated section's "relation to the overall legislative intent of the statute of which it is a part, and whether the statute, less the invalid provisions, can still accomplish this intent." *Id.* (citations omitted).

[6] The Florida Supreme Court, in *Smith v. Department of Insurance,* 507 So.2d 1080, 1089 (Fla.1987), has suggested the following test for discerning severability:

> When a part of a statute is declared unconstitutional the remainder of the act will be permitted to stand provided: (1) the unconstitutional provisions can be separated from the remaining valid provisions, (2) the legislative purpose expressed in the valid provisions can be accomplished independently of those which are void, (3) the good and the bad features are not so inseparable in substance that it can be said that the Legislature would have passed the one without the other, and (4) an act complete in itself remains after the invalid provisions are stricken.

Coral Springs, 371 F.3d at 1348 (citations omitted). Thus, the Eleventh Circuit concluded that, under Florida law, an unconstitutional portion of a challenged statute "should be excised, leaving the rest intact and in force, when doing so does not defeat the purpose of the statute and leaves in place a law that is complete." *Id.*

[7] While, in this case, factors (1) and (4) of the *Smith* test have been met, as the challenged portions of the ZLDR could be separated from the remaining provisions and leave an act complete in itself, the City's proposed remedy fails to satisfy the other two factors. Instead, the Court finds that such severance would thwart the legislative purpose of the ZLDR such that it could not be said that the Commission would have passed the one without the other. The ZLDR expressly states that places of worship are considered "generally suitable" uses within single family districts subject to controls to best serve the interests of the community and the owners of the property in question. (D.E. 191, at Ex. A at 5.3.G.; *id.* at Ex. B at 4.1.) Thus, the City never intended the complete exclusion of places of worship in single family districts and would have been unlikely to ***1341** enact an ordinance devoid of exception procedures. Removal of the Special Exception provision, therefore, cannot be accomplished without defeating the purpose of the statute and destroying the intent of the enacting body.

[8] Accordingly, pursuant to the Court's authority to fashion a remedy for the City's violation of Plaintiff HCS's right to free exercise of religion and because the Court finds that Plaintiff HCS has been irreparably injured by the violation of its rights, the Court orders that the Synagogue shall be granted the Permanent Special Exception it was awarded by the DRB in March 2003, subject only to those conditions that are objective and definite.[10] Specifically, the Permanent Special Exception shall be conditioned upon the Synagogue building a six-foot soundproofing wall at the rear property line and providing a three-sided dumpster as approved by the City's Public Works department, provided that a list of approved dumpsters exists.[11]

Further, the Court orders that the City shall promptly enact new Special Exception ordinance(s) for places of worship, one(s) that contain "narrow, objective, and definite standards" guiding City officials in their review and that are otherwise constitutionally sound.

Last, the Court orders that the issue of damages that arise from Count I and that relate to the constitutional violation found here is properly placed before a jury for further determination.

V. Conclusion

As stated above, the Court recognizes that the City of Hollywood has a substantial interest in preserving the quality of urban life in its neighborhoods. Moreover, the Court accords great respect for the City's interest in protecting the character and nature of neighborhoods in which single-family, detached dwellings predominate and in furthering the ability of its residents to engage in the quiet and peaceful enjoyment of their property.

However, the City of Hollywood, through its officials, is also charged with the protection of the religious freedoms that are found in the First Amendment and that form the cornerstone of American democracy. Zoning regulations that affect those freedoms must therefore be precise and objective in both their terms and their application. Our Constitution and our love of liberty demand no less.

Accordingly, it is:

ORDERED AND ADJUDGED that Plaintiff Hollywood Community Synagogue's Motion for Partial Summary Judgment (D.E. 190), filed March 21, 2006, is **GRANTED in part and DENIED as moot in part** as described herein.

All Citations

436 F.Supp.2d 1325, 19 Fla. L. Weekly Fed. D 771, 31 A.L.R.6th 713

Footnotes

1 The City's Zoning and Land Development Regulations do not define place of worship, and thus the Court will look to the natural and ordinary meaning. *Konikov v. Orange County, Fl,* 410 F.3d 1317, 1325 (11th Cir.2005). A “place” is defined as “a building or locality used for a special purpose.” Webster's 3d New Int'l Unabridged Dictionary 1727 (1993). “Worship” is defined as “the reverence or veneration tendered a divine being or supernatural power.” *Id.* at 2637. Thus, taken together, a “place of worship” is a building or locality used for the reverence or veneration of a divine being or supernatural power.

2 The conditions imposed by the DRB were: (1) parking of any type is prohibited in the alley located behind the Synagogue; (2) the Synagogue must enter into a lease agreement for off-site parking, (3) the Synagogue must obtain garbage dumpsters in a size and style acceptable to City staff, (4) the Synagogue must enter into a property maintenance agreement with a property maintenance provider who will maintain the premises in accordance with the City Code, and (5) the Synagogue must work with City staff to create a buffer along the rear side of the property. (D.E. 125, at ¶ 30.)

3 The conditions imposed by the DRB require the Synagogue to: (1) build a six-foot soundproofing wall at the rear property line; (2) provide for appropriate three-sided dumpster as approved by the City's Public Works Department; (3) provide additional landscaping along the north and south property lines as determined appropriate by the City's Office of Planning; and (4) provide a site plan to the City's Planning Staff that demonstrates how the Synagogue will satisfy the first three conditions. (D.E. 125, at ¶ 37.)

4 Though Plaintiff never specifies as to which Counts its Motion relates, the Court finds that the Motion is dispositive of Counts XVII and XVIII and also affects portions of Counts I and II.

5 Plaintiff provided the text of Section 5.7 of the ZLDR in the Second Amended Complaint (D.E. 125, at § 138); Defendant City of Hollywood, in its Answer, admitted to the contents of this paragraph of the pleading (D.E. 307, at ¶ 138).

6 The Court notes that a facial challenge to a zoning ordinance may be raised when the mere threat of abuse of power exists; no proof of actual abuse of power is required. *Thornhill v. State of Alabama,* 310 U.S. 88, 97, 60 S.Ct. 736, 84 L.Ed. 1093 (1940).

7 Though prior restraints are not *per se* unconstitutional, there exists a strong presumption against their constitutionality. *FW/PBS, Inc. v. City of Dallas,* 493 U.S. 215, 225, 110 S.Ct. 596, 107 L.Ed.2d 603 (1990). Any scheme that places unbridled discretion in the hands of a government official or agency, however, must be invalidated due to the great danger of censorship and of abridgment of our precious First Amendment freedoms. *Id.; Southeastern Promotions,* 95 S.Ct. at 1244.

8 The relevant provision of the City of Jacksonville regulations provided that the zoning board

> shall issue an order to grant the exception on if it finds from a preponderance of the evidence...that the proposed use meets, to the extent applicable, the following standards and criteria:

(i) Will be consistent with the Comprehensive Plan, including any subsequent plan adopted by the Council pursuant thereto;

(ii) Will be compatible with the existing contiguous uses or zoning and compatible with the general character of the area, considering population density, design, scale and orientation of structures to the area, property values, and existing similar uses or zoning;

(iii) Will not have an environmental impact inconsistent with the health, safety and welfare of the community;

(iv) Will not have a detrimental effect on vehicular or pedestrian traffic, or parking conditions, and will not result in the generation or creation of traffic inconsistent with the health, safety and welfare of the community;

(v) Will not have a detrimental effect on the future development of contiguous properties or the general area, according to the Comprehensive Plan, including any subsequent amendment to the plan adopted by the Council;

(vi) Will not result in the creation of objectionable or excessive noise, lights, vibrations, fumes, odors, dust or physical activities, taking into account existing uses or zoning in the vicinity;

(vii) Will not overburden existing public services and facilities;

(viii) Will be sufficiently accessible to permit entry onto the property by fire, police, rescue and other services; and

(ix) Will be consistent with the definition of a zoning exception, and will meet the standards and criteria of the zoning classification in which such use is proposed to be located, and all other requirements for such particular use set forth elsewhere in the Zoning Code, or otherwise adopted by the Planning Commission.

Lady J. Lingerie, 176 F.3d at 1369–70.

9 The Court notes that, even if it found that the City of Hollywood's zoning scheme constituted a content-neutral time, place and manner restriction instead of a prior restraint, the City's Special Exception standards as applied to places of worship do not pass constitutional muster. The Supreme Court has held that even time, place, and manner restrictions must contain adequate standards to guide officials' discretion and allow for effective judicial review in the First Amendment context. *Thomas v. Chicago Park District,* 534 U.S. 316, 323, 122 S.Ct. 775, 151 L.Ed.2d 783 (2002). Therefore, such regulations must contain "narrowly drawn, reasonable and definite standards." *Burk v. Augusta–Richmond County,* 365 F.3d 1247, 1256 (11th Cir.2004), *quoting Thomas,* 534 U.S. at 324, 122 S.Ct. 775. As discussed above, the standards provided for the DRB to review Special Exception applications contain vague and imprecise language allowing for wide variances in interpretation and application. This infirmity is only exacerbated by the fact that both the DRB and Commission retain the discretion to deny a Special Exception application, even if a place of worship is found to satisfy all four criteria. Therefore, the Court finds that the City's zoning regulations relating to places of worship are unconstitutional, even if construed as content-neutral time, place, and manner restrictions.

10 The Court notes that, at a hearing held on June 26, 2006, the Parties announced that, as a part of the proposed settlement, the City would allow the Synagogue, *inter alia,* to operate as a "matter of right" in its present location. The Court's ruling, contained in this Order, shall not preclude the Parties from agreeing to terms that are more favorable to the Synagogue, provided that such terms are consistent with all applicable laws.

11 The Court finds that the remaining conditions—requiring "additional" landscaping "as determined appropriate" and providing a site plan—are insufficiently objective to be imposed.

176 F.3d 1358
United States Court of Appeals, Eleventh Circuit.

LADY J. LINGERIE, INC., a Florida corporation; Buford B. Breland, et al., Plaintiffs–Appellants,

v.

CITY OF JACKSONVILLE, a Florida municipal corporation, Defendant–Appellee.

Milton R. Howard, Emro Corporation, d.b.a. J.R.'s Lounge, Plaintiffs–Appellants,

v.

City of Jacksonville, a Florida municipal corporation, Defendant–Appellee.

Nos. 98–2088, 98–2207
|
May 27, 1999.

Synopsis
Lingerie shops that contained nude dancing brought action challenging constitutionality of ordinance that subjected adult businesses to various licensing, health and safety, and zoning regulations.. The United States District Court for the Middle District of Florida, Nos. 95–181–CIV–J–20A, 95–434–Civ–J–20, Harvey Schlesinger, J., 973 F.Supp. 1428, upheld most of the provisions of the newly amended ordinance, and plaintiffs appealed. The Court of Appeals, Dubina, Circuit Judge, held that: (1) ordinance which specified the procedures for obtaining a zoning exception was unconstitutional as applied to adult entertainment establishments; (2) hours of operation rule was valid; (3) rule requiring that rooms in adult entertainment establishments be at least 1000 square feet in area did not violate First Amendment; and (4) provision requiring corporate applicants for adult business licenses to disclose the names of "principal stockholders" was violative of First Amendment.

Affirmed in part, reversed in part, dismissed in part, and remanded.

Barkett, Circuit Judge, concurs in part and dissents in part.

West Headnotes (14)

[1] **Constitutional Law** Zoning, planning, and land use

Zoning and Planning Validity of regulations in general

A zoning ordinance is valid if it is narrowly tailored to serve a substantial government interest, and it allows for reasonable alternative avenues of expression.

12 Cases that cite this headnote

[2] **Constitutional Law** Discretion in general

A licensing ordinance that gives public officials the power to decide whether to permit expressive activity must contain precise and objective criteria on which they must make their decisions; an ordinance that gives too much discretion to public officials is invalid. U.S.C.A. Const.Amend. 1.

39 Cases that cite this headnote

[3] **Licenses** Constitutionality and Validity of Acts and Ordinances

Licensing ordinances must require prompt decisions; an ordinance that permits public officials to effectively deny an application by sitting on it indefinitely is invalid.

16 Cases that cite this headnote

[4] **Constitutional Law** Zoning, planning, and land use

Zoning and Planning Sexually-oriented businesses; nudity

Zoning ordinance which specified the procedures for obtaining a zoning exception was unconstitutional as applied to adult entertainment establishments since none of its nine criteria was precise and objective. U.S.C.A. Const.Amend. 1; Jacksonville, Fla., Land Use Code § 656.131(c)(1).

17 Cases that cite this headnote

[5] **Zoning and Planning** Sexually-oriented businesses; nudity

Zoning ordinance which specified the procedures for obtaining a zoning exception was unconstitutional as applied to adult entertainment establishments since ordinance failed to require a deadline for decision and did not specifically provide for prompt judicial review of the zoning board's decisions. U.S.C.A. Const.Amend. 1; Jacksonville, Fla., Land Use Code § 656.131(c)(1).

17 Cases that cite this headnote

[6] **Constitutional Law** Intermediate scrutiny

Constitutional Law Narrowing, requirement of

A rule is narrowly tailored to serve a substantial government interest, and thus, not violative of First Amendment, as long as it is not substantially broader than necessary to achieve the government's interest. U.S.C.A. Const.Amend. 1.

6 Cases that cite this headnote

[7] **Constitutional Law** Hours of operation

Public Amusement and Entertainment Sexually Oriented Entertainment

Hours of operation rule that required adult entertainment establishments to close from 2:00 a.m. until noon every day did not violate First Amendment; rule was narrowly tailored and left open reasonable alternative avenues of expression, permitting adult businesses to stay open fourteen hours a day, seven days a week. U.S.C.A. Const.Amend. 1; Jacksonville, Fla., Adult Ent. & Serv.Code § 150.422(a).

17 Cases that cite this headnote

[8] **Constitutional Law** Availability of other sites

Public Amusement and Entertainment Sexually Oriented Entertainment

Rule requiring that rooms in adult entertainment establishments be at least 1,000 square feet in area did not violate First Amendment since regulation left open reasonable alternative avenues of expression in light of fact that at least 40% of the available sites in city were large enough to accommodate 1,000 square foot rooms. U.S.C.A. Const.Amend. 1; Jacksonville, Fla., Adult Ent. & Serv.Code § 150.301(g, h).

9 Cases that cite this headnote

[9] **Public Amusement and Entertainment** Judicial review or intervention

Operators of adult entertainment establishments lacked standing to challenge the validity of a provision that made an applicant ineligible for an adult entertainment license if the Sheriff had recently revoked a license for the same premises since none of them had been injured by the provision. Jacksonville, Fla., Adult Ent. & Serv.Code § 150.214.

2 Cases that cite this headnote

[10] **Constitutional Law** Sexually oriented businesses

Public Amusement and Entertainment Sexually Oriented Entertainment

Provision requiring corporate applicants for adult business licenses to disclose the names of "principal stockholders" was violative of First Amendment since there was no "substantial relation" between requiring disclosure of principal stockholders' names and a substantial government interest. U.S.C.A. Const.Amend. 1; Jacksonville, Fla., Adult Ent. & Serv.Code § 150.205(a)(1)(iii).

5 Cases that cite this headnote

[11] **Constitutional Law** Judgment and Sentence

Due process prohibits the state from imprisoning a person without proof of some form of personal blameworthiness more than a responsible relation. U.S.C.A. Const.Amend. 14.

2 Cases that cite this headnote

[12] **Criminal Law** Commission of offense by agent or employee

Criminal liability based on respondeat superior is acceptable if the defendant is in a "responsible relation" to the unlawful conduct or omission, but only if the penalty does not involve imprisonment; a defendant is in a "responsible relation" if he has the power to prevent violations from occurring. U.S.C.A. Const.Amend. 14.

5 Cases that cite this headnote

[13] **Constitutional Law** Obscenity and lewdness

Constitutional Law Penalties and fines

Criminal Law Commission of offense by agent or employee

Ordinance provision making owners of adult entertainment establishments criminally liable for acts committed by their servants, agents, and employees within scope of their authority was violative of due process at least to extent that it made imprisonment a possibility; however, city's authority to fine owners for violations committed by their employees was constitutionally valid since owner was only responsible for acts or omissions that he had the power to prevent. U.S.C.A. Const.Amend. 14; Jacksonville, Fla., Adult Ent. & Serv.Code § 150.510.

5 Cases that cite this headnote

[14] **Public Amusement and Entertainment** Judicial review or intervention

Zoning and Planning Monetary relief

Operators of adult entertainment establishments were not entitled to damages for the ten days they were closed after city implemented the initial licensing and zoning provisions which the district court struck down.

4 Cases that cite this headnote

Attorneys and Law Firms

***1360** Gary S. Edinger, Gainesville, FL, for Plaintiffs–Appellants.

Bruce Page, Jacksonville, FL, for Defendant–Appellee.

Appeals from the United States District Court for the Middle District of Florida.

Before DUBINA and BARKETT, Circuit Judges, and JONES*, Senior Circuit Judge.

Opinion

DUBINA, Circuit Judge:

These consolidated cases require us to determine *de novo* the constitutionality of several provisions of a Jacksonville, Florida (the "City") ordinance that subjects adult businesses to various licensing, health and safety, and zoning regulations. The plaintiffs/appellants are "lingerie shops" that showcase nude dancing. The City classifies them as "adult entertainment establishments." Jacksonville, Fla. Adult Ent. & Serv.Code § 150.103(c) (reprinted in appendix). The district court ***1361** initially agreed with some of the plaintiffs' objections to the ordinance and preliminarily enjoined enforcement of the licensing and zoning provisions. In response, the City amended its ordinance. The district court lifted its injunction and upheld most of the provisions of the new ordinance. *See Lady J. Lingerie, Inc. v. City of Jacksonville,* 973 F.Supp. 1428 (M.D.Fla.1997). The plaintiffs then perfected this appeal.

I.

First we decide whether regulations requiring adult entertainment establishments to apply for zoning exceptions comply with the First Amendment. The City permits adult entertainment establishments to operate as of right in only one area, the CCBD (Commercial/Central Business District) zone. They may also operate in the CCG–2 (Commercial Community/General–2) zone, but only if the zoning board

grants them a zoning exception. *See* Jacksonville, Fla. Land Use Code § 656.313(IV)(c)(7) (reprinted in appendix). In addition, the ordinance forbids adult businesses in either zone from locating within specified distances of residences, schools, churches, bars or other adult businesses. *See* Jacksonville, Fla. Land Use Code § 656.1103(a) (reprinted in appendix).

The main objection the plaintiffs have to the ordinance is that there are only *two* sites in the CCBD zone that comply with the distance requirements. This means that practically all adult entertainment establishments must apply for a zoning exception to operate anywhere in the City. The City concedes this, but argues that there are 93–plus available sites in the CCG–2 zone, and that we should include those sites in the calculation. The combined 95 sites, it maintains, are enough.

[1] We usually review zoning regulations in this area under the deferential "time, place, or manner" standards which the Supreme Court delineated in *City of Renton v. Playtime, Theatres, Inc.,* 475 U.S. 41, 50–54, 106 S.Ct. 925, 89 L.Ed.2d 29 (1986); *see also Int'l Eateries of America, Inc. v. Broward Co., Fla.,* 941 F.2d 1157, 1161–65 (11th Cir.1991). A zoning ordinance is valid if it is narrowly tailored to serve a substantial government interest, and it allows for reasonable alternative avenues of expression. *See Int'l Eateries,* 941 F.2d at 1161–65. Combating the harmful secondary effects of adult businesses, such as increased crime and neighborhood blight, is a substantial government interest. *See City of Renton,* 475 U.S. at 50–52, 106 S.Ct. 925; *Barnes v. Glen Theatre, Inc.,* 501 U.S. 560, 583–84, 111 S.Ct. 2456, 115 L.Ed.2d 504 (1991) (Souter, J., concurring in the judgment).

Most zoning ordinances easily meet these standards, but this ordinance does not. Even if the ordinance is narrowly tailored to serve a substantial government interest, it only allows for reasonable alternative avenues of expression if the 93–plus sites in the CCG–2 zone count. But to operate in the CCG–2 zone, an adult entertainment establishment must apply for an exception. This makes an exception the equivalent of a license. The City does have a separate licensing procedure for adult entertainment establishments (for which, incidentally, a zoning exception is a prerequisite), but the indispensability of the zoning exception persuades us to treat it like a license as well.

[2] **[3]** As a form of prior restraint, licensing schemes commonly contain two defects: discretion and the opportunity for delay. An ordinance that gives public officials the power to decide whether to permit expressive activity must contain precise and objective criteria on which they must make their decisions; an ordinance that gives too much discretion to public officials is invalid. *See Shuttlesworth v. City of Birmingham,* 394 U.S. 147, 89 S.Ct. 935, 22 L.Ed.2d 162 (1969). Licensing ordinances must also require prompt decisions. An ordinance that permits public officials to effectively deny an application by sitting on it indefinitely is also invalid. *See* ***1362** *Freedman v. Maryland,* 380 U.S. 51, 85 S.Ct. 734, 13 L.Ed.2d 649 (1965). Jacksonville's zoning exceptions process contains both defects.

A. *Discretion*

[4] Section 656.131 of the Jacksonville Land Use Code specifies the procedures for obtaining a zoning exception. *See* Jacksonville, Fla. Land Use Code § 656.131 (reprinted in appendix). The procedures apply to applicants of all sorts—not just adult businesses. Subsection (c)(1) contains the criteria the zoning board must consider in deciding whether to grant exceptions. These are run-of-the-mill zoning considerations: compatibility with contiguous uses, environmental impact, effect of pedestrian traffic, and so on. But they are just a floor; subsection (c)(2) permits the board to impose more restrictive requirements on applicants.

The district court held that subsection (c)(2) is unconstitutional, and severed that provision from the rest of the ordinance. The City does not appeal that part of the judgment. Instead, the plaintiffs appeal the part of the judgment that upheld all of the (c)(1) criteria. The district court found that these factors (in the absence of subsection (c)(2)) sufficiently limit the board's discretion. We disagree.

The standard incantation of the *Shuttlesworth* principle is that statutes may not give public officials "unbridled" discretion to deny permission to engage in constitutionally protected expression. *E.g., City of Lakewood v. Plain Dealer Publ'g Co.,* 486 U.S. 750, 757, 108 S.Ct. 2138, 100 L.Ed.2d 771 (1988) (citing *Shuttlesworth,* 394 U.S. at 151, 89 S.Ct. 935). This implies that some measure of discretion is acceptable, but the cases show that virtually any amount of discretion beyond the merely ministerial is suspect. Standards must be *precise* and *objective. See, e.g., Shuttlesworth,* 394 U.S. at 150–51, 89 S.Ct. 935 ("narrow, objective, and definite"); *Church of Scientology Flag Serv. Org., Inc. v. City of Clearwater,* 2 F.3d 1514, 1547–48 (11th Cir.1993) ("definite and precise"); *see also Heffron v. Int'l Soc'y for Krishna Consciousness, Inc.,* 452 U.S. 640, 649, 101 S.Ct. 2559, 69 L.Ed.2d 298 (1981) (upholding "first-come, first-served" method of allocating

booths at the state fair); *Church of Scientology,* 2 F.3d at 1548 (labeling city clerk's duty to obtain information from applicants for solicitation licenses "purely ministerial").

Such is not the case with subsection (c)(1). None of the nine criteria is precise and objective. All of them—individually and collectively—empower the zoning board to covertly discriminate against adult entertainment establishments under the guise of general "compatibility" or "environmental" considerations. Jacksonville, Fla. Land Use Code § 656.131(c)(1)(ii) & (iii). Even the seemingly-innocuous fire safety provision is too broad. It does not say "there must be *x number* of doors per square foot"; it says that buildings must be "*sufficiently accessible* to permit entry onto the property by fire, police, rescue and other services." *Id.* § 656.131(c)(1)(viii) (emphasis added). This is neither precise nor objective.

To be clear, the City may still use the (c)(1) criteria (and (c)(2), for that matter) for applicants who are not entitled to First Amendment protection. We only find troublesome the application of the otherwise-valid zoning criteria to adult businesses like the plaintiffs'.

B. *Delay*

[5] The opportunity for public officials to delay is another form of discretion. Recognizing this, the Supreme Court held in *Freedman* that a Maryland movie censorship law violated the First Amendment because it did not require prompt decisions. In a later case, *FW/PBS, Inc. v. City of Dallas,* 493 U.S. 215, 110 S.Ct. 596, 107 L.Ed.2d 603 (1990) (plurality opinion), a majority of the Court (the plurality plus three concurring Justices) applied *Freedman* to an adult business licensing scheme. *See also id.* at 238, 110 S.Ct. 596 (Brennan, J., concurring). Specifically, the Court agreed that ordinances must contain two procedural safeguards to ensure prompt decision-making: (1) licensing officials ***1363** must be required to make prompt decisions; and (2) prompt judicial review must be available to correct erroneous denials. *See id.* at 228–30, 110 S.Ct. 596; *Redner v. Dean,* 29 F.3d 1495, 1500 (11th Cir.1994). The same safeguards are required here.

First, the ordinance fails to put any real time limits on the zoning board. The board must hold a public *hearing* within 63 days after a business applies for an exception. *See* Jacksonville, Fla. Land Use Code § 656.131(c)(4). But nothing requires a *decision* within 63 days, or any other time period. The ordinance's failure to require a deadline for decision renders it unconstitutional. *See Redner,* 29 F.3d at 1501.

The City concedes that the ordinance does not give the zoning board a deadline for decision, but it points out that the ordinance permits an applicant to begin operating its business 45 days after applying. *See* Jacksonville, Fla. Land Use Code § 656.1109 (reprinted in appendix). Once the board denies an application, the applicant must shut down. *See id.* The City argues that this ensures that a delay in the decision-making process will not keep the plaintiffs from opening.

The defendant county in *Redner* made a similar defense of its ordinance. But that ordinance said that an applicant "may be permitted" to open; it didn't give applicants an absolute right to open. 29 F.3d at 1500–01. The Jacksonville ordinance, in contrast, says that an applicant "may begin operating [his] facility" 45 days after applying. Jacksonville, Fla. Land Use Code § 656.1109. This leaves no discretion in the City's hands to keep an adult business closed before denying its request for an exception.

Does it matter that an applicant may begin operating while the board is still considering its application? We think not. The ordinance only permits applicants to operate conditionally. Once the board denies an application for an exception, the applicant must close its doors. A conditional exception is no exception at all. A business can scarcely afford to operate in limbo, not knowing whether the City will shut it down the next day or not. Further, *Freedman* 's requirement that the status quo be maintained while public officials are deciding does not eliminate the requirement that the decision itself must be prompt. (And anyway, the status quo here is no zoning exception.)

As for the second procedural safeguard, we note that this ordinance does not specifically provide for prompt judicial review of the zoning board's decisions. This may not be fatal. We have never squarely held that an explicit judicial review provision is essential. It may be enough that state law provides a general right to judicial review of administrative decisions. *See Redner,* 29 F.3d at 1501–02 & n. 9 (discussing *Cent. Florida Nuclear Freeze Campaign v. Walsh,* 774 F.2d 1515 (11th Cir.1985), and *Miami Herald Publishing Co. v. City of Hallandale,* 734 F.2d 666, 676 (11th Cir.1984)). Still, the plaintiffs have not argued this issue on appeal, so we leave it undecided.

To conclude, we want to emphasize that it is not difficult to draft an ordinance that addresses the harmful secondary effects of adult businesses without running afoul of the First Amendment. This ordinance, however, is unconstitutional because it channels nearly all adult entertainment establishments through the exceptions process. That process in turn gives the zoning board discretion to delay a decision indefinitely or to covertly deny applications for content-sensitive reasons. The plaintiffs may operate as of right in the CCBD and CCG–2 zones, as long as they comply with the distance limitations. We leave it to the district court on remand to decide whether they may also operate in other parts of the City.

II.

Next, the plaintiffs challenge two content-neutral provisions: first, an hours of operation rule that requires adult entertainment establishments to close from 2:00 a.m. until noon every day, and second, a ***1364** rule requiring that rooms in adult entertainment establishments be at least 1000 square feet in area. These rules are content-neutral because the City enacted them not to suppress the expressive content of nude dancing, but to alleviate the harmful secondary effects with which adult businesses are commonly associated.

First we must choose which test applies to these regulations. There are two possibilities. The first is the "time, place, or manner" test the Supreme Court used to evaluate the zoning regulations in *City of Renton.* The Court initially developed this test to review restrictions on expression taking place in public fora, but in *City of Renton,* it used this test to evaluate the validity of zoning regulations. *See Barnes,* 501 U.S. at 566, 111 S.Ct. 2456 (plurality opinion) (citing *Ward v. Rock Against Racism,* 491 U.S. 781, 791, 109 S.Ct. 2746, 105 L.Ed.2d 661 (1989), and *City of Renton,* 475 U.S. 41, 106 S.Ct. 925, 89 L.Ed.2d 29). *City of Renton* says that a "time, place, or manner" regulation must be narrowly tailored to serve a substantial government interest, and it must allow for reasonable alternative avenues of expression. *See* 475 U.S. at 50–54, 106 S.Ct. 925; *Int'l Eateries,* 941 F.2d at 1161–65.

The alternative is the four-part test the Court laid out in *United States v. O'Brien,* 391 U.S. 367, 88 S.Ct. 1673, 20 L.Ed.2d 672 (1968). This test has been used to evaluate regulations of expressive conduct—conduct that contains both "speech" and "nonspeech" elements. *Id.* at 376, 88 S.Ct. 1673. In *Barnes v. Glen Theatre, Inc.,* 501 U.S. 560, 111 S.Ct. 2456, 115 L.Ed.2d 504 (plurality opinion), both the plurality and Justice Souter, *see id.* at 581, 111 S.Ct. 2456 (Souter, J., concurring in the judgment), used this test to resolve a challenge by nude dancing establishments to a state law that banned public nudity. The test permits government regulation of expressive conduct "if it is within the constitutional power of the Government; if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest." *O'Brien,* 391 U.S. at 377, 88 S.Ct. 1673.

The Supreme Court has observed that the expressive conduct test of *O'Brien* and *Barnes* and the "time, place, or manner" test of *City of Renton* "embody much the same standards." *Barnes,* 501 U.S. at 566, 111 S.Ct. 2456 (plurality opinion) (discussing *Clark v. Community for Creative Non–Violence,* 468 U.S. 288, 298 & n. 8, 104 S.Ct. 3065, 82 L.Ed.2d 221 (1984)). Still, which test we choose at least determines how we approach these questions, even if it doesn't affect the outcome. And for that matter, our choice of which test to use may occasionally be outcome determinative. In *Ward,* for instance, a "time, place, or manner" case, the Court said that the means chosen are narrowly tailored as long as they are "not substantially broader than necessary to achieve the government's interest." 491 U.S. at 800, 109 S.Ct. 2746. Contrast this with *O'Brien,* in which the Court said that regulation of expressive conduct may be "no greater than is essential to the furtherance of [the government's] interest." 391 U.S. at 377, 88 S.Ct. 1673. The Court is surely right to suggest that these tests are *generally* the same. *See Clark,* 468 U.S. at 298, 104 S.Ct. 3065 (*O'Brien* 's four-part test, "in the last analysis, is little, if any, different from the standard applied to time, place, or manner restrictions"). But in the occasional case, there may be a difference between "not substantially broader" and "no greater than is essential."

We need not decide whether this is that occasional case. We decide only one case at a time, and in this case, *City of Renton* guides our inquiry. The *City of Renton* test is appropriate because the rules we consider today—the hours of operation and 1000 square foot provisions—regulate "time" and "place" in the "time, place, or manner" sense. They affect, but do not directly regulate, the expressive conduct that is the basis of the plaintiffs' First ***1365** Amendment challenges: nude dancing. The draft card burning statute in *O'Brien* and the indecency law in *Barnes* regulated the *how* of expressive conduct, as opposed to the where or the when, and they did

so in a way that made the messages less potent. The hours of operation and 1000 square foot rules are different.

[6] *City of Renton* requires that these rules be narrowly tailored to serve a substantial government interest, and that they allow for reasonable alternative avenues of expression. *See* 475 U.S. at 50–54, 106 S.Ct. 925; *Int'l Eateries,* 941 F.2d at 1161–65. A rule is narrowly tailored as long as it is "not substantially broader than necessary to achieve the government's interest." *Ward,* 491 U.S. at 800, 109 S.Ct. 2746.

[7] Whether the hours of operation rule is valid is a close question. *See* Jacksonville, Fla. Adult Ent. & Serv.Code § 150.422(a) (reprinted in appendix). When we asked counsel for the City at oral argument why the City requires adult entertainment establishments to close from 10:00 a.m. until noon (the plaintiffs limit their argument to these hours), he could not come up with a reason. Nor can we. The question is whether we need a reason.

The plaintiffs concede that ample evidence exists to justify requiring them to close during the late evening hours, so the hours of operation rule *as a whole* indisputably serves a substantial government interest. But the plaintiffs would have us look at the City's reasons for this rule on an hour by hour basis. There is no evidence, they submit, of a substantial government interest to justify requiring adult businesses to close from 10:00 a.m. until noon. This is a clever argument, but it confuses the requirement that a regulation serve a substantial government interest with the requirement that it be narrowly tailored to that end. We look at the provision *as a whole* to decide whether it serves a substantial government interest. Since it does, we ask whether it is narrowly tailored.

We can imagine an hours of operation rule drawn so broadly as to not be narrowly tailored, but we decline to scrutinize the City's reasons for this rule as closely as the plaintiffs would have us do. If we were to side with the plaintiffs here, the next litigants would argue whether evidence of secondary effects at 6:15 in the morning justifies requiring adult businesses to close at 9:30, or whether evidence from 9:30 justifies requiring them to close at 10:45. That sort of line-drawing is inconsistent with a narrow tailoring requirement that only prohibits regulations that are "substantially broader than necessary." *Ward,* 491 U.S. at 800, 109 S.Ct. 2746; *but cf. O'Brien,* 391 U.S. at 377, 88 S.Ct. 1673 (regulation may be no greater than is *essential* to the government interest). The issue we face today is, of course, a closer question, but we conclude that the hours of operation rule is "not substantially broader than necessary." It is therefore narrowly tailored. Since the rule also leaves open reasonable alternative avenues of expression—adult businesses may stay open fourteen hours a day, seven days a week—it is valid.

[8] We also conclude that the 1000 square foot rule is valid. *See* Jacksonville, Fla. Adult Ent. & Serv.Code § 150.301(g) & (h) (reprinted in appendix). Ample evidence, from Jacksonville and elsewhere, supports the district court's finding that illegal and unhealthy activities take place in small rooms at adult entertainment establishments. One thousand square feet is not that large, so we can't say that this rule is substantially broader than necessary.

Still, the plaintiffs argue that the 1000 square foot rule will force them to move. At least two of the plaintiffs can't comply in their present locations. One plaintiff's total floorspace is only 850 square feet, and another can't remodel because of structural constraints. As we see it, though, this doesn't matter. The test is whether the regulation leaves open reasonable *alternative* avenues of expression; it does not guarantee that the plaintiffs will ***1366** be able to operate in their present locations.

Without the zoning ordinance confining them, there are plenty of places the plaintiffs can move to comply with this rule. The plaintiffs' own expert testified that at least 40% of the available sites in Jacksonville are large enough to accommodate 1000 square foot rooms. There is no evidence to indicate that this figure is not also representative of the CCG–2 zone. Forty percent of 93–plus sites is enough.

III.

[9] The plaintiffs next challenge the validity of a provision that makes an applicant ineligible for an adult entertainment license if the Sheriff has recently revoked a license for the same premises. *See* Jacksonville, Fla. Adult Ent. & Serv.Code § 150.214 (reprinted in appendix). A site is ineligible until the second October 1 after the Sheriff revokes the license. *Id.* This site disability provision applies even to an applicant with a clean record who happens to buy or lease an affected site for use as an adult entertainment establishment.

We conclude that none of the plaintiffs has standing to challenge this provision because none is injured. Not only has none of the plaintiffs applied for a license for an affected site,

but there is no evidence that there are any affected sites in Jacksonville. If there were, the plaintiffs could at least say that the site disability provision limits their choice of where to move. But without evidence of affected sites, the plaintiffs can't even say that. So we dismiss this claim.

IV.

We now turn our attention to a provision that requires corporate applicants for adult business licenses to disclose the names of "principal stockholders." Jacksonville, Fla. Adult Ent. & Serv.Code § 150.205(a)(1)(iii) (reprinted in appendix). A "principal stockholder" is one who owns at least 10% of the stock of a corporation. *Id.* § 150.103(k) (reprinted in appendix). If no stockholder owns more than 10%, then all stockholders are "principal stockholders." *Id.* The plaintiffs argue that this unconstitutionally chills their right to free expression. The City responds that the plaintiffs do not have standing to challenge this provision, but that even if they do, the disclosure provision is valid.

We are satisfied that at least one of the plaintiffs has standing to challenge this rule. The ordinance requires corporations to disclose principal stockholders' names, and Lady J. Lingerie is a corporation.

[10] Compelled disclosure of the sort the Jacksonville ordinance entails threatens to stymie the exercise of First Amendment freedoms—the so-called "chilling effect"—so it must survive "exacting scrutiny." *Buckley v. Valeo,* 424 U.S. 1, 64, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976) (per curiam). Specifically, there must be a "relevant correlation" or a "substantial relation" between requiring disclosure of principal stockholders' names and a substantial government interest. *Id.* (citations omitted); *see also NAACP v. Alabama,* 357 U.S. 449, 463–64, 78 S.Ct. 1163, 2 L.Ed.2d 1488 (1958) (government interest must be substantial).

Here the government interest is substantial, but we do not see a "relevant correlation" or a "substantial relation" between the names of principal stockholders and the harmful secondary effects of adult entertainment establishments. The City's best argument is that principal stockholders tend to have a discernable influence on management, and that the City needs to keep an eye on who is running adult businesses in town. But stockholders, *qua* stockholders, do not run corporations; officers and directors do. The City can enforce its rules through them. *See Acorn Inv., Inc. v. City of Seattle,* 887 F.2d 219, 226 (9th Cir.1989); *cf. East Brooks Books, Inc. v. City of Memphis,* 48 F.3d 220, 226 (6th Cir.1995) (invalidating an ordinance requiring disclosure of all stockholders' names); *Genusa v. City of Peoria,* 619 F.2d 1203, 1216–17 (7th Cir.1980) (invalidating ***1367** an ordinance requiring all stockholders owning more than 10% of the stock of an applicant to submit various personal data to licensing officials). Accordingly, we conclude that this provision is unconstitutional.

V.

The final provision the plaintiffs challenge makes owners of adult entertainment establishments criminally liable for acts committed by their servants, agents and employees. *See* Jacksonville, Fla. Adult Ent. & Serv.Code § 150.510 (reprinted in appendix). Not all acts are imputable, only those acts done within a servant, agent or employee's scope of authority under the owner. *See id.* § 150.510(b). For their first five convictions, owners are punished by either a fine *or* 10 days in jail; for the sixth and subsequent offenses, the penalty is a fine *and* up to 90 days in jail. *See id.* § 150.510(c).

Respondeat superior is a familiar concept in the context of "public welfare" crimes. These offenses are not crimes in the traditional sense; instead, they are a means of regulating activities that pose a special risk to the public health or safety. In *United States v. Park,* 421 U.S. 658, 95 S.Ct. 1903, 44 L.Ed.2d 489 (1975), for example, the defendant was the president of a national retail food corporation that got into trouble with the Food and Drug Administration for having rodent-infested warehouses. The Court upheld his conviction because, as president, he was in a "responsible relation" to the unlawful failure to maintain sanitary warehouses. *Id.* at 673–76, 95 S.Ct. 1903; *see also United States v. Dotterweich,* 320 U.S. 277, 285, 64 S.Ct. 134, 88 L.Ed. 48 (1943).

[11] But significantly, Park's only punishment was a fine; incarceration is a different matter. Commentators distinguish public welfare offenses from offenses for which the penalty involves imprisonment, and argue that *respondeat superior* is inappropriate for these "true crimes." Francis Bowes Sayre, *Criminal Responsibility for the Acts of Another,* 43 Harv.L.Rev. 689, 717 (1930); *see also* Wayne R. LaFave & Austin W. Scott, Jr., *Criminal Law* 255 (2d ed.1986); Rollin M. Perkins & Ronald N. Boyce, *Criminal Law,* 913–14 (3d ed.1982). We agree and hold that due process prohibits the state from imprisoning a person without proof of some

form of personal blameworthiness more than a "responsible relation."

[12] **[13]** The upshot is this: criminal liability based on *respondeat superior* is acceptable if the defendant is in a "responsible relation" to the unlawful conduct or omission, but only if the penalty does not involve imprisonment. A defendant is in a "responsible relation" if he has the power to prevent violations from occurring. *See Park,* 421 U.S. at 670–73, 95 S.Ct. 1903. The owner liability provision makes imprisonment a possibility—indeed it is a certainty for the sixth and subsequent offenses. It is therefore unconstitutional at least to that extent.

We can salvage the fine, however, if the ordinance requires proof of a "responsible relation." Proof of a defendant's position alone is not enough, *see id.* at 658, 95 S.Ct. 1903, but this provision requires more. Only acts "done within the scope of [a] servant, agent or employee's scope of authority under the owner" are imputable. Jacksonville, Fla. Adult Ent. & Serv.Code § 150.510(b). We understand this to mean that an owner-defendant is only responsible for acts or omissions that he has the power to prevent. For this reason, we leave intact the City's authority to fine owners for violations committed by their employees.

Personal blameworthiness can take two forms: unlawful act and unlawful intent. It is common to convict and imprison defendants for the acts of others—witness conspiracy law. But conspiracy still requires individualized proof of unlawful intent. The converse is strict liability, which requires proof of act but not intent. We decline to consider whether *mens rea* is an indispensable constitutional requirement for sending someone to prison. *Cf.* ***1368** *Staples v. United States,* 511 U.S. 600, 616, 114 S.Ct. 1793, 128 L.Ed.2d 608 (1994) (penalty of imprisonment suggests that statute should not be construed as dispensing with *mens rea*). Instead, we hold that due process *at least* requires individualized proof of intent *or* act. The owner liability provision requires neither, so the City may not use it to incarcerate owners.

VI.

[14] The last issue the plaintiffs raise concerns their entitlement to damages for 10 days they were closed after the City implemented the initial licensing and zoning provisions which the district court struck down. This claim is meritless. The district court correctly held that the plaintiffs are not entitled to damages.

For the foregoing reasons, we affirm the district court's judgment in part, reverse in part, dismiss in part, and remand this case for further proceedings consistent with this opinion.

AFFIRMED in part, REVERSED in part, DISMISSED in part, and REMANDED.

APPENDIX

Jacksonville, Fla. Code, Title VI, Chapter 150 (Adult Entertainment and Services Code—Businesses, Trades and Occupations)
150.103 Definitions. In this chapter, unless the context otherwise requires:

* * *

(c) *Adult entertainment establishment* means a commercial establishment where the owner, or an employee or agent of the owner, suffers, permits, allows, encourages, or pays any person to engage in nude entertainment on the premises. Adult entertainment establishment also includes any establishment which contains or operates an adult entertainment booth.

* * *

(k) *Principal stockholder* means an individual, partnership or corporation that owns or controls, legally or beneficially, ten percent or more of a corporation's capital stock and includes the officers, directors and principal stockholders of a corporation that is a principal stockholder under this chapter; provided, that if no stockholder of a corporation owns or controls, legally or beneficially, at least ten percent of the capital stock, all stockholders shall be considered principal stockholders; and further provided, that if a corporation is registered with the Securities and Exchange Commission or pursuant to Chapter 517, Florida Statutes and its stock is for sale to the general public, it shall not be considered to have any principal stockholders.

* * *

150.205 License application; application fee.

(a) A person desiring to engage in the business of operating an adult bookstore, adult motion picture theater, adult entertainment establishment, or escort service shall file with the Sheriff a sworn application on forms supplied by the Sheriff. The application shall contain at least the following information and be accompanied by the following documents:

(1) If the applicant is:

(i) An individual, his name.

(ii) A partnership, the full name of the partnership and the name of the managing partner and the names of all other partners, whether general or limited, accompanied by the partnership instrument or a certified copy thereof.

(iii) A corporation, the exact corporate name and state of incorporation and the name of the chief executive officer and the names of all other officers, directors and principal stockholders, accompanied by the articles of incorporation and all amendments thereto and the certificate of incorporation, or certified copies thereof.

***1369** * * *

150.214 Issuance of license for prior revoked license.

When a license is revoked by the Sheriff, no license shall be issued for the location formerly covered by the revoked license. The period of time that a license shall be prohibited under this section shall be one year from the October 1 following revocation.

150.301 General requirements.

In addition to the special requirements contained in this part, unless otherwise exempted, each adult bookstore, adult motion picture theater and adult entertainment establishment, shall meet each of the requirements of this section.

* * *

(g) All premises shall have an entrance room or lobby, i.e., the room which is entered from the outside, and sanitary facilities as set forth in subsection (e). The entrance room or lobby may be as large or as small as the licensee chooses.

(h) All other rooms in premises must either:

(1) be not less than one thousand square feet in area; or

(2) be clearly marked in letters not less than two inches in height “No Customers or Patrons Allowed.”

* * *

150.422 Hours of operation.

(a) Adult entertainment facilities, adult bookstores and adult movie theaters shall not be open between the hours of 2:00 a.m. and noon.

* * *

150.510 Owner responsibility.

(a) As used in part, *owner* shall mean and include the owner, and co-owner, partner, managing partner or chief executive officer.

(b) All acts of any servant, agent or employee, paid or unpaid, of an owner shall be imputed to the owner and be deemed to be an act of the owner if done within the scope of such servant, agent or employee's scope of authority under the owner.

(c) Any owner convicted of violating this chapter due to responsibility imposed pursuant to this section shall be upon conviction punished as follows:

(1) for the first five offenses, by a fine of not less than two hundred fifty dollars nor more than five hundred dollars, or by imprisonment up to ten days in jail;

(2) for the sixth and subsequent offenses, by a fine of not less than three hundred fifty dollars nor more than five hundred dollars and by imprisonment of not less than twenty nor more than ninety days.

Jacksonville, Fla. Code, Section 656 (Zoning Code—Land Use)
656.131 Zoning exceptions

* * *

(c) With respect to acting upon applications for zoning exceptions:

(1) The Commission shall issue an order to grant the exception only if it finds from a preponderance of the evidence of record presented that the proposed use meets, to the extent applicable, the following standards and criteria:

(i) Will be consistent with the Comprehensive Plan, including any subsequent plan adopted by the Council pursuant thereto;

(ii) Will be compatible with the existing contiguous uses or zoning and compatible with the general character of the area, considering population density, design, scale and orientation of structures to the area, property values, and existing similar uses or zoning;

(iii) Will not have an environmental impact inconsistent with the health, safety and welfare of the community;

***1370** (iv) Will not have a detrimental effect on vehicular or pedestrian traffic, or parking conditions, and will not result in the generation or creation of traffic inconsistent with the health, safety and welfare of the community;

(v) Will not have a detrimental effect on the future development of contiguous properties or the general area, according to the Comprehensive Plan, including any subsequent amendment to the plan adopted by the Council;

(vi) Will not result in the creation of objectionable or excessive noise, lights, vibrations, fumes, odors, dust or physical activities, taking into account existing uses or zoning in the vicinity;

(vii) Will not overburden existing public services and facilities;

(viii) Will be sufficiently accessible to permit entry onto the property by fire, police, rescue and other services; and

(ix) Will be consistent with the definition of a zoning exception, and will meet the standards and criteria of the zoning classification in which such use is proposed to be located, and all other requirements for such particular use set forth elsewhere in the Zoning Code, or otherwise adopted by the Planning Commission.

(2) In issuing its order to grant a zoning exception as provided in the Zoning Code, the Commission may place more restrictive requirements and conditions on applicants than are provided in the Zoning Code. A recommended order to grant a zoning exception shall not be granted unless and until the procedures in this chapter have been complied with.

(3) The use for which a zoning exception has been granted by the Commission shall not be commenced by the owner, his agent or lessee until such time as the order is deemed to be final or a final order has been issued and all of the improvements stipulated in the grant of exception necessary for the orderly use of the property have been accomplished.

(4) Unless a longer time is mutually agreed upon by the applicant and the Commission in the particular case, a public hearing shall be held by the Commission to consider an application for zoning exception within not more than sixty-three days from the date of filing of the completed application. Notice of the public hearing shall be made as provided in s. 656.136 and a party shall be heard in person or by agent or attorney.

(5) The violation of the terms of an exception, including conditions and safeguards which may be a part thereof, shall be deemed a violation of the Zoning Code and punishable as provided in the Zoning Code.

656.313 Community/General Commercial Category.

IV. *Commercial Community/General–2 (CCG–2) District.*

* * *

(c) *Permissible uses by exception.*

* * *

(7) Adult entertainment and service activities.

* * *

656.1101 Definitions. For the purposes of Part 11, the following definitions shall apply:

(a) *Adult entertainment or service facility* means an escort service, adult bookstore, nude massage parlor, adult motion picture theater or adult entertainment establishment, as defined in Chapter 150, Ordinance Code.

* * *

656.1103 Distance limitations; exception.

(a) No adult entertainment or service facility shall be located on a site unless the ***1371** site equals or exceeds all of the distance limitations required by this subsection;

(1) One thousand feet from the boundary of another adult entertainment or services facility.

(2) Five hundred feet from the boundary of a residential district.

(3) One thousand feet from an established school or church.

(4) Five hundred feet from the boundary of any business which has an on premises consumption beverage license.

(b) Notwithstanding any ordinance to the contrary, and notwithstanding any prior legal status of any adult entertainment or services facility, as of March 1, 1995, no adult entertainment or service facility shall be located on a site or parcel or in a structure which, in whole or in part, has been granted an on premises consumption beverage license or which is a bottle club.

(c) Notwithstanding any ordinance to the contrary, and notwithstanding any prior legal status of any adult entertainment or services facility, as of March 1, 1995, no adult entertainment or services facility shall be located on a site or parcel or in a structure which, in whole or in part, is within five hundred feet of the boundary of any business which has an on-premises consumption beverage license.

656.1109 Conditional commencement without exception

Where a person has applied for an exception in order to operate an adult entertainment [establishment] in a Community/Commercial General–2 zoning district, the applicant may begin operating the facility forty-five days after submitting a completed application. The conditional operation shall be permitted only until such time as the exception is granted or denied and judicial review is completed by a trial court of competent jurisdiction. This conditional grant to operate shall not permit the applicant to operate in violation of any other ordinance or law. In particular the applicant shall not operate in violation of any distance requirement set forth in this chapter.

BARKETT, Circuit Judge, concurring in part and dissenting in part:

I agree with much of the majority's opinion in this case. However, I do not believe that Jacksonville's hours of operation provision can be upheld under the "time, place, and manner" analysis set forth in *City of Renton v. Playtime Theatres, Inc.,* 475 U.S. 41, 106 S.Ct. 925, 89 L.Ed.2d 29 (1986).[1]

I agree that the hours of operation provision is a content-neutral restriction and that it serves the substantial governmental interest of eliminating the secondary effects produced by the late-night operations of adult entertainment establishments. Under *Renton,* however, this provision violates the First Amendment because it is not narrowly tailored to serve this substantial government interest. The ordinance requires the closure of adult entertainment ***1372** establishments during early morning hours when the city concedes there are no secondary effects. *Renton* 's narrow tailoring requirement, however, requires a city to draw its ordinances "to affect only that category of theaters shown to produce the unwanted secondary effects...." *Renton,* 475 U.S. at 52, 106 S.Ct. 925. By analogy, it seems to me that to justify closure, the city must limit its regulation to the hours where such secondary effects exist. Because the city has, without any justification at all, barred adult entertainment establishments from operating during the late morning hours with no indication of any secondary effects, the ordinance is "substantially broader than necessary," *Ward v. Rock Against Racism,* 491 U.S. 781, 800, 109 S.Ct. 2746, 105 L.Ed.2d 661 (1989), and must be invalidated.[2] I believe that the majority's assertion that the city needs no reason to force adult entertainment establishments to close during the late morning hours flies in the face of *Renton,* which makes clear that where a city regulates to avoid secondary effects, its regulation must be drawn "to affect only that category of theaters shown to produce the unwanted secondary effects...." *Renton,* 475 U.S. at 52, 106 S.Ct. 925.

The majority offers no authority for its position. I believe that the Fifth Circuit's opinion in *Beckerman v. City of Tupelo, Miss.,* 664 F.2d 502 (5th Cir. Unit A Dec.1981), although not binding precedent, is directly on point and should guide our analysis. In *Beckerman,* the court invalidated a city ordinance forbidding parades after 6 P.M., finding the ban substantially broader than necessary to effectuate the city's interest in nighttime security. The court explained that because the sun did not set in Tupelo until well after 6 P.M. for a good part of the year, the ordinance "unnecessarily restricted [individuals] in the time in which they may parade." *Id.* at 512. Although the court recognized "the difficulty Tupelo faces in pinpointing the exact time at which the nighttime security problems arise," *id.,* it found the city's use of a 6 P.M. cutoff overbroad since nighttime security could not justify banning parades during the summer when the sun does not set until approximately 8:30 P.M. *Id.*

We face a similar situation here. Although a city may unquestionably regulate the hours of operation of an adult entertainment establishment to avoid the secondary effects associated with late night-hours, the city here, like the city in *Beckerman,* has done so in an overbroad manner by requiring closure during the late morning hours when no secondary effects have been shown to exist. The fact that the ordinance as a whole here serves to address the problem of late evening hours cannot save this ordinance any more than the fact that the ordinance in *Beckerman,* taken as a whole, addressed problems of nighttime security.

All Citations

176 F.3d 1358, 12 Fla. L. Weekly Fed. C 883

Footnotes

* Honorable Nathaniel R. Jones, Senior U.S. Circuit Judge for the Sixth Circuit, sitting by designation.

1 I would also note that the *Renton* test, not the analysis set forth in *United States v. O'Brien,* 391 U.S. 367, 88 S.Ct. 1673, 20 L.Ed.2d 672 (1968) and applied by a plurality in *Barnes v. Glen Theatre, Inc.,* 501 U.S. 560, 111 S.Ct. 2456, 115 L.Ed.2d 504 (1991), is the applicable standard. Unlike the ordinance at issue in *Renton* and the one before us in this case, *Barnes* dealt with a generally-applicable ban on public nudity, considering whether the ban on public nudity could be constitutionally applied to nude dancing in an adult entertainment establishment. Because we are considering a regulation that singles out adult entertainment establishments for regulation, rather than a generally-applicable statute that has an incidental effect on adult entertainment, *Renton,* not *Barnes,* provides the appropriate standard of review. We have previously recognized this distinction between *Renton* and *Barnes.* In *International Eateries of America, Inc. v. Broward County, Fla.,* 941 F.2d 1157 (11th Cir.1991), we upheld a county ordinance prohibiting adult nightclubs within 500 feet of a residential district and within 1,000 feet of a church. We pointed out that *Renton* and the case we were considering involved ordinances that only applied to adult entertainment, while *Barnes* involved a ban on all public nudity. Accordingly, we concluded that, even after *Barnes,* "*Renton* still controls our analysis." *Id.* at 1161.

2 Although the city could certainly mandate closure if it showed secondary effects during these late morning hours, it does not even purport to make such a showing and so this ordinance is distinguishable from the other ordinances which have been upheld against First Amendment challenges. *See Ben Rich Trading, Inc. v. City of Vineland,* 126 F.3d 155, 160–63 (3d Cir.1997) (upholding ban on operating adult entertainment establishments before 8:00 A.M. and after 10 P.M.); *Mitchell v. Commission on Adult Entertainment Establishments of Delaware,* 10 F.3d 123, 131–39 (3d Cir.1993) (upholding ban on operating adult entertainment establishments before 10:00 A.M. and after 10:00 P.M. and all day Sunday); *Star Satellite, Inc. v. City of Biloxi,* 779 F.2d 1074, 1079–80 (5th Cir.1986) (upholding ban on operating adult entertainment establishments before 10:00 A.M. and after midnight and all day Sunday); *see also National Amusements, Inc. v. Town of Dedham,* 43 F.3d 731, 741–45 (1st Cir.1995) (upholding ban on operating entertainment business between 1:00 A.M. and 6:00 A.M.).

August 14, 2023

RE: Bet Midrash Ohr Hachaim Hakadosh Inc.
Parking Plan

Enclosed please find the following documents:

1. School Parking Confirmation Letter.
2. Letter from City of Hollywood Parking Division Van Buren Parking Garage reserving 25 parking spaces for the school (please be advised that there are additional parking spaces available as per the parking garage manager, on a first come, first serve basis).
3. Map illustrating the two nearest public parking garages, all within a 5-7 minute walking distance.
4. Copy of our parking garage account showing vehicles registered and paid for.
5. List of registered vehicles and the corresponding owner information (employees).

Ben Porat Yosef Yitzchak
1720 Harrison St
Hollywood, FL 33020

Re: Bet Midrash Ohr Hachaim Kadosh, Inc. Parking confirmation letter.

Please be advised that all staff members of the school will be utilizing the public parking facility located on Van Buren (251 S. 20th Ave., Hollywood, FL 33020).

Please see attached City of Hollywood parking building account our account and proof of payment with registered Staff parking list.

Thank you,
Chani Zigelbom
Head of Operations
Ben Porat Yosef Yitzchak

From: SLOPPY SECONDS israelrazla3@gmail.com
Subject: Fwd: [EXT]Van Buuren Parking Garage
Date: Feb 1, 2023 at 1:24:55 PM
To: My Hubby ravrazla@gmail.com

---------- Forwarded message ---------
From: **Angela Kelsheimer**
<AKELSHEIMER@hollywoodfl.org>
Date: Tue, Jan 31, 2023 at 2:17 PM
Subject: RE: [EXT]Van Buuren Parking Garage
To: Israel Razla <israelrazla3@gmail.com>

Good Afternoon.

As previously advised, we would not be able to reserve any spaces for your business, we would only be able to sell you up to 25 access cards, which may be used to access the garage. Parking is not guaranteed and is only provided on a first come, first serve basis.

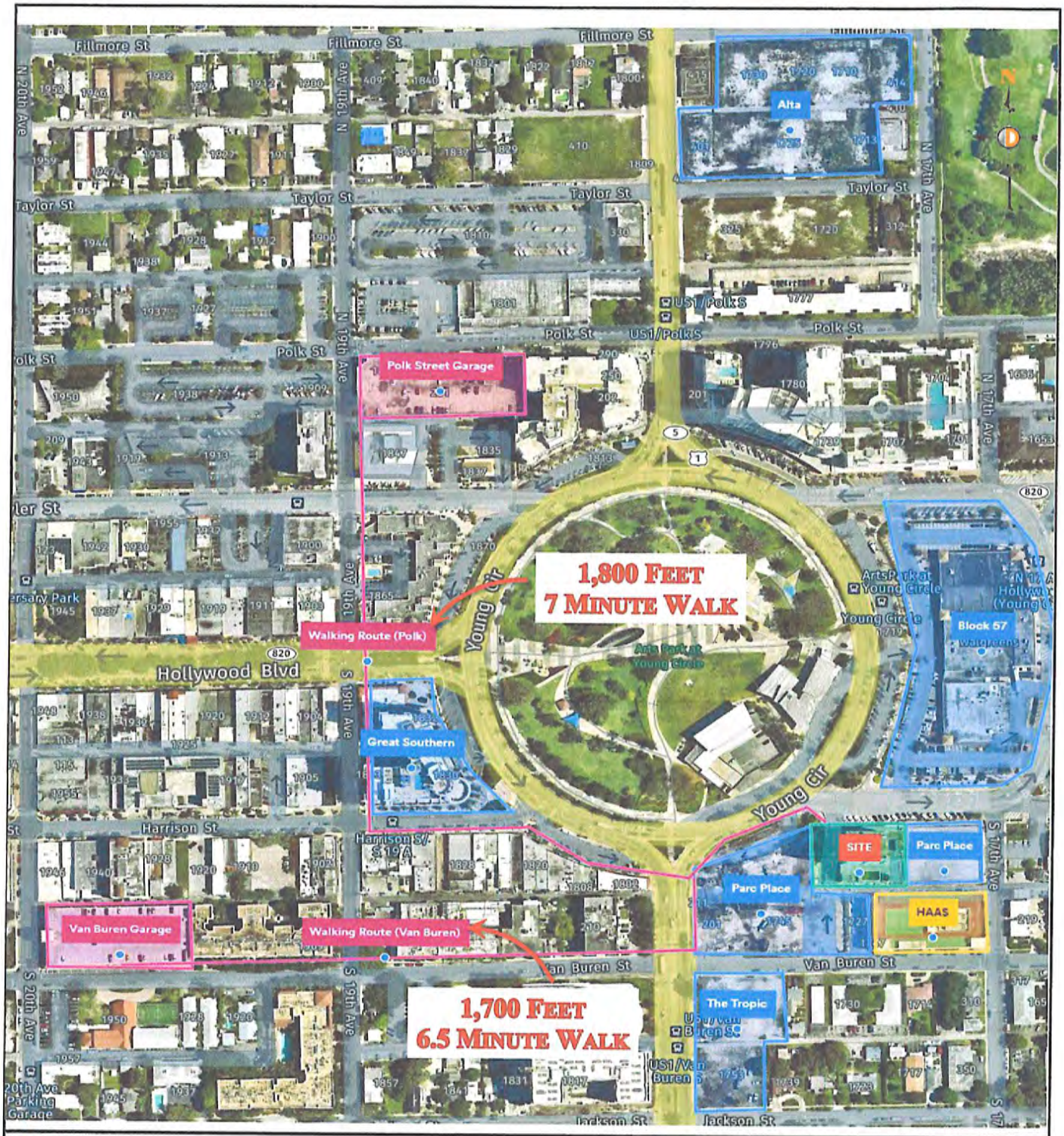
We do have our garage staff in/out of the garage throughout the day as well as a security company in/out throughout the evening, night. There is no security that exclusively patrols the garage at all times. I'm not sure what you mean about security within the garage to get to the parking spaces,

Angi Kelsheimer
Parking Operations Manager
City of Hollywood, Parking Division
954-921-3535

-----Original Message-----
From: Israel Razla <israelrazla3@gmail.com>
Sent: Friday, January 27, 2023 12:34 PM
To: Angela Kelsheimer <AKELSHEIMER@hollywoodfl.org>
Cc: Daddy <ravrazla@gmail.com>
Subject: [EXT]Van Buuren Parking Garage

Hello, I appreciate the response. So as you mentioned, there are 25 spots available that we would like to reserve, we are just getting all the information for the cars that will park there. Also is there additional security within the garage to get to the parking spaces. We spoke to the manager of the parking garage, and the school (HAAS) parks there as well. If you can please provide the rates. If you can also assist on any nearby parking garages closest to the Van Buuren parking garage. Please get back to me when you can.

Thank you, all the best!



Proposed School
Traffic Impact Study
4472-22-01924

Reference Map

Van Buren Garage

251 S 20th Ave

Hollywood, FL 33020

Details

Account: 1392 Ben Porat Yosef Yitzchok

1720 Harrison Street

Hollywood FL 33020

(Update)

Amount Due: $0.00

The most recent payment ($133.75) was received on 08/02/2023

Pays by Check (Change)

Israel Razla
Manager
Cell: (954) 947-9601
3113 Stirling Rd, Fort Lauderdale , FL 33312

Invoices and Payments

Back to Account

Hollywood FL
Van Buren Garage
1720 Harrison Street
Hollywood FL 33020

Contact

Account: 1392 Ben Porat Yosef Yitzchok

Pay

Amount Due: $0.00

Show History From

7/ Search Export

Date	Type	Description	Amount
	Prior Balance		$0.00
8/1/2023	Invoice, #106936	Billing for 8/1/2023	$0.00
8/1/2023	Invoice, #106971	New Parker: Mindi Gordon, Card 02727	$26.75

From: Israel Razla israelrazla@gmail.com
Subject: Parking info
Date: Aug 8, 2023 at 7:27:57 PM
To: Daddy ravrazla@gmail.com

Parking info

Registered Vehicles

1) Full Name : Mindi Gordon
Parking Pass : 12 hour Pass/ $26.75
License Plate: JWI Z29
Vehicle Make: Hyundai Sonata

2) Full Name : Liraz Rikman
Parking Pass : 12 hour Pass/ $26.75
License Plate: IMA J92
Vehicle Make: Honda Odyssey

3) Full Name : Anna Lumbroso
Parking Pass : 12 hour Pass/ $26.75
License Plate: QVR N62
Vehicle Make: Nissan Rogue SL

4) Full Name : Ariel Sobol

Parking Pass : 12 hour Pass/ $26.75
License Plate: QPM P95
Vehicle Make: Nissan Rogue

5) Full Name : Yossi Doch
Parking Pass : 12 hour Pass/ $26.75
License Plate: IMA R91
Vehicle Make: Hyundai Elantra

6) Full Name : Belen Jervis
Parking Pass : 12 hour Pass/ $26.75
License Plate: NXQB96
Vehicle Make: Hyundai Palisade

7) Full Name : Ariel Sobol
Parking Pass : 12 hour Pass/ $26.75
License Plate: QPM P95
Vehicle Make: Nissan Rogue

8) Full Name : Nicole Elkayam
Parking Pass : 12 hour Pass/ $26.75
License Plate: 52A XUT
Vehicle Make: Honda Pilot

9) Full Name : Vicky Furer
Parking Pass : 12 hour Pass/ $26.75
License Plate: 82D BJT
Vehicle Make: White Mitsubishi Outlander

10) Full Name : Chaya Hartman
Parking Pass : 12 hour Pass/ $26.75
License Plate: AH1 3BP
Vehicle Make: Mitsubishi Outlander

11) Full Name : Caryn Milton
Parking Pass : 12 hour Pass/ $26.75
License Plate: GTI X67
Vehicle Make: Silver Buick Lacrosse

12) Full Name : Nechama Weiss
Parking Pass : 12 hour Pass/ $26.75
License Plate: AP3 1RH
Vehicle Make: Red Nissan Altima

13) Full Name : Audrey Azra
Parking Pass : 12 hour Pass/ $26.75

License Plate: PWG V39
Vehicle Make: Nissan Pathfinder

14) Full Name : Nataly Mamane
Parking Pass : 12 hour Pass/ $26.75
License Plate: GQY H15
Vehicle Make: Buick Enclave

15) Full Name : Shir Halabi
Parking Pass : 12 hour Pass/ $26.75
License Plate: FFT 668
Vehicle Make: Hyundai Tucson

16) Full Name : Deidre Dixon
Parking Pass : 12 hour Pass/ $26.75
License Plate: JLZ G87
Vehicle Make: Ford Escape

17) Full Name : Beki Osturkan
Parking Pass : 12 hour Pass/ $26.75
License Plate: O2A ZGM
Vehicle Make: Infiniti 2019

18) Full Name : Adam Razla
Parking Pass : 12 hour Pass/ $26.75
License Plate: 79A WTL
Vehicle Make: White Honda Pilot

19) Full Name : Elinor Razla
Parking Pass : 12 hour Pass/ $26.75
License Plate: AN7 7EM
Vehicle Make: White Honda Odyssey

20) Full Name : Joann
Parking Pass : 12 hour Pass/ $26.75
License Plate: IEN 341
Vehicle Make: Honda Civic

21) Full Name : Esther Ettedgui
Parking Pass : 12 hour Pass/ $26.75
License Plate: P26 ZBJ
Vehicle Make: White Mazda CX-9

22) Full Name : Ortal Cohen
Parking Pass : 12 hour Pass/ $26.75
License Plate: BV3 3RS

Israel Razla
Manager
Cell: (954) 947-9601
3113 Stirling Rd, Fort Lauderdale , FL 33312

August 14, 2023

RE: Bet Midrash Ohr Hachayim Hakadosh
Phase 1: Initial 8/20/23 Bus plan

Enclosed are the following documents for your review:

1.Letter from bus company, outlining pick up and drop off Protocol with their experience list of other schools they service with a similar situation.

2.Architectural diagram showing the type of bus being used, location of school pick up, and the procedure for the students to exit the building into the bus.

A) option one use of our private driveway using a designated path that is barricaded for the students to exit the building straight into the bus.

B) option two use of adjacent sidewalk for the students to exit the school and walk directly to the bus, using only barricades at the end of the driveway.

3. Letter from HAAS charter school outlining their school schedule and dedicated cooperation with our school for pick up and drop off Protocol times.

4. Transportation schedule for the upcoming school year outlining where each bus will be picking up and then dropping off students.

Bus schedule has been set up to intentionally avoid any two buses, arriving at the same time and creating queuing on Harrison Street

The original traffic report was omitted since no traffic will be queuing on Harrison Street. Enclosed is a letter from the bus company and their procedures, to ensure that they will comply with the enclosed transportation schedule. IMK transportation SERVICES ALL THE MAJOR SCHOOLS IN THE AREA AND THEY ARE VERY FAMILIAR WITH URBAN AREA SCHOOLS AND THE NEED TO AVOID BUS QUEUING.

IMK Transportation is a Licensed and insured bus company with the FDOT. Like other school bus companies they are able to stop in front of any building to pick up and drop off students.

IMR TRANSPORTATION
954 646 5144 | 305 975 2042
954 614 0046 | 305 725 4205
imrtransportation@hotmail.com
www.imrtransportation.com

August 3, 2023

RE: Bet Midrash Ohr Hachaim Hakadosh Inc school at 1720 Harrison Street
Hollywood, FL 33021

IMR Transportation will be providing busing for Ben Porat Yosef Yitzchak school for the 2023-24 academic school year. We would be utilizing our designated buses with air conditioning. (See below)

Regarding the afternoon school pickup, we will be staggering the arrival of our buses to the school in order not to back up any traffic on Harrison street.

Our buses are parked at our parking location which is at: (our bus Depot)

5081 SW 48th St
Davie, FL 33314

Buses coming from above location will be departing the bus depot at pre-determined intervals so as not to back up traffic on arrival. This can easily be controlled and coordinated since all drivers have radio communications and are dispatched.

The bus drivers will be in communication with each other to manage the afternoon pickup efficiently and prevent the arrival of buses simultaneously.

Once students are picked up and dropped off at these designated locations in Hollywood as outlined in the attached Transportation Schedule.

Morning pick up will be at the same designated locations. Buses will arrive at the school for student drop off at different intervals in order to avoid queuing on Harrison again, this will be easily achieved by and coordinated by our dispatch.

Morning drop off and afternoon pick up at the school location, will be coordinated by the school security team and our designated bus manager who will be present there. The school will also have three appointed teachers that would monitor the dismissal of the students and escorts them to the bus making this process extremely efficient.

Our company provides school buses to various area schools and is very familiar with the above designated protocol.

Should you need additional information? Please don't hesitate to contact my office.

Thank you,

Javier Moreno Fleet Manager.

IMRtransportation was established in 2015 to offer non-emergency, shutter services and school transportation services in Broward County and Miami Dade County. IMR offers a safe, efficient, punctual and clean service to all of their customers and is known for their quality.

EXPERIENCE

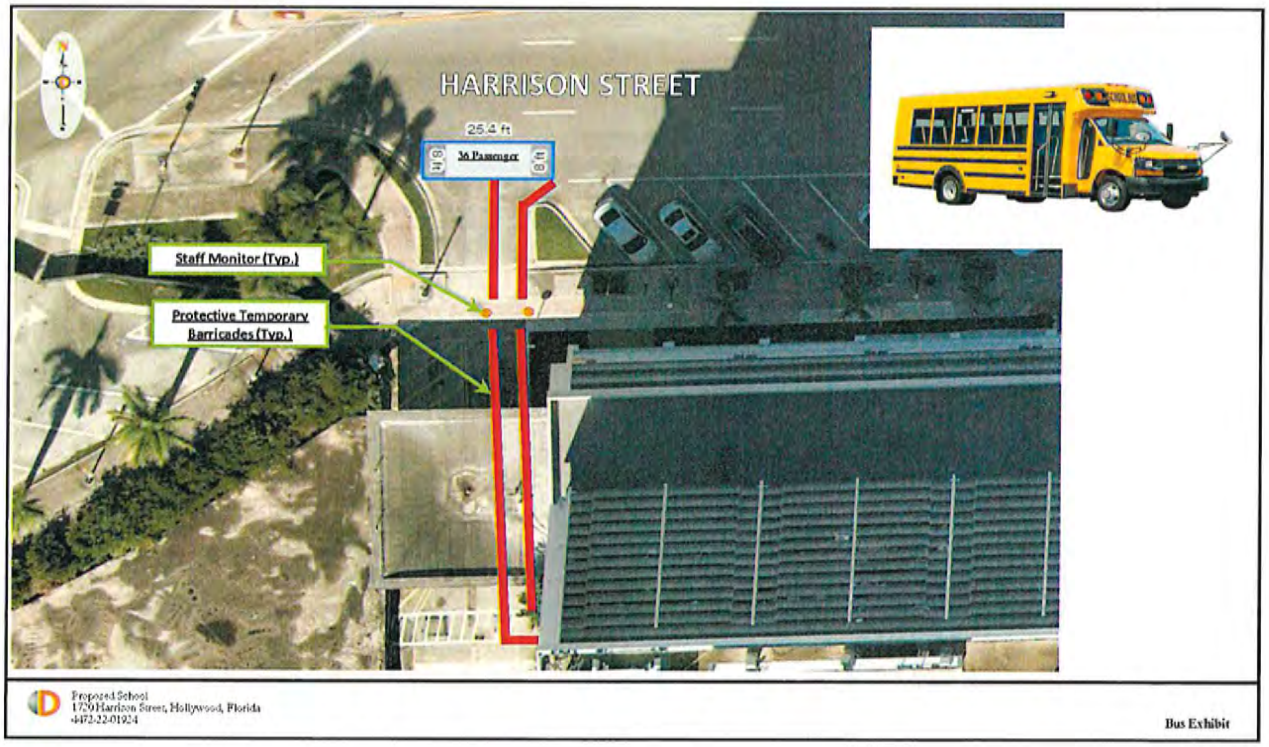
- **Yeshiva Toras Emes** (2015- to present)
  Mrs. Nechama (transportation coordinator) (305) 890-4571
- Shaarei Bina, (2021-to present)
  Mrs. Devy (954) 662-3752.
- **Beth Jacob high school** Mrs Sivan (954) 245-2801
- **Ohr HaTorah Yeshiva High School**
  Mrs Spalter (Director) (954) 559-7854
- **Hochberg Preparatory School**
  Coach Andy (sports director) (305) 389-8578
- **Brauser Maimonides Academy**
  Coach Jared (sports director) (410) 598-8890
- **Seminal Tribe of Florida** (2014 - Present)
  - Raysa De La Paz (Office Manager): (954) 989 -8640 x10443
- **Pines Middle School** (2016 - Present)
  - Carlton Campbell (Principal) (754) 323-4000
- **Ace Academy** (2013 - Present)
  - Janell Alzate (Coordinator): (30) 528-7704
- Kiddie City Daycare (2008 - Present)
  - Annabell (Owner): (754) 204-4866
- **Camp Gan Israel - Weston** (2015 to present)
  - Rabbi Mendell: (954) 348-5850
- **Camp Gan Israel - Hallendale** (2015 to present)
  - Rabbi Mendi: (954) 687-7225
- **YMCA** (2014 - Present)
  - Irma Diaz *(Executive Director): (954) 727-9622 x 1404*
- **Karate America** (2014 - Present)
  - Debbie Silva *(Coordinator): (305) 613-3210*
  - *Mr. Creed (Teacher and Coordinator) (954) 336-8223*

9 and summer 2019

RELIABILITY

IMR's vehicles range in capacity from 15 to 70 passengers. All of these vehicles are equipped with AC, seat belts, and surveillance cameras. In addition, all of them have passed the Broward Bus inspections that includes a safety equipment and mechanical tests that is routinely done every six months. Attached is the Vehicle Condition Report for your review.

In the case of a **vehicle breakdown**, IMR ensures a spare vehicle within 30-45 minutes to continue the route with excellence. Additionally, IMR will always have a spare driver in case of an emergency.



USE OF DRIVEWAY USING
A Designated PATH BARRICADED

USE OF SIDEWALK
(BARRICADES ONLY AT END OF DRIVEWAY)

HOLLYWOOD ACADEMY OF ARTS & SCIENCE

April 24, 2023

To whom it may concern,

This is letter is to iterate our dismissal and arrival procedures from our meeting from February 20th to assist in accommodating the new Jewish Day School. Below is our arrangement to ensure we share the easement.

Hollywood Academy Of Arts & Science	Ben Porat Yosef Yitzchok school
Arrival: 7:45 am to 8:15 am	Arrival: 8:20 am to 8:45 am

Hollywood Academy of Arts & Science Dismissal
K-2 Starts 2:25 pm 3-5 Dismissed at 2:45 pm 6-8 Dismissed at 3:00 pm
Ben Porat Yosef Yitzchok school Dismissal
Monday- Thursday Dismissal begins at 3:45 pm to 4:10 pm Friday dismissal: 1:00 pm – 1:30 pm

If you have any questions or comments, please feel free to email to reach out.

Sincerely,

Johna Giordano

Ms. Johna Giordano
Principal
JGiordano@hollywoodcharter.org

בן פורת יוסף יצחק

BPYY

PLANTING SEEDS,
CREATING LEADERS.

TRANSPORTATION SCHEDULE

2023 - 2024

PICK-UP & DROP-OFF LOCATIONS

- Mapleridge Stop
  (In front of community pool)
- Oakridge Stop
  (In front of park)
- Davie Stop
  (Country Creek Estate (Community gate) SW 70th Terrace & SW 39th Street)
- Winn Dixie Stop
  (Winn Dixie parking lot: 3850 N 46th Ave Hollywood, FL, 33021)
- Grove Stop
  (In the back parking lot of the Grove, Hollywood Plaza)
- Sunny Isles Stop
  (Ross parking lot: 18499 Biscayne Boulevard)
- Aventura Stop
  (Nordstrom parking lot: 19507 Biscayne Boulevard)
- Hallandale Stop
  (Ross parking lot: 1425 E Hallandale Beach Boulevard)
- NMB Stop
  (On the side of street: 801 NE 172nd Terrace)
- Aventura Isles Stop
  (In front of Aventura Isles gate on 195th & Ives Dairy Road)

TRANSPORTATION PICK-UP

BUS 1

- Davie 7:10 am
- Mapleridge 7:20 am
- Oakridge 7:30 am
- BPYY School 8:15 am

BUS 2

- Winn Dixie 7:20 am
- Grove 7:35 am
- BPYY School 8:10 am

BUS 3

- Davie 7:10 am
- Mapleridge 7:20 am
- Oakridge 7:30 am
- BPYY School 8:30 am

BUS 4

- Winn Dixie 7:20 am
- Grove 7:35 am
- BPYY School 8:25 am

TRANSPORTATION PICK-UP

BUS 5

- Sunny Isles Ross
  7:10 am
- Aventura Nordstrom
  7:35 am
- Hallandale Ross
  7:45 am
- BPYY School
  8:20 am

BUS 6

- NMB
  7:25 am
- Aventura Isles Gate
  7:45 am
- BPYY School
  8:35 am

TRANSPORTATION DROP-OFF

BUS 1

- BPYY School
  4:25 pm
- Oakridge
  4:15 pm
- Mapleridge
  4:25 pm
- Davie
  4:35 pm

BUS 2

- BPYY School
  4:35 pm
- Grove
  4:20 pm
- Winn Dixie
  4:30 pm

BUS 3

- BPYY School
  3:45 pm
- Oakridge
  4:15 pm
- Mapleridge
  4:25 pm
- Davie
  4:35 pm

BUS 4

- BPYY School
  3:55 pm
- Grove
  4:20 pm
- Winn Dixie
  4:30 pm

TRANSPORTATION DROP-OFF

BUS 5

- BPYY School
  4:05 pm
- Hallandale Ross
  4:20 pm
- Aventura Nordstrom
  4:35 pm
- Sunny Isles Ross
  4:50 pm

BUS 6

- BPYY School
  4:15 pm
- Aventura Isles Gate
  4:25 pm
- NMB
  4:40 pm

TRANSPORTATION
FRIDAY DROP-OFF

BUS 1

- BPYY School
  1:00 pm
- Oakridge
  1:30 pm
- Mapleridge
  1:40 pm
- Davie
  1:50 pm

BUS 2

- BPYY School
  1:10 pm
- Grove
  1:45 pm
- Winn Dixie
  2:00 pm

BUS 3

- BPYY School
  1:40 pm
- Oakridge
  3:00 pm
- Mapleridge
  3:40 pm
- Davie
  4:20 pm

BUS 4

- BPYY School
  1:45 pm
- Grove
  2:25 pm
- Winn Dixie
  3:05 pm

TRANSPORTATION FRIDAY DROP-OFF

BUS 5

- BPYY School
  1:20 pm
- Hallandale Ross
  1:50 pm
- Aventura Nordstrom
  2:25 pm
- Sunny Isles Ross
  2:35 pm

BUS 6

- BPYY School
  1:30 pm
- Aventura Isles Gate
  1:55 pm
- NMB
  2:05 pm

Pick-Up & Drop-off Locations

Mapleridge Stop
(in front of community pool)

Oakridge Stop
(in front of park)

Davie Stop
(in front of Zaitun gate)

Winn Dixie Stop
(Winn dixie Parking lot)

Grove Stop
(in the back parking lot of the grove hollywood Plaza)

Sunny Isles Stop
(Ross Parking lot 16499 Biscayne Boulevard)

Aventura Stop
(Nordstroms Parking lot 19507 Biscayne Boulevard)

Hallandale Stop
(Ross Parking lot 1425 E Hallandale Beach Boulevard)

NMB Stop
(on the side of street 801 NE 172nd Terrace)

Aventura Isles Stop
(in front of Aventura isles gate on 195th & Ives Dairy Road

August 14, 2023

RE: Bet Midrash Ohr Hachaim Hakadosh Inc.

Phase 2: Bus traffic plan upon removal of canopy:

Enclosed are the following documents:

1) Architectural drawing illustrating the queuing for buses in the school driveway (once canopy is removed.)
These are 71 passenger buses.

2) Engineering turning illustration of the buses exiting from the driveway to the alleyway.

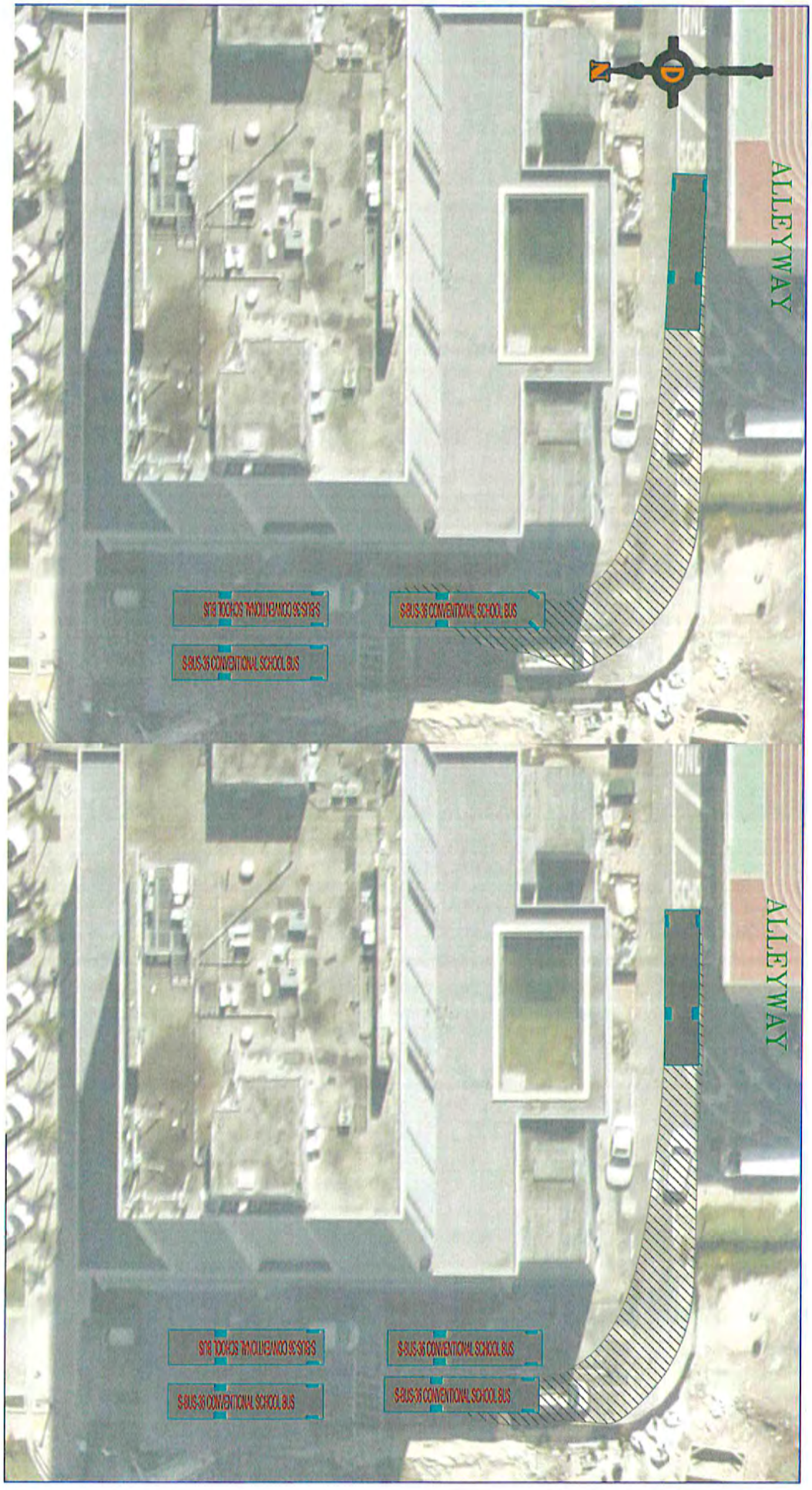
3) Survey of the building at 1720 Harrison illustrating canopy is owned by the building.

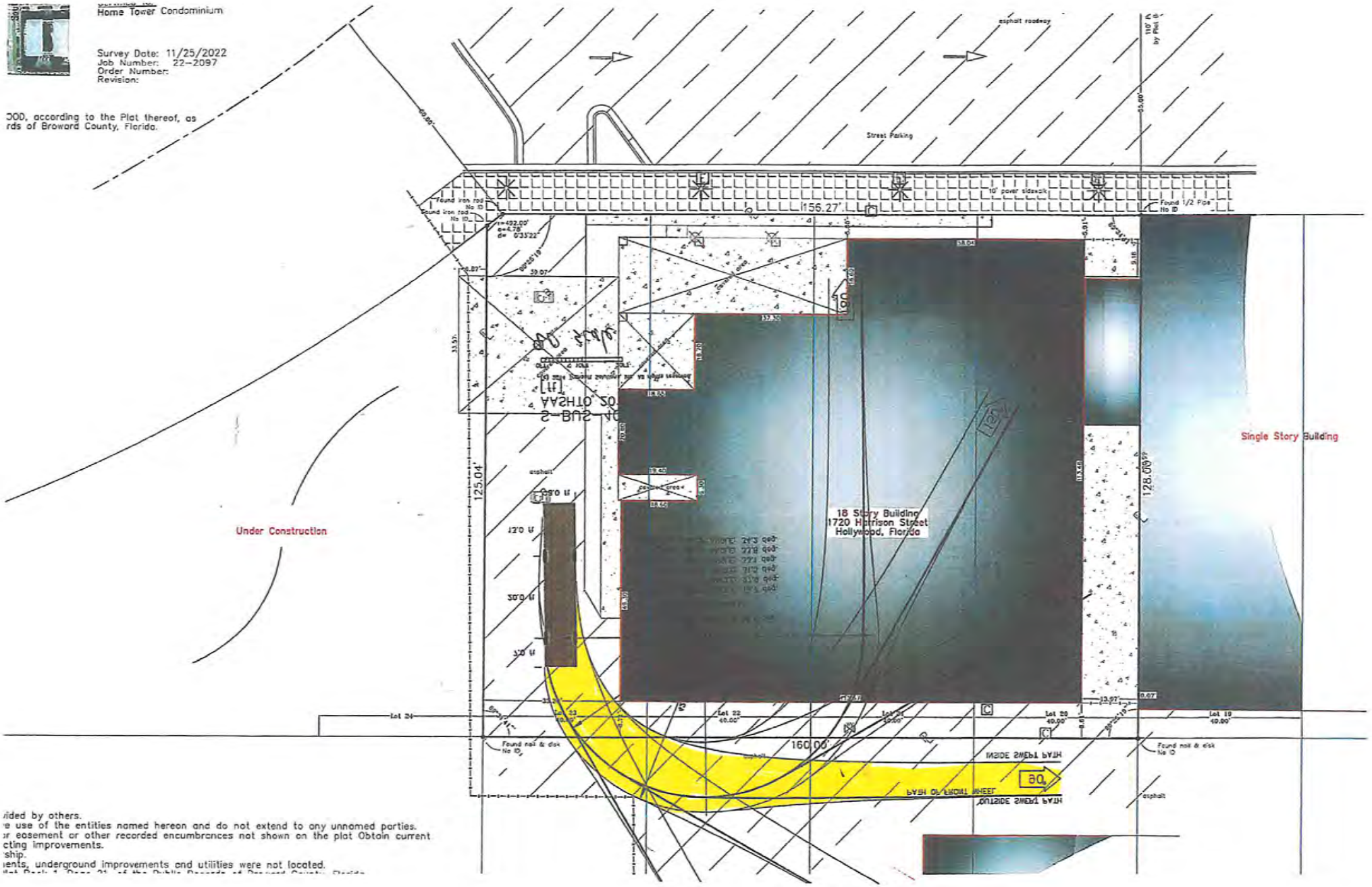
Once the canopy is removed, the school driveway can Que Four 71 passenger school buses (total of 284 Students). Once these buses exit 4 additional buses, will enter the driveway to pick up the rest of the students.

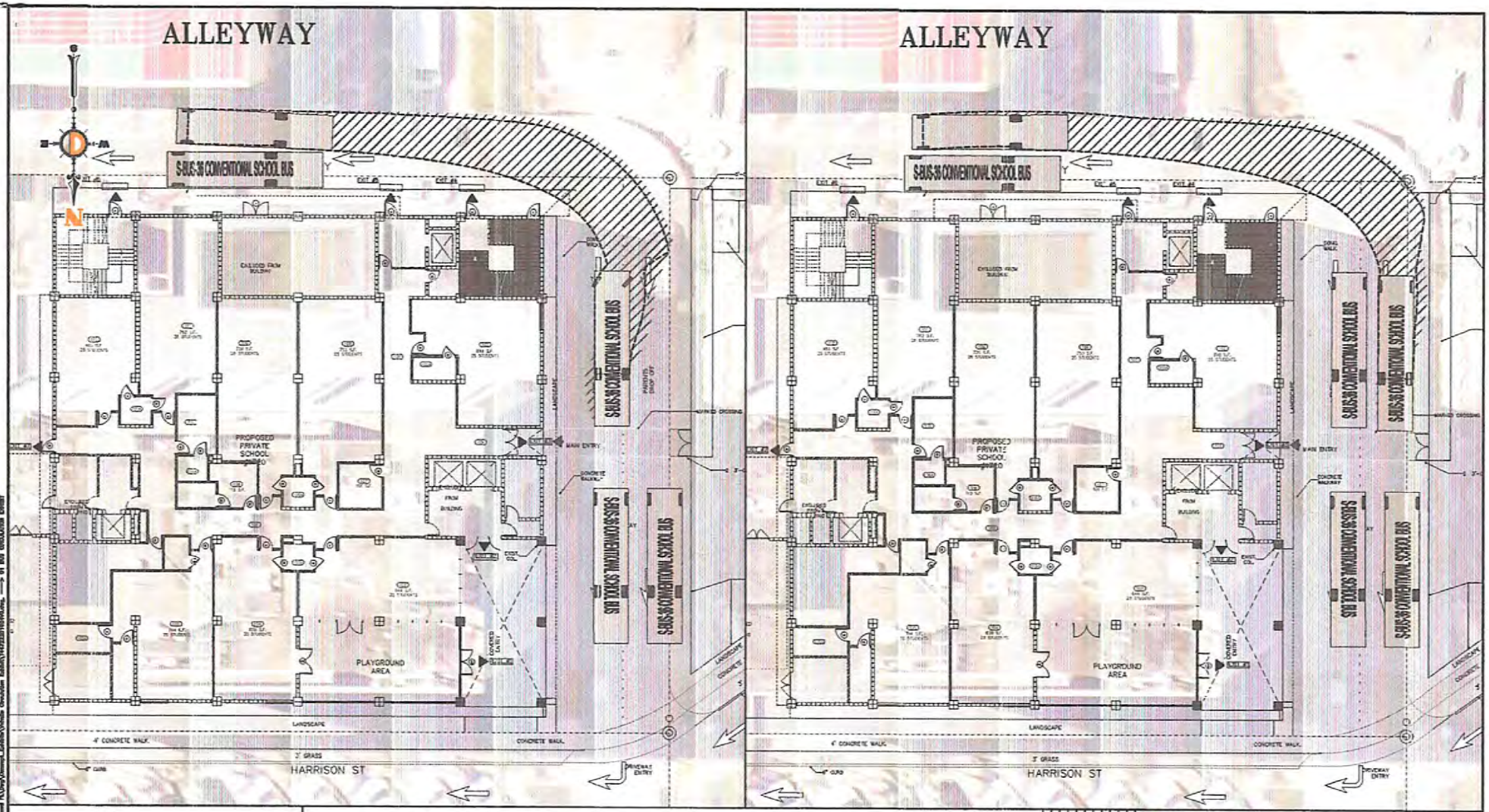
The same pick up and drop off procedure will be followed by the bus company IMK Transportation. Once Phase 2 is implemented the school will be able to handle a greater number of students in a shorter period of time for the pick up and drop off protocol.

Estimate time for phase 2 is in approximately two months or 10/31/23.

ONCE CANOPY REMOVED AND DIRECTION NORTH-SOUTH.




Home Tower Condominium
Survey Date: 11/25/2022
Job Number: 22-2097
Order Number:
Revision:
OOD, according to the Plat thereof, as
rds of Broward County, Florida.
asphalt roadway
Street Parking
10' paver sidewalk
Found iron rod No ID
Found 1/2 Pipe No ID
156.27'
125.04'
Under Construction
18 Story Building
1720 Harrison Street
Hollywood, Florida
Single Story Building
128.09'
Lot 24
Lot 22
Lot 20
Lot 19
160.00'
Found nail & disk No ID
asphalt
ided by others.
e use of the entities named hereon and do not extend to any unnamed parties.
r easement or other recorded encumbrances not shown on the plat Obtain current
cting improvements.
ship.
ents, underground improvements and utilities were not located.



S-BUS-36 – Conventional School Bus

Overall Length	35.800ft
Overall Width	8.000ft
Overall Body Height	9.063ft
Min Body Ground Clearance	1.184ft
Track Width	8.000ft
Lock-to-lock time	5.00s
Max Steering Angle (Virtual)	37.60°

EGRESS FROM EASTERN DROP-OFF/PICK-UP LANE

EGRESS FROM WESTERN DROP-OFF/PICK-UP LANE

GRAPHIC SCALE

DYNAMIC TRAFFIC, LLC

TITLE: **BUS CIRCULATION EXHIBIT**

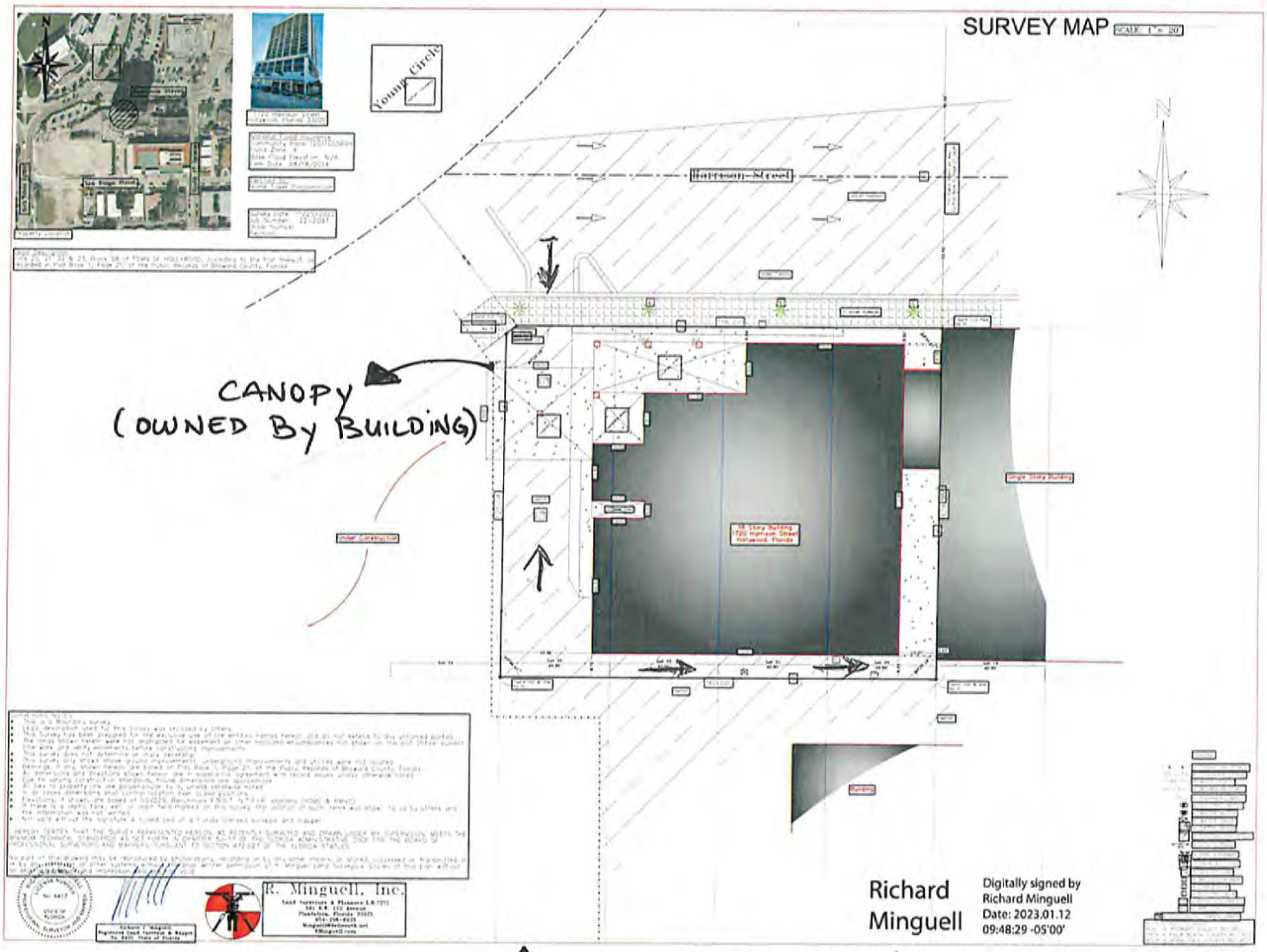
PROJECT: BET MIDRASH OHR HA-CHAYIM HA-KADOSH INC.
PROPOSED PRIVATE SCHOOL
1720 HARRISON STREET
CITY OF HOLLYWOOD, BROWARD COUNTY, FLORIDA

CRAIG W. PEREGOY
PROFESSIONAL ENGINEER

JOB No. 4473-22-01224
DATE: 07/07/2023
DRAWN BY: CCH
DESIGNED BY: CWP
CHECKED BY: CWP
SCALE: NO 1"=10'
SHEET No. 1 OF 1

1720 Harrison

* Survey *



Dynamic Traffic, LLC
100 NE 5th Avenue, Suite B2
Delray Beach, FL 33483
T. 732.681.0760

March 13, 2023

City of Hollywood
2600 Hollywood Boulevard
Hollywood, FL 33020-4807

Attn: Planning & Development Board

Re: Circulation Assessment
Special Exception Application
Proposed Private School
1720 Harrison Street
City of Hollywood, Broward County, FL
DT#: 4472-22-01924

Dear Board Members:

Dynamic Traffic has prepared the following assessment to support the Special Exception Application for the occupancy of a 700-student school in the commercial space located in an existing mixed-use building in the City of Hollywood, Broward County, Florida (The Project). Specifically, the property is located at 1720 Harrison Street, just east of Young Circle, and is occupied by a multi-family residential building with four (4) floors of commercial space on the lower levels of the building. Notably, the commercial space was previously occupied by the Hollywood Academy of Arts and Sciences (HAAS) school which was relocated to an adjacent building in the northwest corner of the intersection of Van Buren Street and South 17th Avenue. The Applicant is requesting the ability to continue the school use within the former HAAS space which consists of the following:

- First Floor – 6,604 Square Feet
- Second Floor – 8,996 Square Feet
- Third Floor – 10,683 Square Feet
- Fourth Floor – 10,683 Square Feet

Permitted uses in the subject space include commercial, retail and office uses among others, however, a school is identified as a use requiring a Special Exception although, as previously mentioned, the space was historically occupied by a school. A realistic occupancy scenario by permitted uses would likely include a retail/convenience type of use on the ground floor with general office space above. Certainly a portion of the ground floor would have to be utilized for office access and lobby space, etc. Therefore, this assessment conservatively assumes half of the ground floor space as ancillary to the office above and the remaining half occupied by a permitted convenience store.

Trip Generation

Trip generation projections for The Project were made utilizing trip generation research data as published under Land Use Code (LUC) 530 – *Private School (K-8)* in the Institute of Transportation Engineers' (ITE) publication, *Trip Generation, 11th Edition.* This publication sets forth trip generation rates based on traffic counts conducted at research sites throughout the country. Pursuant to City requirements, the weekday evening peak street hour (PM PSH) is assessed for the proposed use and compared to the occupation of the space by permitted uses as described above utilizing LUC 851 –

Convenience Store and LUC 710 – *General Office Building*. The following table shows the anticipated trip generation for the PM PSH and compares the proposed use with that which would be permitted without a Special Exception. All trip generation computations are shown in Appendix A.

Table I
Trip Generation Comparison

Use	PM PSH		
	In	Out	Total
Permitted 3,302 SF Retail and 33,664 SF Office	91	119	210
Proposed 700-Student Private School	84	98	182
Difference	**-7**	**-21**	**-28**

As shown above, a reasonable scenario of occupancy of the commercial space at 1720 Harrison Street would result in a higher traffic impact during the weekday PM PSH as compared with the proposed school which is a use that previously occupied the space and is requesting a Special Exception to continue to do so. Therefore, it can be concluded the traffic impacts to the surrounding roadway network will not be exacerbated beyond those which accompany a permitted use of the space.

Site Access

Access to the subject property exists via a driveway on Harrison Street that provides access to a covered loading area along the west side of the building as well as to the access driveway and "alley" utilized by HAAS for their pick-up/drop-off activity. This is performed via a one-way "loop" around the current HAAS building with ingress along Van Buren Street and Egress via South 17th Avenue. This roadway has sufficient width for two (2) lanes of vehicular travel. HAAS has preliminarily agreed to allow the usage of this roadway for the purposes of pick-up/drop-off for the proposed school as the operational hours are not coincident. The following assesses the pick-up/drop-off activities:

Pick-Up/Drop-off Circulation

Existing HAAS

Student pick-up and drop-off for the HAAS school is achieved via an access aisle that is entered via Van Buren Street, proceeds in a northerly direction around the southern side of the building, bends to the east and then proceeds in an easterly direction to South 17th Avenue. The designated zone for student loading and unloading is striped at approximately 120' in length and is located along the northerly side of the building. Parents are directed to access the pick-up/drop-off lane by entering Van Buren Street via South 16th Avenue and proceeding west to the driveway. No access is permitted from the west via a left-turn into the driveway or to Van Buren Street via South 17th Avenue. This one-way circulation simplifies the process and ensures queue spillover will only occur on westbound Van Buren Street and will not extend into the more heavily traveled throughfares of Harrison Street, Young Circle or South Federal Highway (US-1).

Proposed School

Student pick-up and drop-off for the proposed school will utilize the westerly lane, which is currently striped for short term parking spaces, adjacent to the access aisle utilized for HAAS. Vehicles will enter this repurposed lane adjacent to the existing HAAS pick-up/drop-off lane and proceed in a northerly direction towards the subject property. This activity can then proceed east and student

loading and unloading can occur along the 90' of available site frontage (Option 1). Consideration can also be given to allowing this traffic to proceed to the left (west) and utilize the dual access aisles that exist along the westerly side of the subject property (Option 2). The access pattern established by HAAS via South 16th Avenue to westbound Van Buren Street will also be utilized by the proposed school. Again, this simplified one-way circulation ensures queue spillover will only occur on westbound Van Buren Street and will not extend into the more heavily traveled throughfares of Harrison Street, Young Circle or South Federal Highway (US-1). The proposed circulation pattern is illustrated on Figure 1 in Appendix B.

If usage of the HAAS access aisle is precluded, an alternative option can be considered whereby arrivals occur via the same pattern as identified above with the exception being that vehicles will continue past the HAAS access point on westbound Van Buren Street and stage before the intersection with US-1. School Staff will then communicate between the staging area and pick-up/drop-off area to process vehicles as a right-turn onto US-1, a right-turn through Young Circle onto eastbound Harrison Street and then a right-turn into the site driveway. This controlled access scheme will also ensure queue spillover will only occur on westbound Van Buren Street and will not extend into the more heavily traveled throughfares of Harrison Street, Young Circle or South Federal Highway (US-1). The alternate proposed circulation pattern is illustrated on Figure 1B in Appendix B.

Pick-Up/Drop-off Procedure

Existing HAAS

Morning arrivals for HAAS occur between 7:45 AM and 8:15 AM. Evening pick-up is staggered as follows:

- Grades K-2 Dismissal: 2:25 PM
- Grades 3-5 Dismissal: 2:45 PM
- Middle School Dismissal: 3:00 PM

Pursuant to available enrollment data, the school has an enrollment of approximately 1,600 students with approximately 1,110 in Grades K-5 and 490 in middle school. Parents are issued color coded placards to identify the pick-up group to which they are assigned.

Proposed School

The proposed school pick-up/drop-off times will be staggered from those employed by HAAS in order to avoid overlap of this activity. Specifically, morning drop-off is scheduled from 8:15 to 8:40 Monday through Friday. Afternoon pick-up is scheduled from 3:45 PM to 4:15 PM Monday through Thursday and from 1:45 PM to 2:15 PM on Fridays. Tables I and II below detail these time periods in 15 minute increments based on the total number of students. A portion of students, carpool or walk to school or otherwise are not picked up and dropped off via a vehicle, however, this level of activity is expected to be similar between the two schools and the overall number of students was utilized to prepare an "apples to apples" comparison between the two schools. Student numbers were proportionately distributed over the time periods for both schools. Table I displays the breakdown of Monday through Thursday and Table II displays the breakdown of Fridays.

Table I
Pick-up/Drop-Off Distribution – Monday to Thursday

Mon -Thurs Time	Existing HAAS Students	Proposed School Students	Total Students
7:45 AM - 8:00 AM	800	0	800
8:00 AM - 8:15 AM	800	0	800
8:15 AM - 8:30 AM	0	420	420
8:30 AM - 8:45 AM	0	280	280
MAX Drop Off	800	420	800
1:45 PM - 2:00 PM	0	0	0
2:00 PM - 2:15 PM	0	0	0
2:15 PM - 2:30 PM	140	0	140
2:30 PM - 2:45 PM	415	0	415
2:45 PM - 3:00 PM	555	0	555
3:00 PM - 3:15 PM	490	0	490
3:15 PM - 3:30 PM	0	0	0
3:30 PM - 3:45 PM	0	0	0
3:45 PM - 4:00 PM	0	350	350
4:00 PM - 4:15 PM	0	350	350
MAX Pick-Up	555	350	555

Table II
Pick-up/Drop-Off Distribution – Friday

Friday Time	Existing HAAS Students	Proposed School Students	Total Students
7:45 AM - 8:00 AM	800	0	800
8:00 AM - 8:15 AM	800	0	800
8:15 AM - 8:30 AM	0	420	420
8:30 AM - 8:45 AM	0	280	280
MAX Drop Off	800	420	800
1:45 PM - 2:00 PM	0	350	350
2:00 PM - 2:15 PM	0	350	350
2:15 PM - 2:30 PM	140	0	140
2:30 PM - 2:45 PM	415	0	415
2:45 PM - 3:00 PM	555	0	555
3:00 PM - 3:15 PM	490	0	490
3:15 PM - 3:30 PM	0	0	0
3:30 PM - 3:45 PM	0	0	0
3:45 PM - 4:00 PM	0	0	0
4:00 PM - 4:15 PM	0	0	0
MAX Pick-Up	555	350	555

As shown, the maximum number of students either picked up or dropped off within any 15-minute increment will remain as exists associated with HAAS. Maximum morning drop-offs for the proposed school in any single period are 52.5% of the existing HAAS and maximum pick-ups are 63% of HAAS.

Available Queue Storage

Existing HAAS

As previously mentioned, HAAS has a 120-foot long loading area and an additional 160' of stacking capacity in advance of the loading area before reaching Van Buren Street for a total storage capacity of 280'. Figure 2 in Appendix B illustrates the available queue storage.

Proposed School

The proposed school has 90' of frontage available for loading to the east of the access drive and 150' of stacking capacity in advance of this loading area for a total of 240' of storage capacity from Van Buren Street. Notably, this represents approximately 86% of the available queue storage for HAAS but would accommodate a maximum demand of 63% of the incremental usage as described above. Additionally, as previously mentioned, consideration could be given to utilizing the two lanes adjacent to the west side of the subject building for student loading and unloading. This would provide 240' of loading area with 190' in advance of this area to Van Buren Street for a total of 430' of queue storage capacity, 54% more than provided by HAAS. Further consideration could be given to utilizing both available sides of the building for pick up and drop off which would allow for 520' total feet of queue storage, 86% more than that which is provided by HAAS for less than 2/3's of the student demand per 15-minute increment. This could be achieved by designating loading areas by grade and/or employing a similar placard system as that which is utilized by HAAS.

Conclusions

As detailed above, the utilization of the HAAS access via Van Buren, maintaining their prescribed circulation plan, staggering the hours of pick-up and drop-off and, serving far fewer students with more than enough available queue storage to compensate, will allow the continued use of the commercial space at 1720 Harrison Street as a school. An alternate circulation pattern can also be implemented in the event that the HAAS access from Van Buren Street is not available whereby school staff wireless communication will ensure that no queue spillover occurs on the regional roadway network of US-1, Harrison Street or Young Circle.

As is typical with school uses in urban areas, morning drop-off and evening pick-up result in temporary increases in activity during these limited time periods that generally result in short duration impacts to adjacent roadways. The circulation patterns described herein will ensure these impacts are limited to the lightly traveled Van Buren Street and don't impact the more heavily travelled regional roadways in the vicinity. It has also been demonstrated that the number of students and staggering of pick-up/drop-off activity can be assimilated in with the existing activity associated with the HAAS school that has been present in the area for many years.

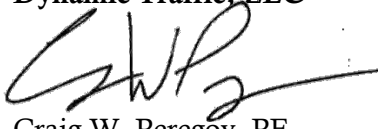
From a traffic planning perspective, the ability to integrate into an area with an existing school and its associated impacts is a better alternative than locating the proposed school elsewhere in the City and introducing these brief morning and afternoon disruptions to a new location.

Lastly, as was noted above, uses that could occupy the subject space without the need for a Special Exception could potentially generate more traffic during the critical weekday evening peak hour and would also generate traffic throughout the day and on weekends, times where traffic generation to/from a school is essentially non-existent. Therefore, it can be concluded that the subject property is ideally suited for continued use as a school and the cooperation between adjacent schools will result

in operations that will not exacerbate the typical impacts experienced with urban schools that are currently, and have been for some time, occurring the area.

If you have any questions on the above, please do not hesitate to contact the undersigned.

Sincerely,
Dynamic Traffic, LLC



Craig W. Peregoy, PE
FL PE License #78893

Appendix A – Trip Generation Information

Land Use: 851
Convenience Store

Description

A convenience store is a small retail business that sells grocery and other everyday items that a person may need or want as a matter of convenience. Convenience stores are typically located along major thoroughfares to optimize motorist convenience. Extended hours of operation (with many open 24 hours, 7 days a week) further support the convenience of the store. A convenience store is also commonly called a convenience market.

The product mix typically includes pre-packaged grocery items, beverages, dairy products, snack foods, confectionary, tobacco products, over-the-counter drugs, and toiletries. A convenience store may sell alcohol, often limited to beer and wine.

Coffee and pre-made sandwiches are also commonly sold at a convenience store. Made-to-order food orders are sometimes offered. Some stores offer limited seating.

Convenience store/gas station (Land Use 945) is a related use.

Additional Data

The technical appendices provide supporting information on time-of-day distributions for this land use. The appendices can be accessed through either the ITETripGen web app or the trip generation resource page on the ITE website (https://www.ite.org/technical-resources/topics/trip-and-parking-generation/).

The sites were surveyed in the 1980s, the 1990s, the 2000s, and the 2010s in Alberta (CAN), Arizona, California, New Jersey, New York, Ontario, Canada, Oregon, Pennsylvania, Texas, and Virginia.

Source Numbers

168, 253, 282, 542, 550, 862, 863, 882, 931, 955, 975

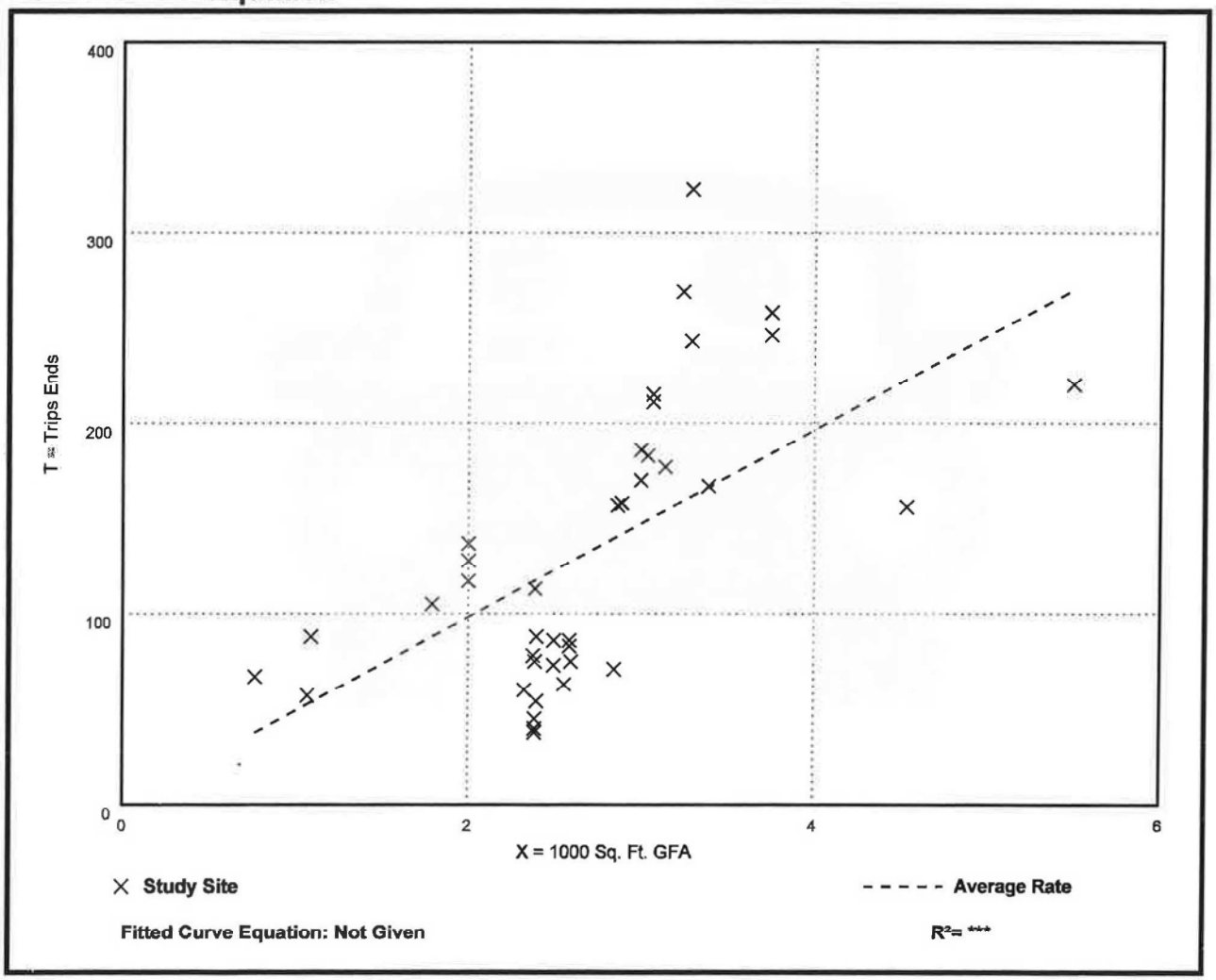
Convenience Store
(851)

Vehicle Trip Ends vs: 1000 Sq. Ft. GFA
On a: Weekday,
Peak Hour of Adjacent Street Traffic,
One Hour Between 4 and 6 p.m.
Setting/Location: General Urban/Suburban
Number of Studies: 39
Avg. 1000 Sq. Ft. GFA: 3
Directional Distribution: 51% entering, 49% exiting 83 In, 79 Out

Vehicle Trip Generation per 1000 Sq. Ft. GFA

Average Rate	Range of Rates	Standard Deviation
49.11 x 3.302 = 162	15.90 - 98.18	20.84

Data Plot and Equation



Land Use: 710
General Office Building

Description

A general office building is a location where affairs of businesses, commercial or industrial organizations, or professional persons or firms are conducted. An office building houses multiple tenants that can include, as examples, professional services, insurance companies, investment brokers, a banking institution, a restaurant, or other service retailers. A general office building with a gross floor area of 10,000 square feet or less is classified as a small office building (Land Use 712). Corporate headquarters building (Land Use 714), single tenant office building (Land Use 715), medical-dental office building (Land Use 720), office park (Land Use 750), research and development center (Land Use 760), and business park (Land Use 770) are additional related uses.

Additional Data

If two or more general office buildings are in close physical proximity (within a close walk) and function as a unit (perhaps with a shared parking facility and common or complementary tenants), the total gross floor area or employment of the paired office buildings can be used for calculating the site trip generation. If the individual buildings are isolated or not functionally related to one another, trip generation should be calculated for each building separately.

For study sites with reported gross floor area and employees, an average employee density of 3.3 employees per 1,000 square feet GFA (or roughly 300 square feet per employee) has been consistent through the 1980s, 1990s, and 2000s. No sites counted in the 2010s reported both GFA and employees.

The average building occupancy varies considerably within the studies for which occupancy data were provided. The reported occupied gross floor area was 88 percent for general urban/suburban sites and 96 percent for the center city core and dense multi-use urban sites.

The technical appendices provide supporting information on time-of-day distributions for this land use. The appendices can be accessed through either the ITETripGen web app or the trip generation resource page on the ITE website (https://www.ite.org/technical-resources/topics/trip-and-parking-generation/).

The average numbers of person trips per vehicle trip at the eight center city core sites at which both person trip and vehicle trip data were collected are as follows:

- 2.8 during Weekday, Peak Hour of Adjacent Street Traffic, one hour between 7 and 9 a.m.
- 2.9 during Weekday, AM Peak Hour of Generator
- 2.9 during Weekday, Peak Hour of Adjacent Street Traffic, one hour between 4 and 6 p.m.
- 3.0 during Weekday, PM Peak Hour of Generator

The average numbers of person trips per vehicle trip at the 18 dense multi-use urban sites at which both person trip and vehicle trip data were collected are as follows:

- 1.5 during Weekday, Peak Hour of Adjacent Street Traffic, one hour between 7 and 9 a.m.
- 1.5 during Weekday, AM Peak Hour of Generator
- 1.5 during Weekday, Peak Hour of Adjacent Street Traffic, one hour between 4 and 6 p.m.
- 1.5 during Weekday, PM Peak Hour of Generator

The average numbers of person trips per vehicle trip at the 23 general urban/suburban sites at which both person trip and vehicle trip data were collected are as follows:

- 1.3 during Weekday, Peak Hour of Adjacent Street Traffic, one hour between 7 and 9 a.m.
- 1.3 during Weekday, AM Peak Hour of Generator
- 1.3 during Weekday, Peak Hour of Adjacent Street Traffic, one hour between 4 and 6 p.m.
- 1.4 during Weekday, PM Peak Hour of Generator

The sites were surveyed in the 1980s, the 1990s, the 2000s, the 2010s, and the 2020s in Alberta (CAN), California, Colorado, Connecticut, Georgia, Illinois, Indiana, Kansas, Kentucky, Maine, Maryland, Michigan, Minnesota, Missouri, Montana, New Hampshire, New Jersey, New York, Ontario (CAN)Pennsylvania, Texas, Utah, Virginia, and Washington.

Source Numbers

161, 175, 183, 184, 185, 207, 212, 217, 247, 253, 257, 260, 262, 273, 279, 297, 298, 300, 301, 302, 303, 304, 321, 322, 323, 324, 327, 404, 407, 408, 419, 423, 562, 734, 850, 859, 862, 867, 869, 883, 884, 890, 891, 904, 940, 944, 946, 964, 965, 972, 1009, 1030, 1058, 1061

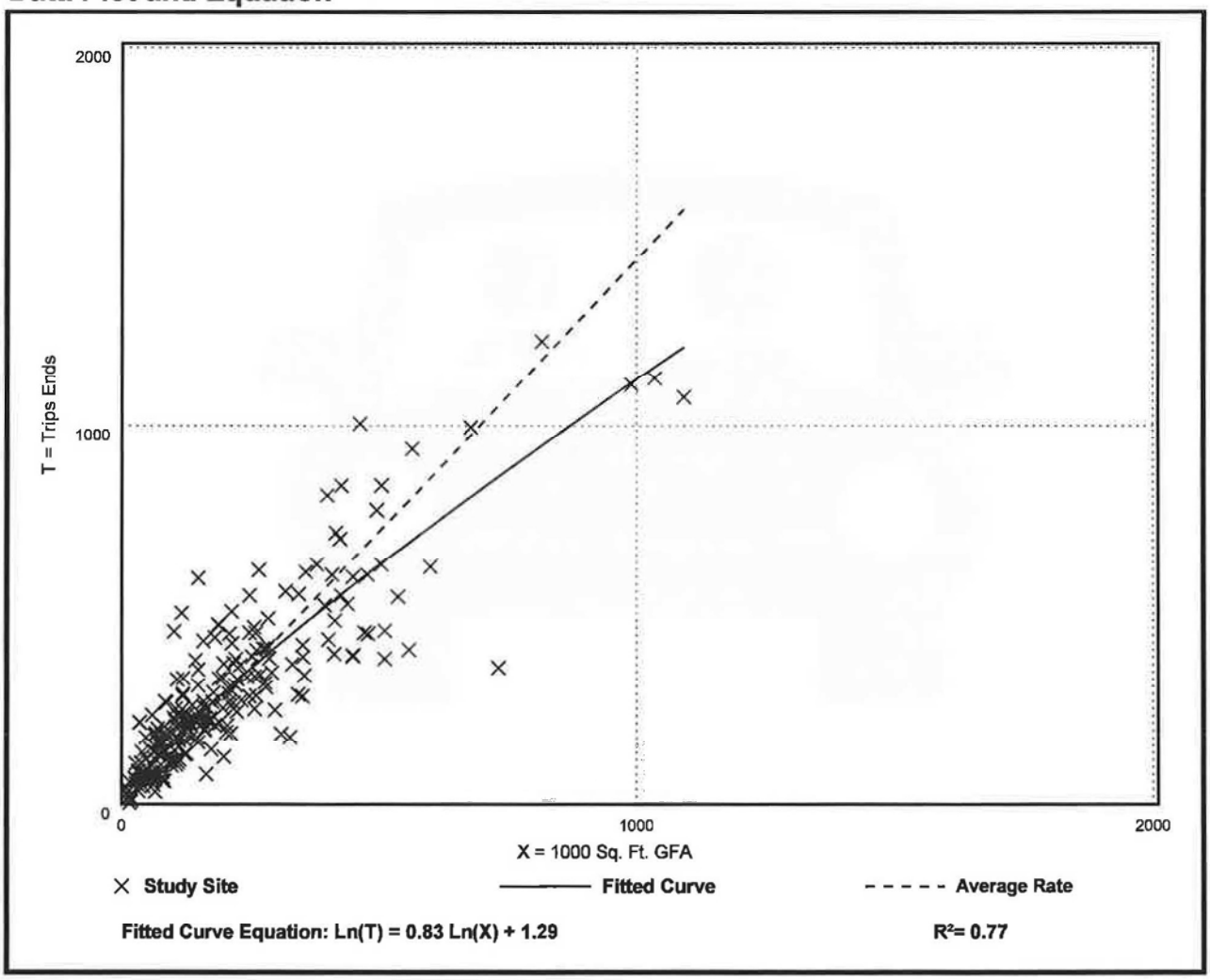
General Office Building
(710)

Vehicle Trip Ends vs: 1000 Sq. Ft. GFA
On a: Weekday,
Peak Hour of Adjacent Street Traffic,
One Hour Between 4 and 6 p.m.
Setting/Location: General Urban/Suburban
Number of Studies: 232
Avg. 1000 Sq. Ft. GFA: 199
Directional Distribution: 17% entering, 83% exiting 8 In, 40 Out

Vehicle Trip Generation per 1000 Sq. Ft. GFA

Average Rate	Range of Rates	Standard Deviation
1.44 x 33.664 = 48	0.26 - 6.20	0.60

Data Plot and Equation



Fitted Curve Equation: Ln(T) = 0.83 Ln(X) + 1.29

R^2= 0.77

Land Use: 530
Private School (K-8)

Description

A private school (K-8) serves students attending kindergarten through the eighth grade. The school may also offer pre-kindergarten classes and extended care and day care. Students may travel a long distance from their residence to the private school. Elementary school (Land Use 520), middle school/junior high school (Land Use 522), private school (K-12) (Land Use 532), private high school (Land Use 534), charter elementary school (Land Use 536), and charter school (Land Use 538) are related uses.

Additional Data

The sites were surveyed in the 1980s, 1990s, the 2000s, and the 2010s in Arizona, Florida, Maryland, Oregon, Pennsylvania, and Texas.

Source Numbers

355, 444, 516, 536, 634, 905, 906, 940

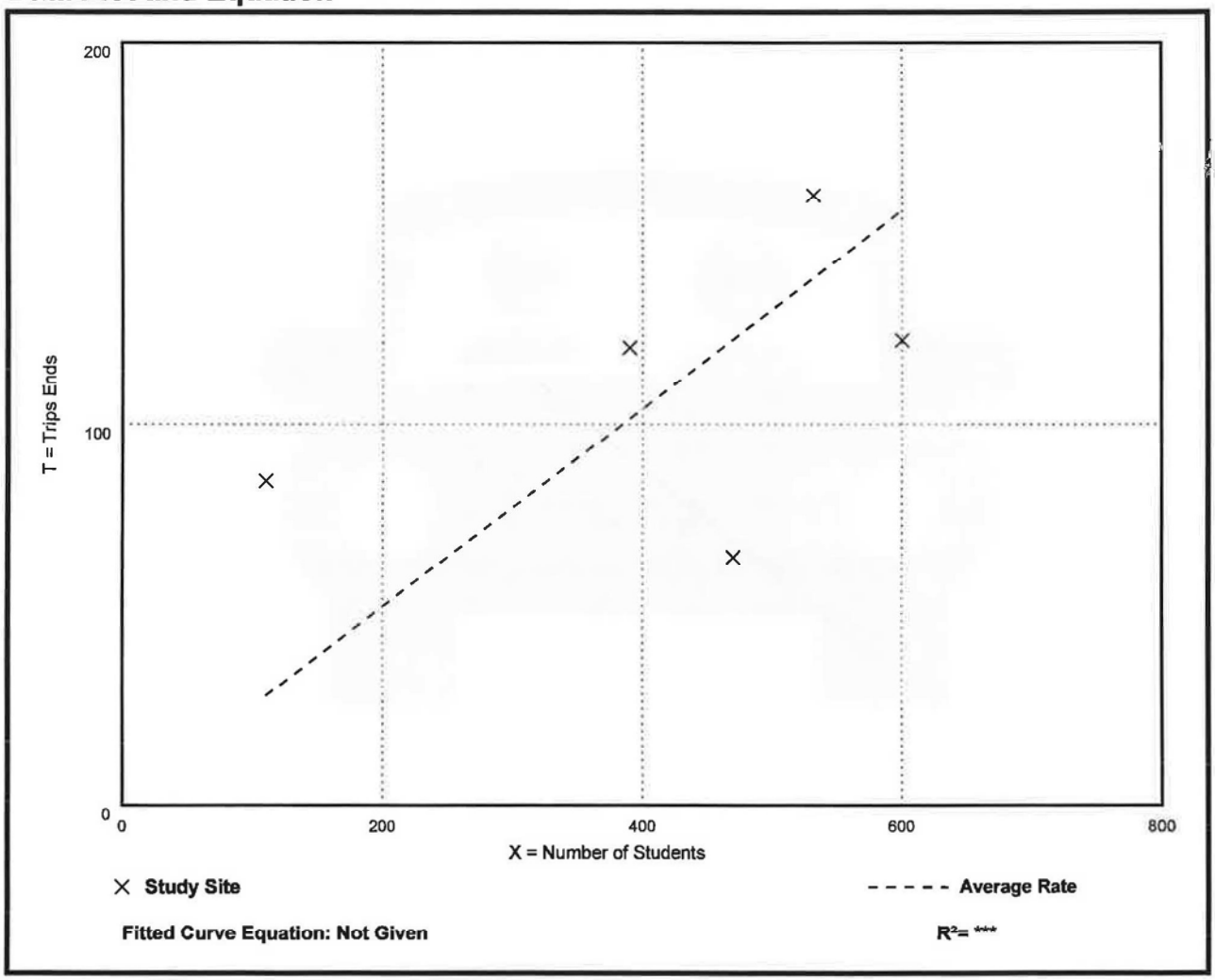
Private School (K-8)
(530)

Vehicle Trip Ends vs: Students
On a: Weekday,
Peak Hour of Adjacent Street Traffic,
One Hour Between 4 and 6 p.m.
Setting/Location: General Urban/Suburban
Number of Studies: 5
Avg. Num. of Students: 420
Directional Distribution: 46% entering, 54% exiting 84 In, 98 Out

Vehicle Trip Generation per Student

Average Rate	Range of Rates	Standard Deviation
0.26 x 700 = 182	0.14 - 0.77	0.15

Data Plot and Equation



Appendix B – Circulation Map

Proposed School
1720 Harrison Street, Hollywood, Florida
4472-22-01924

Figure 1

Circulation Map

Proposed School
1720 Harrison Street, Hollywood, Florida
4472-22-01924

Figure 1B

Circulation Map Alternative

Proposed School
1720 Harrison Street, Hollywood, Florida
4472-22-01924

Figure 2

Queue Storage Exhibit

Dynamic Traffic, LLC
100 NE 5th Avenue, Suite B2
Delray Beach, FL 33483
T. 732.681.0760

August 15, 2023

Rabbi Alon Razla
2863 Stirling
Dania Beach, FL 33312

Re: Traffic Impact Assessment
Proposed Private School
1720 Harrison Street
City of Hollywood, Broward County, FL
DT#: 4472-22-01924

Dear Rabbi Razla:

Dynamic Traffic has reviewed the bus pick-up/drop-off plans and procedures outlined by IMR Transportation. It is our understanding that the initial phase (Phase 1) procedure will be temporarily introduced while the canopy in the site driveway is removed and while the school is still not at its maximum enrollment. Under this phase, a smaller bus will stage along Harrison Street at the site driveway location. The schedule will be staggered such that only one bus at a time is staged and students will be guided to/from the buses across the sidewalk via temporary barricades to control the flow of students who will be supervised by staff while crossing the sidewalk to avoid placing barricades which would block the public right-of-way. This is akin to a school bus stop in any neighborhood picking up and dropping off students. However, in this location the procedure will be safer as the bus will be shielded by a curbed island which opens just to the west to form the third eastbound lane on Harrison Street. Through traffic will easily be able to bypass the bus when approaching from Young Circle. Circulation diagrams are not required for this phase as the bus will utilize the existing right-most lane of Harrison Street and the site driveway entrance which will be closed for the removal of the canopy.

Phase 2 will be implemented when the canopy is removed and will allow busses to stage on-site for pick-up and drop-off. Four (4) busses can stage simultaneously and the bus company has provided a detailed logistical schedule that will ensure staggered arrivals to ensure that there will be no hesitation or queueing on Harrison Street. Buses will then exit the site via the alley adjacent to the HAAS school and exit onto South 17th Avenue. The four (4) 71-passenger busses will accommodate 284 students for each pick-up and drop-off cycle. A detailed turning diagram will be provided on an updated site survey to demonstrate the ability for busses to adequately circulate when Phase 2 is implemented. Based on the bus company experience and detailed logistical scheduling information, it is anticipated that this can be accomplished safely and efficiently. Both phases will serve to limit the volume of traffic accessing the school and obviate the potential for queuing and the need for a Traffic Study.

If you have any questions on the above, please do not hesitate to contact the undersigned.

Sincerely,
Dynamic Traffic, LLC

Craig W. Peregoy, PE
FL PE License #78893

Craig W Peregoy
Digitally signed by Craig W Peregoy
Date: 2023.09.19 20:07:44 -04'00'