

SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM

SUBJECT: Appeal of the Board of Adjustment's decision to deny a special exception for the establishment of a church and attendant facilities on property zoned A-5 (Rural Zoning Classification District); (Cornerstone Church of Orlando, appellant).

DEPARTMENT: Planning & Development **DIVISION:** Planning

AUTHORIZED BY: Donald S. Fisher **CONTACT:** Earnest McDonald **EXT.** 7430

Agenda Date 07-22-03 Regular Consent Work Session Briefing
Public Hearing – 1:30 Public Hearing – 7:00

MOTION/RECOMMENDATION:

1. UPHOLD the Board of Adjustment's decision to deny a special exception for the establishment of a church and attendant facilities on property zoned A-5 (Rural Zoning Classification District); (Cornerstone Church of Orlando, appellant).
2. REVERSE the Board of Adjustment's decision to deny a special exception for the establishment of a church and attendant facilities on property zoned A-5 (Rural Zoning Classification District); (Cornerstone Church of Orlando, applellant).
3. CONTINUE the request to a time and date certain.

(Commission District #1, Maloy) (Earnest McDonald, Principal Coordinator)

GENERAL INFORMATION:

Location: Northeast corner of Willingham Road & Old Chuluota Road
Proposed Uses: Church & Attendant Facilities
Existing Zoning: A-5 (Rural Zoning Classification District)
Applicable Regulations: A-5 District, LDC Section 30.104(b)(3)

STAFF RECOMMENDATION:

Staff recommends the Board of County Commissioners reverse the Board of Adjustment's decision to deny a special exception for the establishment of a church and attendant facilities on property zoned A-5 (Rural Zoning Classification District), based on the

Reviewed by: _____
Co Atty: RCC
DFS: _____
Other: MS
DCM: SS
CM: MS
File No. ph700pdp03

presented findings and subject to staff conditions enumerated in this report.

BACKGROUND / REQUEST:

- The applicant proposes to establish a 7,800 SF church on a 4.88 acre site.
- The site is located in the A-5 (Rural Zoning Classification District), which only allows churches and attendant facilities as conditional uses; a special exception is thereby requested.
- On February 25, 2002, the Board of Adjustment (BOA) denied a request for the establishment of a 12,000 SF church on the subject property.
- The applicant subsequently reduced the size of the proposed church from 12,000 SF to 7,800 SF and resubmitted a second application for special exception following the lapse of one (1) year, as allowed by the Land Development Code.
- The new application was considered by the BOA on April 28, 2003; the BOA subsequently continued the request to its May 19, 2003 regular meeting after requesting that staff further evaluate issues related to stormwater management, drainage and traffic impact.
- On May 19, 2003, the BOA denied the request for special exception, which is the reason for this appeal.

GENERAL INFORMATION:

ZONING & FLU	DIRECTION	EXISTING ZONING	EXISTING FLU	USE OF PROPERTY
	SITE	A-5	RURAL-5	VACANT
	NORTH	A-5	RURAL-5	VACANT
	SOUTH	A-5	RURAL-5	RESIDENTIAL
	EAST	A-5	RURAL-5	VACANT
	WEST	A-5	RURAL-5	RESIDENTIAL & VACANT
SITE CONDITIONS	<ul style="list-style-type: none"> • The site is located in the County's East Rural Area, where development standards, such as active/passive buffers, central water & sewer requirements, street lighting, internal sidewalks, etc. do not apply. • The site has frontage on Willingham Road & Old Chuluota Road; the proposed site plan shows single driveway access from Willingham Road. • The site would be serviced by on-site well & septic systems. • A 7,800 SF church would generate an average of 9.37 trips per 1,000 SF of gross floor area during peak hour on Sunday and an average of 9.32 trips per 1,000 SF of gross floor area on a weekday. In sum, a church of the size proposed would generate an average of 75 trips on Sunday and up to 73 trips on a weekday. 			

	<ul style="list-style-type: none">• The Traffic Engineering Division has determined there are approximately 445 daily trips on the abutting section of Willingham Road. The proposed church would increase the average daily traffic volume to approximately 520 daily trips.• The abutting section of Willingham Road is classified as a <i>Rural Local Roadway</i> with a level of service (LOS) "A" and a capacity of 2,250 trips per day. Including the trips that would result from the proposed church, the service demand would remain at approximately 23 percent of adjoining road capacity.• A gopher tortoise habitat has been observed on the site. A listed species survey would be required to address the potential for gopher tortoises on the site.• Eagle nest #SE053 is located within a mile of the site. A letter from the Florida Fish and Wildlife Conservation Commission would be required to confirm the location of this nest and the requirements for developing the site with respect to the same.• There are no clearly defined development trends in the immediate area, other than large lot, single-family residential and agricultural uses.
<p>STANDARDS FOR GRANTING SPECIAL EXCEPTIONS & STAFF FINDINGS</p>	<p>Prior to the granting of a special exception for any conditional use allowed in the A-5 (Rural Zoning Classification District), the Land Development Code requires compliance of the same with the following standards:</p> <ol style="list-style-type: none">1. <u>THE PROPOSED USE IS CONSISTENT WITH THE GENERAL ZONING PLAN OF THE A-5 (RURAL ZONING CLASSIFICATION DISTRICT).</u> The proposed church, which would include a sanctuary, educational center and office are conditional uses in the A-5 District. To ensure consistency with the general zoning plan of the A-5 District and protect the character of the area, the Board of County Commissioners (BCC) may impose reasonable restrictions and conditions in accordance with Section 30.104(b) of the Land Development Code, if it decides to reverse the decision of the BOA.2. <u>THE PROPOSED USE IS NOT HIGHLY INTENSIVE IN NATURE.</u> The proposed use is not highly intensive in nature, as the sanctuary proposes to seat no more than 225 people.

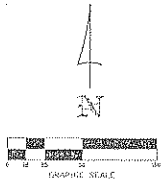
	<p>3. <u>THE PROPOSED USE IS COMPATIBLE WITH THE CONCEPT OF LOW-DENSITY RURAL LAND USE.</u> The proposed use would be consistent with the concept of low-density, rural land use with the imposition of the conditions recommended by staff in this report.</p> <p>4. <u>THE PROPOSED USE HAS ACCESS TO AN ADEQUATE LEVEL OF PUBLIC SERVICES.</u> Pursuant to the County's Comprehensive Plan, a minimum level of services and facilities would be required for the development of this property.</p>
<p>STAFF RECOMMENDATION</p>	<p>Staff conducted a thorough review of stormwater, drainage, and traffic issues associated with the proposed development. Staff also considered the applicability of the <i>Religious Land Use & Institutionalized Persons Act (RLUIPA)</i> and Florida's <i>Religious Freedom Restoration Act (RFRA)</i> to the proposed use.</p> <p>As previously stated in this report, staff believes the proposed church would be consistent with the trend of development in the area, with the imposition of the following conditions:</p> <ol style="list-style-type: none"> 1. The maximum square footage of proposed buildings shall not exceed 7,800 SF. 2. A minimum 15-foot natural buffer shall be retained along the northern and eastern property lines. 3. Any exterior lighting shall be limited to 16 ft in height, utilize cutoff/shoebox style lighting, and be located a minimum of 50 ft from property lines to minimize impact to adjacent properties. 4. The final site plan shall meet the applicable requirements of the Seminole County Vision 2020 Comprehensive Plan and Land Development Code. <p>Staff thereby recommends the BCC reverse the decision of the BOA to deny the request for special exception, based on the findings presented and subject to the conditions enumerated above.</p> <p>If the BCC should decide to uphold the BOA's decision, the findings upon which such a decision is based should further "a compelling governmental interest" and constitute the "least restrictive means" of doing so as required by the <i>Religious Land Use & Institutionalized Persons Act (RLUIPA)</i> and Florida's <i>Religious Freedom Restoration Act (RFRA)</i>. The BCC may want to consider public health and safety concerns as compelling governmental interests.</p>

Attachments:

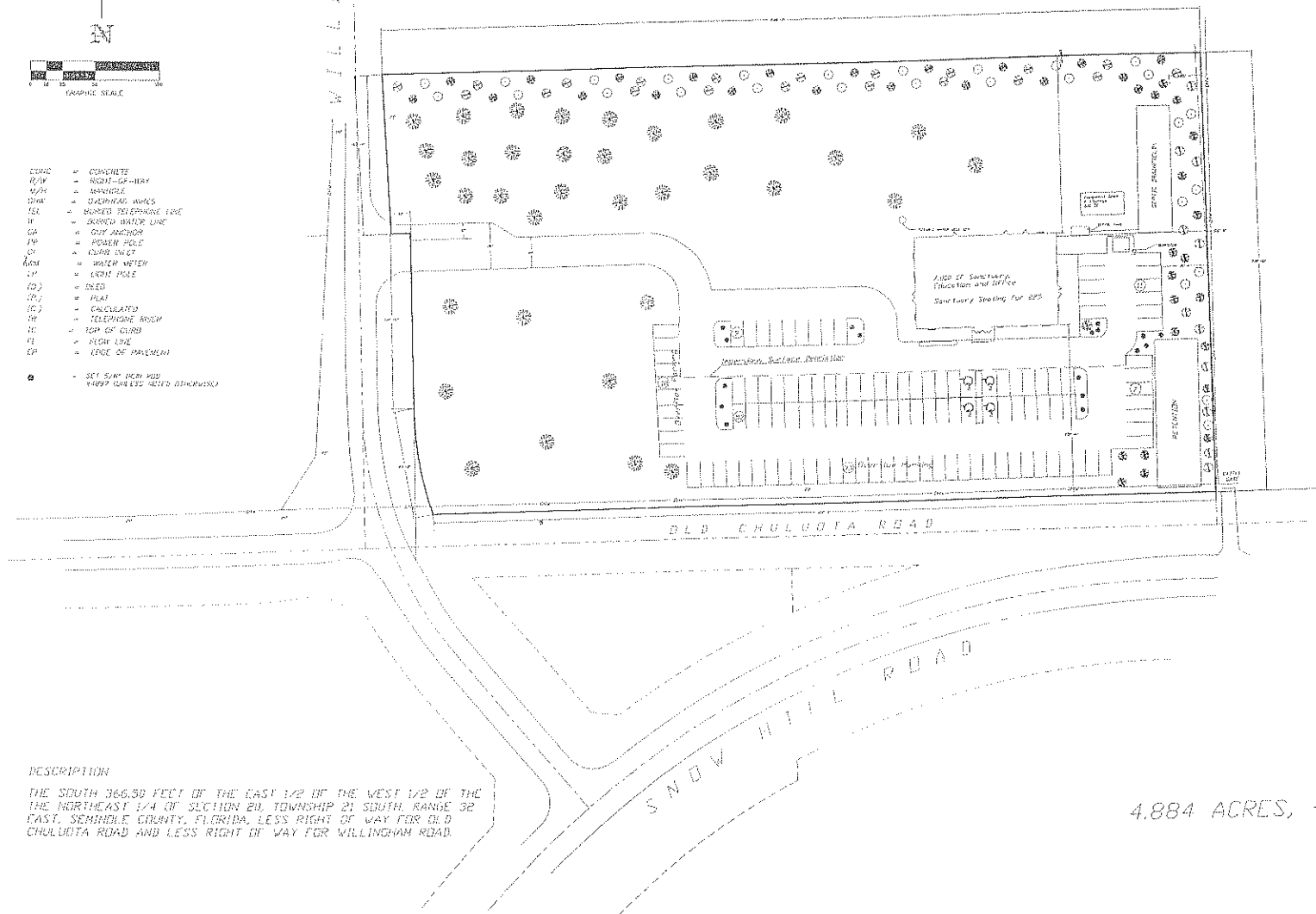
Proposed site plan, Recorded Development Order No. 03-32000005, Decision on Appeal, Summary of *Religious Land Use & Institutionalized Persons Act (RLUIPA)* and Florida's *Religious Freedom Restoration Act (RFRA)*, Minutes of the April 28, 2003 and May 19, 2003 BOA Regular Meetings, and Letters from affected property owners.

Cornerstone Church

1 Case requirement for Section 301201 parking = 1 space per 3 sanctuary seats
 4000 ÷ 3 = 1333 spaces
 Parking on sheet = 29 (4 HANDICAP) + 43 (Other) = 100
 Estimated Total Impervious Surface 30,767 S.F. (70%)



- CONC = CONCRETE
- R/W = RIGHT-OF-WAY
- M/W = MANSARD
- SWR = SWIRLED WALKS
- TEL = BURIED TELEPHONE LINE
- W = BURIED WATER LINE
- GP = GUY ANCHOR
- FW = FLOW FIELD
- CS = CURB INLET
- WMT = WATER METER
- LP = LIGHT POLE
- TS = TREE
- ST = STREET
- CL = CALCULATED
- TR = TELEPHONE RADIUS
- CL = TOP OF CURB
- FL = FLOW LINE
- EP = EDGE OF PAVEMENT
- = SET BACK FROM ROAD (SEE 1989 AND 1992 RECORD DRAWINGS)



DESCRIPTION
 THE SOUTH 366.50 FEET OF THE EAST 1/2 OF THE WEST 1/2 OF THE
 THE NORTHEAST 1/4 OF SECTION 20, TOWNSHIP 21 SOUTH, RANGE 32
 EAST, SEMINOLE COUNTY, FLORIDA, LESS RIGHT OF WAY FOR OLD
 CHULGOTA ROAD AND LESS RIGHT OF WAY FOR WILLINGHAM ROAD.

4.884 ACRES, +-

Done and Ordered on the date first written above.

By: Matthew West
Matthew West, Planning Manager

STATE OF FLORIDA)
COUNTY OF SEMINOLE)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared _____ who is personally known to me or who has produced _____ as identification and who executed the foregoing instrument.

WITNESS my hand and official seal in the County and State last aforesaid this 23 day of MAY, 2003.



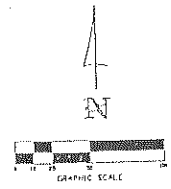
Karen Mathews
My Commission DD144550
Expires August 26, 2006

Karen Mathews
Notary Public, in and for the County and State
Aforementioned

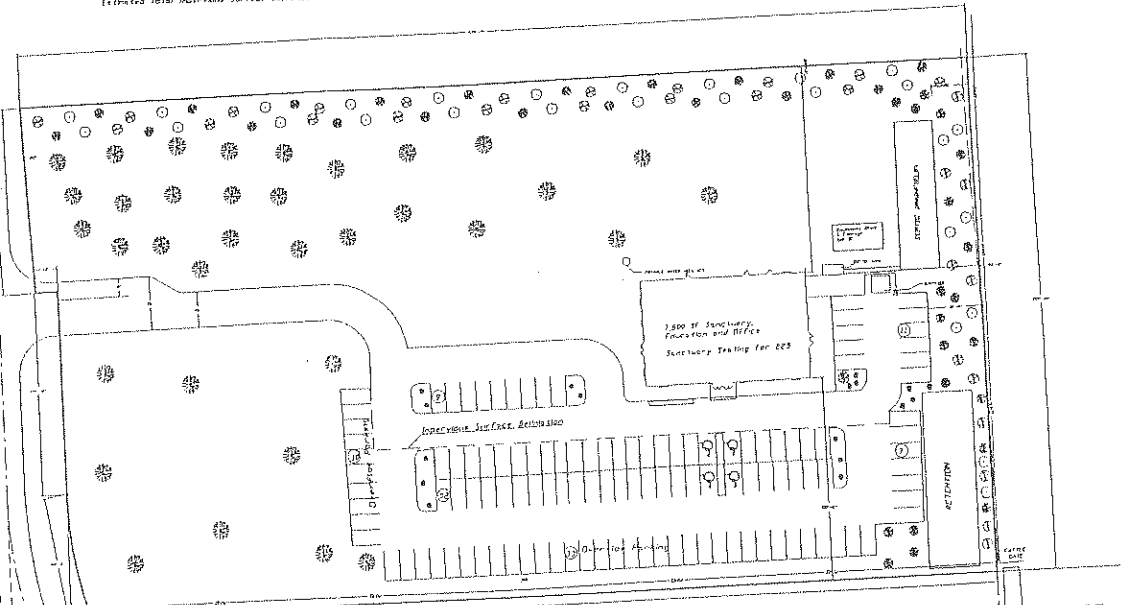
My Commission Expires:

Cornerstone Church

REMARKS
 1. Code requirement Over Section 30102(1) marking - 1 space per 9 sanctuary seats = 45 spaces
 Parking as shown = 79 (4 HANDICAP) + 43 Description = 122
 Estimated total Impervious Surface 34,767.241 (1770)



- CONC = CONCRETE
- E/W = EDGE-OF-WAY
- M/H = MANHOLE
- D/W = OVERHEAD WIRES
- TL = BURIED TELEPHONE LINE
- W = BURIED WATER LINE
- CA = CURB ANCHOR
- PP = POWER POLE
- CI = CURB INLET
- WM = WATER METER
- LP = LIGHT POLE
- (D) = DEED
- (P) = PLAT
- (C) = CALCULATED
- TR = TELEPHONE RISER
- TC = TOP OF CURB
- FL = FLOOR LINE
- EP = EDGE OF PAVEMENT
- = 4" x 8" IRON ROD
 4887 THICKNESS UNLESS OTHERWISE



OLD CHULUDTA ROAD

SNOW HILL ROAD

DESCRIPTION
 THE SOUTH 366.50 FEET OF THE EAST 1/2 OF THE WEST 1/2 OF THE THE NORTHEAST 1/4 OF SECTION 20, TOWNSHIP 21 SOUTH, RANGE 32 EAST, SEMINOLE COUNTY, FLORIDA, LESS RIGHT OF WAY FOR OLD CHULUDTA ROAD AND LESS RIGHT OF WAY FOR WILLINGHAM ROAD.

4.884 ACRES, +-

SEMINOLE COUNTY BOARD OF COUNTY COMMISSIONERS
DECISION ON APPEAL

This decision is made by the Board of County Commissioners of Seminole County, Florida, this 22nd day of July 2003, in accordance with Section 30.43 of the Land Development Code of Seminole County (LDC), as amended, reversing a decision by the Board of Adjustment to deny a special exception for the establishment of a church and attendant facilities in the A-5 (Rural Zoning Classification District) on property located at the northeast corner of Willingham Road and Old Chuluota Road.

A. FINDINGS OF FACT

1. On May 19, 2003, the Board of Adjustment denied a special exception to establish a church and attendant facilities, as requested by Cornerstone Church of Orlando, on the property further described by the following legal description:

SEC 20 TWP 21S RGE 32E S 366.5 FT OF E 1/2 OF W 1/2 OF NE 1/4 (LESS RDS)

2. The Board of County Commissioners has the authority and responsibility to adjudge this appeal by virtue of Section 30.43(f), LDC.

3. On July 22, 2003, the Board of County Commissioners heard an appeal of this decision.

B. CONCLUSIONS OF LAW

The Board of County Commissioners finds that the subject special exception is in conformance with Section 30.104 of the Land Development Code of Seminole County, due to the following:

1. The Board hereby agrees with and adopts the staff recommendations as reflected in the Agenda Memorandum.
2. The subject special exception meets all of the criteria in Section 30.104(a), LDC, for granting special exceptions because:

- a. The subject special exception would allow development that would be consistent with the character and trends of single-family residential and agricultural development in the area.
- b. The proposed use is consistent with the Vision 2020 Comprehensive Plan Future Land Use Element, which allows special exception uses, including churches, in the LDR (Low Density Residential) Future Land Use Classification.

C. DECISION

Based upon the foregoing and having fully considered the application submitted, and the testimony presented at the Board of County Commissioners public hearing on July 22, 2003, it is determined by majority vote of members of the Board of County Commissioners of Seminole County, Florida, that the subject decision of the Board of Adjustment is **OVERTURNED** and the special exception requested is granted.

DATED this 22nd day of July 2003.

Board of County Commissioners
Seminole County, Florida

Daryl G. McLain, Chairman

RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS
42 USCA § 2000cc

§ 2000cc. Protection of land use as religious exercise

(a) Substantial burdens

(1) General rule

No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution--

(A) is in furtherance of a compelling governmental interest; and

(B) is the least restrictive means of furthering that compelling governmental interest.

(2) Scope of application

This subsection applies in any case in which--

(A) the substantial burden is imposed in a program or activity that receives Federal financial assistance, even if the burden results from a rule of general applicability;

(B) the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, even if the burden results from a rule of general applicability; or

(C) the substantial burden is imposed in the implementation of a land use regulation or system of land use regulations, under which a government makes, or has in place formal or informal procedures or practices that permit the government to make, individualized assessments of the proposed uses for the property involved.

(b) Discrimination and exclusion

(1) Equal terms

No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.

(2) Nondiscrimination

No government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination.

(3) Exclusions and limits

No government shall impose or implement a land use regulation that--

- (A) totally excludes religious assemblies from a jurisdiction; or
- (B) unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.

§ 2000cc-1. Protection of religious exercise of institutionalized persons

(a) General rule

No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution, as defined in section 1997 of this title, even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person--

- (1) is in furtherance of a compelling governmental interest; and
- (2) is the least restrictive means of furthering that compelling governmental interest.

(b) Scope of application

This section applies in any case in which--

- (1) the substantial burden is imposed in a program or activity that receives Federal financial assistance; or
- (2) the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes.

§ 2000cc-2. Judicial relief

(a) Cause of action

A person may assert a violation of this chapter as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under Article III of the Constitution.

(b) Burden of persuasion

If a plaintiff produces prima facie evidence to support a claim alleging a violation of the Free Exercise Clause or a violation of section 2000cc of this title, the government shall bear the burden of persuasion on any element of the claim, except that the plaintiff shall bear the burden of persuasion on whether the law (including a regulation) or government practice that is challenged by the claim substantially burdens the plaintiff's exercise of religion.

(c) Full faith and credit

Adjudication of a claim of a violation of section 2000cc of this title in a non-Federal forum shall not be entitled to full faith and credit in a Federal court unless the claimant had a full and fair adjudication of that claim in the non-Federal forum.

(d) Omitted

(e) Prisoners

Nothing in this chapter shall be construed to amend or repeal the Prison Litigation Reform Act of 1995 (including provisions of law amended by that Act).

(f) Authority of United States to enforce this chapter

The United States may bring an action for injunctive or declaratory relief to enforce compliance with this chapter. Nothing in this subsection shall be construed to deny, impair, or otherwise affect any right or authority of the Attorney General, the United States, or any agency, officer, or employee of the United States, acting under any law other than this subsection, to institute or intervene in any proceeding.

(g) Limitation

If the only jurisdictional basis for applying a provision of this chapter is a claim that a substantial burden by a government on religious exercise affects, or that removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, the provision shall not apply if the government demonstrates that all substantial burdens on, or the removal of all substantial burdens from, similar religious exercise throughout the Nation would not lead in the aggregate to a substantial effect on commerce with foreign nations, among the several States, or with Indian tribes.

§ 2000cc-3. Rules of construction

(a) Religious belief unaffected

Nothing in this chapter shall be construed to authorize any government to burden any religious belief.

(b) Religious exercise not regulated

Nothing in this chapter shall create any basis for restricting or burdening religious exercise or for claims against a religious organization including any religiously affiliated school or university, not acting under color of law.

(c) Claims to funding unaffected

Nothing in this chapter shall create or preclude a right of any religious organization to receive funding or other assistance from a government, or of any person to receive government funding for a religious activity, but this chapter may require a government to incur expenses in its own operations to avoid imposing a substantial burden on religious exercise.

(d) Other authority to impose conditions on funding unaffected

Nothing in this chapter shall--

(1) authorize a government to regulate or affect, directly or indirectly, the activities or policies of a person other than a government as a condition of receiving funding or other

assistance; or

(2) restrict any authority that may exist under other law to so regulate or affect, except as provided in this chapter.

(e) Governmental discretion in alleviating burdens on religious exercise

A government may avoid the preemptive force of any provision of this chapter by changing the policy or practice that results in a substantial burden on religious exercise, by retaining the policy or practice and exempting the substantially burdened religious exercise, by providing exemptions from the policy or practice for applications that substantially burden religious exercise, or by any other means that eliminates the substantial burden.

(f) Effect on other law

With respect to a claim brought under this chapter, proof that a substantial burden on a person's religious exercise affects, or removal of that burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, shall not establish any inference or presumption that Congress intends that any religious exercise is, or is not, subject to any law other than this chapter.

(g) Broad construction

This chapter shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this chapter and the Constitution.

(h) No preemption or repeal

Nothing in this chapter shall be construed to preempt State law, or repeal Federal law, that is equally as protective of religious exercise as, or more protective of religious exercise than, this chapter.

(i) Severability

If any provision of this chapter or of an amendment made by this chapter, or any application of such provision to any person or circumstance, is held to be unconstitutional, the remainder of this chapter, the amendments made by this chapter, and the application of the provision to any other person or circumstance shall not be affected.

§ 2000cc-4. Establishment Clause unaffected

Nothing in this chapter shall be construed to affect, interpret, or in any way address that portion of the First Amendment to the Constitution prohibiting laws respecting an establishment of religion (referred to in this section as the "Establishment Clause"). Granting government funding, benefits, or exemptions, to the extent permissible under the Establishment Clause, shall not constitute a violation of this chapter. In this section, the term "granting", used with respect to government funding, benefits, or exemptions, does not include the denial of government funding, benefits, or exemptions.

§ 2000cc-5. Definitions

In this chapter:

(1) Claimant

The term "claimant" means a person raising a claim or defense under this chapter.

(2) Demonstrates

The term "demonstrates" means meets the burdens of going forward with the evidence and of persuasion.

(3) Free Exercise Clause

The term "Free Exercise Clause " means that portion of the First Amendment to the Constitution that proscribes laws prohibiting the free exercise of religion.

(4) Government

The term "government"--

(A) means--

(i) a State, county, municipality, or other governmental entity created under the authority of a State;

(ii) any branch, department, agency, instrumentality, or official of an entity listed in clause (i); and

(iii) any other person acting under color of State law; and

(B) for the purposes of sections 2000cc-2(b) and 2000cc-3 of this title, includes the United States, a branch, department, agency, instrumentality, or official of the United States, and any other person acting under color of Federal law.

(5) Land use regulation

The term "land use regulation" means a zoning or landmarking law, or the application of such a law, that limits or restricts a claimant's use or development of land (including a structure affixed to land), if the claimant has an ownership, leasehold, easement, servitude, or other property interest in the regulated land or a contract or option to acquire such an interest.

(6) Program or activity

The term "program or activity" means all of the operations of any entity as described in paragraph (1) or (2) of section 2000d-4a of this title.

(7) Religious exercise

(A) In general

The term "religious exercise" includes any exercise of religion, whether or not

compelled by, or central to, a system of religious belief.

(B) Rule

The use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise of the person or entity that uses or intends to use the property for that purpose.

Below is the Religious Freedom Restoration Act that was adopted in Florida which can serve as a model for other states. Please take this to your state legislator if your state does not already have a RFRA.

**"Religious Freedom Restoration Act"
Sample State Legislation**

Short Title

This act may be cited as the "Religious Freedom Restoration Act."

Preamble:

"WHEREAS, it is the finding of the Legislature that the framers of the State Constitution, recognizing free exercise of religion as an unalienable right, secured its protection in the State Constitution, and

"WHEREAS, laws which are "neutral" toward religion may burden the free exercise of religion as surely as laws intended to interfere with the free exercise of religion, and

"WHEREAS, governments should not substantially burden the free exercise of religion without compelling justification, and

"WHEREAS, the compelling interest test as set forth in certain federal court rulings is a workable test for striking sensible balances between religious liberty and competing prior governmental interests, and

"WHEREAS, it is the intent of the Legislature of the State to establish the compelling interest test as set forth in *Sherbert v. Verner*, 374 U.S. 398 (1963), and *Wisconsin v. Yoder*, 406 U.S. 205 (1972), to guarantee its application in all cases where free exercise of religion is substantially burdened, and to provide a claim or defense to persons whose religious exercise is substantially burdened by government,
NOW, THEREFORE."

Definitions

As used in this act:

- (1) "Government" or "state" includes any branch, department, agency, instrumentality, or official or other person acting under color of law of the state, a county, special district, municipality, or any other subdivision of the state.
- (2) "Demonstrates" means to meet the burden of going forward with the evidence and of persuasion.
- (3) "Exercise of religion" means an act or refusal to act that is substantially motivated by a religious belief, whether or not the religious exercise is compulsory or central to a larger system of religious belief.

761.03. Free exercise of religion protected

- (1) The government shall not substantially burden a person's exercise of religion, even if the burden

results from a rule of general applicability, except that government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person:

(a) Is in furtherance of a compelling governmental interest; and

(b) Is the least restrictive means of furthering that compelling governmental interest.

(2) A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief.

Attorney's fees and costs

The prevailing party in any action or proceeding to enforce a provision of this act is entitled to reasonable attorney's fees and costs to be paid by the government.

Applicability; construction

(1) This act applies to all state law, and the implementation of that law, whether statutory or otherwise, and whether adopted before or after the enactment of this act.

(2) State law adopted after the date of the enactment of this act is subject to this act unless such law explicitly excludes such application by reference to this act.

(3) Nothing in this act shall be construed to authorize the government to burden any religious belief.

**Minutes for the Seminole County
Board of Adjustment
April 28, 2003**

Members present: Mike Hattaway, Wes Pennington, Dan Bushrui, Lila Buchanan, and Alan Rozon

Also present: Kathy Fall, Senior Planner, Earnest McDonald, Principal Coordinator, Karen Consalo, Assistant County Attorney, and Candace Lindlaw-Hudson, Senior Staff Assistant.

The meeting was called to order by the Chairman at 6:00 P.M. The Chairman then explained the method used in conducting the meeting and how appeals were to be made.

Kathy Fall stated that items 3,5,6,8 and 13 were being removed from the Consent Agenda and were to be heard as Regular Agenda items.

Ms. Fall also noted that item 18 had been withdrawn by the applicant since they had been denied by their home owner association.

CONTINUED ITEMS FROM MARCH 24, 2003:

1. **WILLINGHAM ROAD** – Cornerstone Church of Orlando; A-5 (Rural Zoning Classification); Special exception to allow a church and attendant facilities; located on the northeast corner of Willingham Road and Old Chuluota Road (BS2003-002).
District 1 - Commissioner Maloy
Earnest McDonald, Principal Coordinator

Earnest McDonald presented some background on the application. This application is following a previous application that was denied on February 25, 2002. The current application reduces the building requirements to 7,800 square feet for a house of worship. Churches are a conditional use in the A-5 zoning district with the granting of a special exception. Staff recommendation is for approval with the findings and conditions listed in the staff report, with the added provision that the access to the site should be limited to Old Chuluota Road, rather than the access shown on the site plan submitted.

Wes Pennington asked why this was being recommended.

Mr. McDonald stated that the Old Chuluota Road access would be less detrimental to the area residents.

Steve Anderson spoke next for Cornerstone Church. He stated that little had changed with their request, other than the limiting of the request to the 7,800 foot building which would seat a little over 200 people. (The previous request had 2 phases of development planned: phase 1 had a 3,000 square foot building and phase 2 had a 12,000 square foot building.) He suggested that access would be worked out with the site planning phase of the process.

Mr. Pennington asked about the lighting on the site.

Steve Anderson said that low level box lighting had been recommended for the site.

Dr. Buchanan asked where the congregation was meeting now.

Mr. Anderson stated that the congregation was currently meeting at the Oviedo YMCA Health and Wellness Center.

Dr. Buchanan asked about the size of the congregation.

Mr. Anderson said that between 105 – 110 members typically attended each service now.

Mr. Rozon asked if the church had plans for a daycare center.

Mr. Anderson said that the church had no plans for a daycare center.

Dr. David Downs spoke next. He is the founding pastor of the church. It is a member of the Conservative Baptist Association. Dr. Downs stated that the church needs a permanent place of worship. They have no signage to let the community know they are there, and have no facilities for weddings and other congregational activities. No alcohol will be allowed on the property. After the first application was denied, Dr. Downs said the property had been put on the market. The congregation had expected that the property would be purchased by one of the neighbors who had said they wanted to buy the land. It had not been bought, so the congregation was now proceeding with their development plan.

Eric Stanley from Liberty Council of Longwood spoke on behalf of the Cornerstone Church. He spoke about new Federal and State requirements concerning churches and zoning. Two laws are at issue here. The newly enacted Federal Religious Land Use and Institutionalized Persons Act of 2000 (RLUPA) applies this application. No substantial burden can be imposed on a church unless the County shows that they have a compelling interest to oppose that application. The church has different standards for zoning consideration. Churches cannot be denied unless there can be demonstrated a compelling reason to do so and if there is any other thing that can be done instead of denial, it is up to the County to use the least restrictive means short of denial. RLUPA requires a sincerely held religious belief and purpose for making a request. The church has testified to the burden on their ministry. The burden then shifts to the County to demonstrate why they should be denied. Mr. Stanley said that this is more than just the normal competent, substantial evidence for adverse public effect. It is the highest order to protect the constitutional rights of churches. Mr. Stanley found no compelling interest in this case for denial. From the review of the records of the last application of 2002, there is no compelling testimony. Staff has recommended approval. That requirement therefore cannot therefore be met. The second RLUPA requirement is that a church cannot be treated on less than equal terms with other secular assembly uses. This requirement looks at Seminole County code for churches and secular uses and asks if the requirements are the same or different. In A-5 zoning in section 30.102K of the LDC public elementary schools are a permitted use. This is a secular assembly use. It is treated differently from a religious assembly use, which is conditional, with a special exception. This is giving a preferential use to a school. You can eliminate the difference by granting the special exception.

Mr. Stanley also mentioned the Florida Religious freedom Restoration act, which mirrors terms of the RLUPA. There has been demonstrated a sincere desire and need to have the church. A compelling burden would be placed on the church if denied. There was no compelling evidence that the church was inconsistent with trends of development or detrimental to the character of the neighborhood. Its effect on area traffic patterns is negligible. Mr. Stanley concluded by urging the Board to approve the request.

Mr. Rozon asked why the church did not appeal the first denial.

Mr. Stanley stated that he was only recently hired by the church and did not know why there had been no appeal.

Mr. Lee McKeecham of Southern Cross Properties said that his wife represented Ben Carmichael when the area was platted. Mr. Carmichael has always stipulated that a country church be placed on this site. Mr. McKeecham is a third generation resident of Oviedo and knows the area well. He said that he feels the church will be a benefit to the community.

Tate Nelson of 400 E. Willingham Road spoke next. He has a 20 year background in civil engineering and geology. He has worked on road engineering projects and knows about drainage. He showed several pictures of rural Oviedo. Mr. Nelson stated that his concern was about the development impinging on the area. Mr. Nelson stated that the church is showing the same plan, minus the large building. The fill in the area is changing the water flow in the immediate neighborhood. Old Chuluota Road is a dirt path. It floods badly. He submitted a map with an area marked in red to indicate a flood area. All of the County engineers who have visited the site have said that this site is unbuildable. Approximately 2.5 to 3 acres of the site will be usable. The plan submitted does not show enough storm water retention. The site plan does not reflect enough parking. The area roads are substandard. The site cannot sustain a 7,800 square foot building. Parking for 225 church members will require 2.5 acres. Add that to the area needed for storm water retention and the lot is unbuildable. Raising the site for the building is not good. The group is not a small organization. The site is too small for its plans.

Ted Reichle of 350 Willingham lives one lot from the site. He said that road paving in the area had interfered with the water movement in the area. He had County engineers take test borings. There is no hard pan in the area. Across the street from the site of the church is a proposed site of an Albertson's plaza.

Vicky Nelson of 400 Willingham Road opposed the project saying that this is a heavily wooded area that has a lot of traffic on weekends from the residents. There are 6 churches within a 2 mile radius of this site. When they applied previously the pastor said that the church would go elsewhere if denied.

Monica Williamson is the owner of 25 acres on Snow Hill Road. She lives on Willingham Road adjacent to the site. She showed pictures of a bank and a McDonald's which together would equal the size of the proposed church development. She said that according to the church's website their goal is expansion. They want 500 members with a school and a counseling center for drug addicts. There is a severe water problem in the area. There are swales in the area. The county has allotted 55 thousand dollars for an engineering study of the area. If the area is raised up, it will further

contribute to flooding. The members of the congregation are from outside of the area. This project will increase traffic to her rural area. One of the things the website says the church will be planning for the future is a school from K to seminary grade.

Brenda Reichle stated that she wanted to buy this land for a retention pond prior to the church closing on the property. Tim Hatten was selling her the land and Mr. Carmichael told her the land was going to be commercial, not for a country church.

Deb Shaefer of the Southeast Seminole County Voters Association said that there was a pending proposal concerning growth in the area. Commercial design standards limit growth to 5,000 square feet in Chuluota. This is not about the church. It is about limiting development. The place is not meant to have an entity this large. She is not against churches, she is against the size. She asked that the request be denied. Growth should be limited. If approved, she asked that the project have explicit restrictions on the development. The design should be rural in character.

David Ryan-Jones of 375 Willingham said that there are plenty of lots in Chuluota along major roads for the placement of churches. This is a residential area. Old Chuluota Road is torn up for more than a year. It is an R-5 residential area. On the website they say they have 450 members. They say they will have a K – 12 school. They will also have an outreach center for unwed mothers and the homeless. They will be operating on hours that will disturb the area.

Gary Smithson of 1505 Willingham is a retired engineer and firefighter. He stated that growth is coming to the area. When the road was raised and paved, it created flooding. Horses in the area are being impacted. Willingham is becoming a cut-through street. There is a 90 degree curve in the road and 5 wildlife crossings in this area. There are many displaced wild life species here also. He asked that the request be denied. He stated that this is not about a church. It is about what would be appropriate for the area.

Robert Williamson of 475 Willingham owns 25 acres on Snow Hill Road and has the parcel 3 lots down for this site of the request. He showed an aerial photo of the area. Old Chuluota Road is now a drainage ditch. No one is against religion. He was at the meeting to protect the wild life and his property. He asked that the flooding please be considered. This is an unnecessary burden to the tax payers.

Mr. Steve Anderson spoke in rebuttal. He said that stormwater issues would be dealt with at the time of site plan approval. This property is not unbuildable. The 225 members of his church will require 94 spots. Mr. Anderson stated that the congregation had looked around for a number of months for a new site and finally came back and bought the property.

Mr. Anderson showed that the property is on the corner of 419 and Willingham. Traffic is not an issue and storm water issues will be addressed by the County at the time of site plan approval. The church has a long term vision. This is our starter property.

Mr. Bushrui said that what had been submitted as a site plan was conceptual.
Mr. Anderson agreed.

Mr. Stanley stated that section 30.102 restated his observation that public elementary schools are a permitted use in this zoning. This church should be also.

Dr. Buchanan stated that there was a serious flooding problem, and that no matter what goes in on this site, that problem will not be going away. This is far from being solved.

Mr. Pennington questioned whether it was the Board's responsibility to identify the problem.

Dr. Buchanan said that the problem exists.

Mr. Pennington stated that the applicant would have to meet with the County regulations.

Mr. Hattaway stated that the Board was considering if it is suitable for a church of 7,800 square feet.

Mr. Rozon stated that we must consider the regional impact of all of the development.

Dr. Buchanan stated that if this is passed, we will have to put constraints on future growth.

Mr. Hattaway stated that the Board must ask if this is a good location for a church.

Karen Consalo reiterated what the Eric Stanley had said earlier about the burden of deniability being on the County's shoulders.

Mr. Bushrui said that the Board still has to apply the 7 elements from the LDC.

Ms. Consalo stated that the federal law steps in if the Board were going to deny, to make the County show a compelling reason for denial.

Mr. Hattaway said that the Board was not doing a rezone; it was looking at the use and the size of the use.

Dr. Buchanan stated that the Board has to show significant reasons for denial. These cannot be neighbor's objections.

Ms. Consalo agreed. The reasons cannot be the "not in my backyard" kind of objection.

Mr. Hattaway stated that the staff recommendation was for approval. When the Board has questions, County engineers can be consulted.

Dr. Buchanan stated that the Board did not have traffic evidence for Willingham Road.

Mr. Pennington stated that such questions would be dealt with at the time of site plan approval.

Mr. Hattaway said that the Board has a right to ask for further studies of traffic.

Mr. Bushrui agreed and said that the Board does not have enough information under the circumstances.

Dr. Buchanan made a motion to approve the granting of the special exception according to the site plan and terms of the development order.

Mr. Pennington seconded.

Mr. Rozon stated that he would vote against the motion. He does not have enough information.

Mr. Bushrui stated that he was also voting against the motion.

The vote was 3 – 2 against the motion. The motion failed. Mr. Hattaway, Mr. Bushrui, and Mr. Rozon had voted “no.”

Mr. Rozon made a motion to continue this item to the next meeting and said that he wanted information on Oviedo annexation and any and all information that could be imparted to this case.

Mr. Bushrui seconded the motion.

Mr. McDonald stated that staff will have specialists present to answer questions of the Board at the next meeting.

The vote was 4 – 1 in support of the motion. Mr. Pennington voted “nay.” The request is continued until next month.

Mr. Hattaway stated that the public hearing portion of this item is closed. Next month there will be staff input only.

2. **703 LAUREL WAY** – Joyce Santee; PUD (Planned Unit Development District); Rear yard setback variance from 25 feet to 20 feet for the replacement of an existing screen room with an addition; located on the south side of Laurel Way, approximately 187 feet east of the Laurel Way and Brittany Drive intersection (BV2003-009).

District 1 – Commissioner Morris

Earnest McDonald, Principal Coordinator

Earnest McDonald stated that staff recommendation was for denial. The home could have been setback another 4 feet on the rear lot line, closer to the front property line. It has been placed 24 feet back from the street, creating a hardship.

**Minutes of the
Seminole County Board of Adjustment
May 19, 2003**

Members present: Mike Hattaway, Chairman, Dan Bushrui, Vice-Chairman, Dr. Lila Buchanan

Members absent: Alan Rozon, Wes Pennington

Alternates present: Michael Bass, Bob Goff

Also present: Earnest McDonald, Principal Coordinator, Kathy Fall, Senior Coordinator, Karen Consalo, Assistant County Attorney, Tony Walter, Principal Planner, Mark Flomerfelt, Storm water Manager, and Candace Lindlaw-Hudson, Senior Staff Assistant.

The meeting was called to order by the Chairman at 6:00. He then reviewed the method by which the hearing was to be conducted. He also reviewed the procedure for appeal of any decision made by the Board at the meeting.

The Chairman announced that Continued Items 2 and 3 are requested to be continued to the June 23, 2003 meeting.

Dr. Buchanan made a motion to continue items 2 and 3 of the Continued Items section of the agenda to the June 23, 2003 meeting.

Mr. Bass seconded the motion.

The motion passed by unanimous consent.

Mr. Hattaway announced that items 4, 7, and 8 of the Consent Agenda will be removed from the Consent Agenda and heard on the Regular Agenda before item 9.

CONTINUED ITEMS:

1. **WILLINGHAM ROAD** – Cornerstone Church of Orlando; A-5 (Rural Zoning Classification); Special exception to allow a church and attendant facilities; located on the northeast corner of Willingham Road and Old Chuluota Road (BS2003-002).
District 1 - Commissioner Maloy
Earnest McDonald, Principal Coordinator

2. **2270 POINSETTIA DRIVE** - William & Nancy Shrock; R-1AA (Single-Family Dwelling District); Rear yard setback variance from 30 feet to 5 feet for a proposed two story garage; located on the north side Poinsettia Drive, approximately 176 feet east of the West Lake Brantley Road and Poinsettia Drive Intersection (BV2003-024)
District 3 - Commissioner Van Der Weide
Earnest McDonald, Principal Coordinator

3. **180 HICKMAN DRIVE** – Thomas Sign & Awning Company; C-2 (Retail Commercial District); Ground sign height variance from 15 feet to 50 feet; located on the west side of Hickman Drive, approximately 0.1 mile north of the State Road 46 and Hickman Drive intersection (BV2003-029).

District 5 – Commissioner McLain
Earnest McDonald, Principal Coordinator

CONTINUED ITEMS:

1. **WILLINGHAM ROAD** – Cornerstone Church of Orlando; A-5 (Rural Zoning Classification); Special exception to allow a church and attendant facilities; located on the northeast corner of Willingham Road and Old Chuluota Road (BS2003-002).

District 1 - Commissioner Maloy
Earnest McDonald, Principal Coordinator

Mr. Hattaway stated that the Board had requested the continuation of this item to this meeting to allow input from County staff members. The public hearing on this item is closed and only staff members will be heard at this time. Drainage, traffic and legal questions pertaining to federal laws on churches were concerns at the last meeting. The Board had received legal clarifications from the County Attorney's office for review. The Board would now hear from staff pertaining to drainage issues in the area.

Mr. McDonald stated that Traffic Engineering Division of Public Works has provided traffic report. They reported that the traffic countThe church is a 78,000 square foot facility which would generate an average of 9.37 trips per 1000 square feet of gross floor area during a peak hour on Sunday and 9.32 trips per 1000 square feet of gross floor area on a weekday. The church is projected to generate between 73 and 75 trips. There are currently 445 daily trips on the section of Willingham Road abutting the site. The church would make the average daily traffic volume making 520 trips per day. This area of Willingham Road is classified as a rural local roadway with a level of service "A" with a potential capacity of 2250 trips per day. Including the trips from the proposed church would generate, the level of service would not increase substantially. The road is at 20 percent capacity now. The church would make it 23 percent capacity.

There were no questions from the Board following the presentation by Mr. McDonald.

Mr. McDonald stated that the Board had inquired about the annexation of nearby parcels. The City of Oviedo has made a decision to deny annexation of nearby parcels on May 5, 2003. At this time, staff is not aware of any further parcels under consideration for annexation.

Mr. Earnest McDonald introduced Mark Flomerfelt of the Storm Water Division of the County staff to speak about drainage issues.

Mark Flomerfelt stated that flooding occurred on the site's south west side near Willingham Road. Mr. Flomerfelt stated that the flooding was caused either by reconstruction of Snow Hill Road or by other issues being checked into at this time. There is an engineering firm checking on the conditions now and will have a report in about 6 months. The County will then know if there is a place that the water can be discharged to. Most likely it will be to the west to 419 area. If the water can not be discharged, it is considered a land-locked basin and the site will be required to hold water to the point of a 100 year flood. This will be reviewed at the time of site plan review by the engineering experts during the Development Review process.

Mr. Goff asked if the flooding problem existed prior to the reconstruction of Snow Hill Road.

Mr. Flomerfelt said that based on the knowledge of local residents, it did not.

Mr. Goff said that the requirement to hold the 100 year flood on the site would be unfair if the County created the water problem during the reconstruction of Snow Hill Road.

Mr. Hattaway asked if the flooding will occur again.

Mr. Flomerfelt said the site will flood again. Any development in the area will have to hold a 100 year flood on site if it is a land-locked site. This is typical of work throughout the County.

Mr. Goff stated that the property has been impacted by the County.

Mr. Flomerfelt said that the checking can be done using aerial photos and engineering plans to determine judgement.

Mr. Goff asked if there was any previous drainage systems existent on Willingham Road prior to the construction on Snow Hill Road.

Mr. Flomerfelt said that there had not been any previous drainage system in the area.

Mr. McDonald stated that there had been several phone calls and e-mails from the public saying that they were not going to be able to be heard due to a misunderstanding about the hearing date. Mr. McDonald pointed out that the public hearing portion of the item had been closed at last month's meeting and that these people would not be heard this evening due to this item being closed to public input.

Mr. Hattaway agreed that the public hearing portion of the item had been closed and that the Board was only going to hear Staff input on the issues of flooding and drainage, as well as traffic.

Mr. Bushrui said that the people who want to comment on the item could appeal.

Mr. Hattaway said that any aggrieved party could appeal the decision of the Board within 15 days of the hearing.

Mr. Goff asked about the propriety of his voting, since he and Mr. Bass were not present at last month's meeting to hear the other part of the input.

Karen Consalo, Assistant County Attorney, stated that without having thoroughly reviewed the record on the case, it would be inappropriate for Mr. Bass and Mr. Goff to vote on the item. They do not have to leave the dais.

Mr. Goff asked about that, stating that if he sat there, the record will reflect the a vote to the positive.

Mr. Hattaway asked that the record clearly indicate that the vote did not include the 2 votes of Mr. Bass and Mr. Goff.

Karen Consalo asked about Mr. Hattaway having a copy of the quorum rules at the podium. She asked to examine a copy of the Chairman's opening statement. Mr. Bushrui agreed with Mr. Goff that they would not be abstaining.

Ms. Consalo stated that the rules require a quorum be present, but that not everyone was required to vote.

Dr. Buchanan said that she had seriously considered this issue since it was first turned down a year back. That building had been a larger building and the property could not hold that size facility. This is one of the two hardest issues she has faced in the 6 years she has served on the Board. Due to the Sunshine Law, Dr. Buchanan has not discussed this with fellow Board members. She is personally conflicted on this item. She believes that a community should be able to set its own standards, and that includes what goes on in its midst. If a community chooses not to have a church in its midst, then she believes that the community has a right to do so.

Dr. Buchanan made a motion to deny the request of Cornerstone Church to have a special exception.

Mr. Bushrui seconded the motion. He said that one could not have a better neighbor than a church, but the question of impact on a neighborhood comes into consideration here. It is a question of having a church here, it is the community standards. If we vote against this, we are not voting against a church, but rather

a use that we feel is improper or proper for the area. Mr. Bushrui stated that he would be voting for the motion for that reason.

Mr. Hattaway said that he would be voting with the motion also. He felt that the church was inconsistent with the development trends in the area and would not be proper in this location.

The motion carried with a unanimous vote. The request was denied. Mr. Bass and Mr. Goff did not record votes on this item.



SOUTHERN CROSS PROPERTIES, INC.

To: Mr. Mike Hattaway, Chairman, Seminole County Board of Adjustment
Ms. Deborah Schafer, President, S.S.C.V.A.

From: Leigh McEachern

Ref: Cornerstone Church of Orlando, special exception, (BS2003-002)

Date: April 30, 2003

Thank you for your patience last Monday evening on this application. A few points for your collective consideration:

1. The Chuluota Sportsmen's Club, just north of the site in question, has over 200 members; operates 7 days per week, day as well as night; conducts live fire target practice with everything from pistols to semi-automatics; pre-dates most of the homes in that area; has not adversely impacted either value or marketability of properties, including Osprey Lakes. I can hear them from my home on Snow Hill Road.
2. Every church in Chuluota is in a residential area surrounded by homes, which in most cases were built after the church; clearly the churches did not adversely impact either value or marketability of contiguous properties. In fact the past president of the Southeast Seminole County Voter's Assoc. built a two-story, Southern- colonial home (cost - approximately \$250,000.) immediately next door to the Faith Assembly of God Church, which does operate a day-care center
3. I would be a very poor businessman to facilitate the sale of a property about \$30,000. below market, if the use of that property could adversely impact the marketability &/or value of the remaining 50+ acres still owned by the principal whom I represent. (The contract closed last September, the commission has been paid; I have no financial interest herein.)

Liberty Counsel

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January 6, 2003

Mr. Steve Anderson
Building Committee Chairperson
Cornerstone Church of Orlando
1617 Sultan Circle
Chuluota, FL 32766

Re: Cornerstone Church of Orlando

Dear Mr. Anderson:

Liberty Counsel is a religious civil liberties legal defense and education organization. Much of our work in this area deals with churches and zoning. You have contacted our office regarding your application for a special exception to have a church on your property in Seminole County. You have related that Cornerstone initially applied for a special exception in January of 2001. After a public hearing, the Board of Adjustment denied the application for a special exception. The public hearing was characterized by testimony in opposition from many neighbors who did not want the church to locate on this property.

It is our understanding that the Church's current application represents a scaled-down version on the initial application submitted in January, 2002.

After reviewing your initial application, the Church's current application and the evidence and testimony presented at the previous hearing, it is our opinion that the Church's application for a special exception is governed by the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. §2000cc-1, *et seq.* ("RLUIPA"). This federal law, a copy of which is attached to this letter, essentially changes the standard to be applied to churches when they apply for a special exception. RLUIPA applies to this case in two ways.

RLUIPA first prevents the county from substantially burdening¹ the church through a land use regulation unless the county has a compelling interest. This means that a denial of the Church's special exception application must be supported by a compelling governmental interest. A compelling interest means that the Board of Adjustment must have an interest of the highest order that is "compelling" before it can deny the Church's special exception application. A compelling

¹ The Church in this case could easily demonstrate that a denial of its application for a special exception resulted in a substantial burden on the Church.

interest is not just someone's opinion, but rather means that if the Board of Adjustment votes to deny the Church's application, it must demonstrate that there is a countervailing interest that is extremely important to override the Church's conversion of this property into a church. Our opinion is that there was no compelling interest shown when the Board of Adjustment denied the Church's initial application last year and, given the scaled-back plan the Church is presenting this year, there is certainly no compelling interest that could be demonstrated currently to deny the Church's application.

Secondly, RLUIPA also prevents a governmental entity from treating churches on less than equal terms with other secular assembly uses. This means that churches must be treated equally with other secular assembly uses. On this issue, I would note that the County's zoning code, on its face, violates RLUIPA. In the A-5 zoning classification where the Church's property is located, §30.102(k) of the Land Development Code allows for public elementary schools as a Permitted Use. Churches, by contrast, are allowed in the A-5 zone only by special exception. This is clearly an unequal treatment of churches with other secular assembly uses and opens the County's zoning code to a facial attack under RLUIPA.

Beyond RLUIPA, the State of Florida has enacted Florida's Religious Freedom Restoration Act. ("RFRA") which is attached to this letter. This Act mirrors the provisions of RLUIPA's substantial burden section. Therefore, not only would a denial of the special exception application be in violation of federal law, as mentioned above, a denial would also be in violation of state law as well.

I hope this explanation has been helpful. If there are any questions regarding RLUIPA or its impact on this case, please do not hesitate to contact me. It is our hope that the Board of Adjustment will approve the Church's application for a special exception and so prevent any violation of RLUIPA or Florida's RFRA.

Sincerely,

A handwritten signature in black ink that reads "Erik W. Stanley". The signature is written in a cursive style with a large, stylized "S" at the end.

Erik W. Stanley

Enclosure

GIBBS LAW FIRM, P. A.

Attorneys and Counselors at Law

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January 02, 2003

Mike Hattaway, Chairman
Seminole County Board of Adjustment
1101 East First St.
Sanford, FL 32771

Re: Application of Cornerstone Church for Conditional Use Permit

Dear Chairman Hattaway:

We are writing this letter to express our support for the above-referenced application, and to call the Board's attention to the religious freedom issues that may be raised if the application is denied.

As General Counsel for the Christian Law Association for four decades, this firm is primarily dedicated to promoting and defending the free, public expression of Bible-believing churches and Christians across the United States. In accordance with this commitment, we have frequently represented religious organizations that encounter obstacles to using real property for worship space.

Most recently, we have successfully represented churches under the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"). Currently, we have at least one case pending in federal court involving deprivations of religious liberty in the land use context.

The principles embodied in RLUIPA enjoy broad, bipartisan support: the legislation sailed through both houses of Congress, virtually unopposed, and was signed into law by President Clinton on September 22, 2000. RLUIPA provides, in relevant part, that:

No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution --

- (A) is in furtherance of a compelling governmental interest; and
- (B) is the least restrictive means of furthering that compelling governmental interest.

RLUIPA § 2(a)(1) (emphasis added).

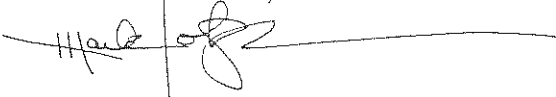
We are writing because we have concluded that, if the Board denies the present application, the Board would violate RLUIPA. Cornerstone Church is plainly a "religious assembly or institution," and it desires to engage in "religious exercise" by using the property in question for religious worship and other ministries. See RLUIPA § 8(7)(B) ("The use . . . or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise . . ."). By applying the "land use regulations" at issue here to prohibit that "religious exercise," the Board would impose a "substantial burden" on that exercise. Thus, if the Board denies the conditional use permit, the Board would "implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of . . . a religious assembly or institution." RLUIPA § 2(a)(1). Moreover, it appears to us unlikely that the Board will be able to prove that this "substantial burden" either furthers a "compelling governmental interest," or is the "least restrictive means" of furthering such an interest. We therefore encourage the Board to avoid these legal risks by granting the application.

We recognize that, because RLUIPA is a relatively new statute, the Board may not have been aware that it applies here, or what it requires. If the Board would find it helpful, we would be happy to provide more detailed information about RLUIPA. In any event, we want to make it clear that our purpose is to promote a fair and prompt resolution of this matter, without unnecessary conflict.

We thank the Board for considering our views, and we welcome any further questions the Board may have.

Sincerely,

Gibbs Law Firm, P.A.


K. Mark Johnson
Admitted in Florida

cc: Steve Anderson, Building Committee Chairman
Cornerstone Church
2333 Donnegan Place
Orlando, FL 32827