

April 15, 2014

PLANNING AND ZONING
AGENCY OFFICE

2014 APR 25 A 10:45

Mr. Jack Osterholt

Zoning Department

MDC Regulatory and Economic Resources

111 N.W. 1st Street Suite 1110

Miami, Fl. 33128-1974

RE: Hearing Number 10-016

Z2010000016

Mr. Osterholt:

Please do not allow Tadpole Investments, Inc. to use their current jewelry shop as a pawnbroker. As it is there are 3 pawnshops within walking distance of this location.

Yes Cash

2510 SW 87th Ave,
(305) 552-1399

Coral Way Jewelry & Cash
8742 SW 24th St,
Miami, FL 33165
(305) 229-1222

Cash America Pawn
8391 Bird Road,
Miami, FL. 33165

Bce
5/20/14

P-1

PLANNING AND ZONING
AGENCY OFFICE
2014 APR 25 A 10:45

Everyone knows the reputation of pawnshops. They cheapen the neighborhood, bring crime, and items not sold are dumped on neighboring swales. As it is, the neighbors in this area have to deal

with stolen shopping carts left in the yards, trash, wrappers or drinking cups strewn on the streets from fast food chains, and empty beer bottles on our swales. In addition, we have produce trucks honking horns to alert neighbors of their presence.

My neighborhood is definitely not a Coral Gables or Pinecrest but I sure pay high enough taxes to make it be. I want to get what I pay for, an upcoming neighborhood modeled after the houses designed by Frank Lloyd Wright. I apologize for the informality of this letter but I need to bring real issues out in the open. Please don't approve anymore pawnshops in my area.

Sincerely,

A handwritten signature in cursive script, appearing to read "Nanette Maule".

Nanette Maule

Cc: Representative Jose Felix Diaz

April 15, 2014

PLANNING AND ZONING
AGENDA OFFICE

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Sincerely,



Nanette Maule

Cc: Representative Jose Felix Diaz



To: Miami-Dade County Department of Regulatory and Economic Resources (Agenda Coordinator)

From: Keith H. Kronin (a concerned parent)

Date: April 10, 2014

Subj.: Hearing #10-016: Homeowner objection to the TADPOLE Variance Permit Application

P-1
BOC
4/24/2014

In accordance with the instructions outlined in the procedural due process notice (Attachment #1) my family received in the mail, the purpose of this memorandum is to bring to the attention of the Community Zoning Appeals Board several concerns, which, taken individually, and certainly as a whole, warrant denying the variance permit application submitted by TADPOLE INVESTMENTS ("TADPOLE").

The Board of Commissioners strives, on a daily basis, to serve the residents of Miami-Dade county, and does an admirable job in discharging its duties; however, in the opinion of this voter, whose family will be directly affected by the operation of a jewelry pawn at the corner of Coral Way and 87th Avenue, a decision to approve this variance permit would be arbitrary and capricious at worst, but, more likely, and at best, a good faith effort that went terribly awry due to a lack of substantial and competent evidence. Approving the application is simply not in accordance with the essential tenets of our zoning laws.

As a Miami-Dade taxpayer, active voter, and father who is commensurately concerned for my 13 year-old daughter who lives and goes to school within about a 1/4 mile of TADPOLE, it is my humble opinion that the variance permit should be denied for the following reasons: **I)** the approval of the variance permit, which is a quasi-judicial decision, would be in blatant disregard to the judicial stare decisis/case law from Miami-Dade County, and, more importantly, from the Supreme Court for the State of Florida; **II)** TADPOLE has not shown, under any deferential standard of review, why TADPOLE, which has already blatantly disregarded the zoning authority of Miami-Dade County for their current zoning classification (BU-2), should be entitled to a variance permit to pawn low-end jewelry, which would run afoul of the Comprehensive Plan of Miami-Dade County, as well as that BU-2 area; and **III)** the general area in which TADPOLE seeks to operate a jewelry pawn business is frequented during the work week, on a daily basis, by elementary, middle school, and high school students, who are often unaccompanied by adults; therefore, it would be detrimental to the health, welfare, and public interest of our community to expose these children to potential undue harm, even if it emanates from sporadic criminals attempting to pawn stolen second hand jewelry. **Protecting our children is a legitimate public purpose.**

Approval of TADPOLE's variance application may create a "slippery slope" by setting bad precedent; therefore, each of the contentions listed above will be supported in detail below, to make clear to the Community Zoning Appeals Board why this variance application should be denied, and hopefully **to prevent a TADPOLE from morphing into a parasitic laden FROG.**

I. Approval of this variance permit would be in blatant disregard to Florida precedent

At best, TADPOLE has not, until now, complied with the procedural requirements of Miami-Dade County. As their application for the variance indicates, they have been cited for inconsistent use within the current (BU-2) zoning classification (Attachment #2, line 15), and TADPOLE has, until now, for a reason they have conveniently not explained, completely disregarded their responsibility of filing for a variance prior to providing pawn services, which, the last time one checked, can be prosecuted as a misdemeanor in some jurisdictions. Now, to add insult to injury to the hardworking taxpaying voters in my relatively crime free residential area, TADPOLE wants the Community Zoning Appeals Board to disregard legal precedent, described below, and feed it a profitable variance as a reward for bad behavior.

There is no presumption for validity of quasi-judicial decisions, the rubric of which this variance application should be evaluated. TADPOLE's variance permit, if approved during this proceeding, will surely be appealed and reviewed in the Florida court system under existing legal precedent. Florida legal precedent covering Miami-Dade County generally allows the granting of a variance permit when there exists the following: 1) the property in question can't produce a reasonable return without the variance permit; 2) the owner of the property will face unnecessary hardship without the variance permit; 3) the plight of the owner is not self-imposed; and 4) the permit will not affect the essential character of the area. *Metropolitan Dade County v. Betancourt*, 559 So. 2d 1237, 1238-1240 (3d DCA 1990). It should be clear, even under the more deferential "fairly debatable" standard, that none of these factors support granting the variance to TADPOLE; however, each of them will be given some analysis in an attempt to provide clarity to the decision makers.

1. TADPOLE can produce a "reasonable return" under the current BU-2 classification

In this case, TADPOLE has been operating in the location since 2002 (Attachment #2, line 17), and signed another lease as recently as 2013 (Attachment #3). They have been operating Marquis Jewelry, as a storefront, which certainly is a beneficial use within the BU-2 zoning classification. It should be stressed, and the Court in *Betancourt* made clear, that "reasonable return" is not necessarily based on economics; rather, if the owner can put the property to another beneficial use without the variance, and in accordance with existing zoning, then there is a reasonable return without the variance. *Id.* at 1239. In this case, TADPOLE is already operating a business, and it is very clear that denying the variance application will not impact the reasonable use or return of the property. While it may be convenient and perhaps lucrative to pawn jewelry in a BU-2 area, the store has and can continue operating under its original and intended use. Simply put, the property has a reasonable return and use without pawing jewelry.

2. TADPOLE will not endure any unnecessary hardship by having their application denied

As nicely stated by the Third District Court of Appeals:

"One who purchases property while it is in a certain known zoning classification, ordinarily will not be heard to claim as a hardship a factor or factors which existed at the time he acquired the property...." *Id.*

Requiring TADPOLE to comply with the existing BU-2 requirements will not impose an unnecessary hardship, as they have been operating a jewelry business in that location since 2002.

3. TADPOLE'S plight has been self-imposed

As nicely stated by the Third District Court of Appeals:

“A self-imposed or self-acquired hardship (such as by purchasing property under existing zoning and then applying for a variance) is not the kind of hardship for which a variance should be granted.” *Id.*

Yet this is exactly what TADPOLE wants you to do. As TADPOLE has indicated on their variance application, they are filing for this variance as the result of a violation of the existing zoning classification. Not much else needs to be proffered regarding the self-imposed hardship in this case.

4. TADPOLE's pawning of jewelry in that location will affect the essential character of the area

The pawning of jewelry in this BU-2 district is simply not consistent with the intent of having pawn stores listed under the BU-3 classification in Miami-Dade County. Miami-Dade's zoning ordinance placed special concern on the operation of pawnshops, even when they are located in the more liberal BU-3 classification. Please note that unlike most of the permitted uses in the liberal BU-3 areas, such as for dry cleaners and bakeries, special attention is placed on pawn stores: “Pawnbrokers shall be permitted only upon approval after a public hearing.” *Miami-Dade Code of Ordinances*, Sec. 33-255, line 20. This puts pawn activities at the extreme end of the BU-3 scale, and is simply not consistent with BU-2 areas.

II. Contrary to the Comprehensive Plan of Miami-Dade County

The Comprehensive Master Plan for Miami-Dade County is similar to a Constitution, but for Land Use purposes. Violating a zoning ordinance is per se a violation of the Comprehensive Master Plan. Per the Florida Supreme Court, parties seeking to obtain a variance from a zoning classification have the burden of showing it would be consistent with that plan. *Board of County Commissioners of Brevard County v. Snyder*, 627 So.2d 469, 471-472 (Fla. 1993).

Having reviewed the available documents pertaining to this variance application on the Miami-Dade website, it is very difficult to discern how TADPOLE has shown the proposed pawning of Jewelry is consistent with the Comprehensive Master Plan of Miami-Dade County.

For argument purposes, let's assume TADPOLE has met the required burden. According to the Supreme Court of Florida:

“Upon such a showing the landowner is presumptively entitled to use his property in the manner he seeks unless the opposing governmental agency asserts and proves by clear and convincing evidence that a specifically stated public necessity requires a specified, more restrictive, use.” *Id.* at 472.

Assuming, though it is a stretch of any land use legal reasoning, TADPOLE has met its burden of showing a pawn store is consistent with the Comprehensive Plan, it is obvious that the presence of children in that area, described below in Section III, and considered just by itself, is clear and

convincing evidence that warrants a “specified, more restrictive, use,” thereby negating the variance permit requested by TADPOLE.

According to the Supreme Court of Florida:

“After such a showing the burden shifts to the landowner to assert and prove that such specified more restrictive land use constitutes a taking of his property for public use for which he is entitled to compensation under the taking provisions of the state or federal constitutions.” *Id.*

It is ridiculous to prematurely go down the path of a Land Use Takings analysis, but, should the Community Zoning Appeals Board deny TADPOLE’s application, then TADPOLE can swim over to the Circuit Court.

TADPOLE has not even come close, under quasi-judicial substantial and competence evidence standards, to showing how a pawn store at that location would be consistent with the Comprehensive Master Plan. If anything, their attempt to now legitimize their prior (potential criminal) violations of the Miami-Dade zoning regulations is an affront to common sense and the authority of the Community Zoning Appeals Board. As an interested party who has read the County zoning recommendation and related filings, it is unclear as to how the initial approval was considered a logical decision, and it seems remote that the interests of the children in the community, described below, were considered when making that decision.

III. Clearly against the health, welfare, and public interest of the community to expose unknowing children to potential undue harm

There must be a reason why the Comprehensive Master Plan and related Zoning Map/Text has classified that specific parcel as falling within the BU-2 zoning classification. A reasonable assumption would be that the following was given significant weight: 1) Saint Brendan Middle and High School is located about 1/4 mile south on 87th Avenue; 2) an elementary school with an attached ball field (known as Banyan Park, it is used daily afterschool and on weekends by young children), is located about 1/4 mile south on 87th Avenue; 3) Christopher Columbus High school is located about 1/4 mile south on 87th Avenue; 4) Everglades K-8 School, built in the 1950’s, is located about 1/4 mile north on 16th avenue; 5) Coral Park High School is located about 1/4 mile north on 87th Avenue; 6) a church, which often conducts youth group activities in the evening and during weekdays in the summer, is located about 1/4 mile north on 87th Avenue; 7) a basketball court, used often by unaccompanied youth from the neighborhood, is located right next to the church in #6 above; and 8) a children’s Montessori school is located about 1/4 mile north on SW 87th Avenue, across from the basketball court in #7 above. See Attachment #4 for a map indicating the location of items 1-8 listed above, and one will clearly see TADPOLE located in the middle.

An additional concern regarding potential impact on children, which the Comprehensive Plan and related Map and Text likely didn’t take into account, should now be considered: the area in which TADPOLE wants to pawn jewelry is literally a hub/focal point (like the center of a bicycle tire) for students from the schools, parks, and church listed above. Some of these students travel near TADPOLE unaccompanied after school, and often these same minors hang out at the Taco Bell, Burger King, Dunkin Donuts, ice cream shop, and pizza restaurant, which are within about 100 yards of TADPOLE. Some of these children skateboard in the area, waiting for the next Metro bus to take

them home to their families. Would you want your adolescent child waiting for a bus or skateboarding in the vicinity of a jewelry pawn? How about the same child possibly interacting in the parking areas with the stellar element looking to pawn lower-end jewelry?

IV. The Variance Application was not properly completed by the Applicant

While this appears de minimis, a zoning variance application not properly completed can “snowball” into bad decisions. Line 17 of TADPOLE’s application (Attachment #2) indicates “SEE ABOVE” for existing use. What is TADPOLE referring to by “SEE ABOVE”? Does this mean TADPOLE is still violating the current BU-2 zoning classification, or simply that they have ceased taking pawned second hand jewelry, and, for the time being, operate only as a traditional jewelry store? TADPOLE should be required to resubmit their application to properly complete line 17, in detail, so concerned residents, as well as the Community Zoning Appeals Board, can be put on proper notice as to exactly what the existing use is. If TADPOLE is still pawning jewelry at that location, then my 13 year old daughter will not be unaccompanied near that store. Additionally, line 13, while there is verbiage written by TADPOLE regarding a variance exception, does not have a box checked. Again, the applicant should be required to properly complete the application and resubmit it. Attention to detail should be expected of TADPOLE in completing the variance application, as it is with all other applicants, even PROSE litigants.

V. Summary

Approving TADPOLE’s variance application would be contrary to Florida legal precedent, in violation of Miami-Dade’s Comprehensive Plan, and detrimental to the health, welfare, and public interest of the Westchester community. If TADPOLE is permitted to pawn jewelry in the current BU-2 location, then you should expect, in the future, for a FROG to show its ugly head, likely after it has been cited for violating other aspects of our zoning laws. **Please help the families in my area protect their children and avoid the negative impact from “zoning creep.”**

It would be appreciated if the Community Zoning Board of Appeals, in reviewing TADPOLE’s application for a variance permit to operate a low-end jewelry pawn store, would take into account the concerns expressed in this letter. Thank you for your service to the community!

Respectfully submitted,



Keith H. Kronin
Major, USMCR (Retired)
703-350-3071

HEARING NUMBER: 10-016
APPLICANT NAME: TADPOLE INVESTMENTS, INC.
THE DIRECTOR OF THE DEPARTMENT OF REGULATORY AND
ECONOMIC RESOURCES IS APPEALING THE DECISION OF
COMMUNITY ZONING APPEALS BOARD #10 ON TADPOLE
INVESTMENTS, INC., WHICH APPROVED THE FOLLOWING:

THE APPLICANT IS REQUESTING A USE VARIANCE
TO PERMIT A PAWNBROKER USE IN A SPECIAL BUSINESS
DISTRICT ZONE (BU-2) AS WOULD BE PERMITTED IN THE
LIBERAL BUSINESS ZONE (BU-3), ONLY UPON APPROVAL
AFTER PUBLIC HEARING, ON THIS SITE.

PLANS ARE ON FILE AND MAY BE EXAMINED IN THE
DEPARTMENT OF PLANNING AND ZONING. PLANS MAY BE
MODIFIED AT PUBLIC HEARING.

LOCATION: 2275 SW 87 AVENUE, MIAMI-DADE COUNTY,
FLORIDA.

HEARING WILL BE HELD AT THE
MIAMI-DADE COUNTY-STEPHEN P. CLARK CTR
BOARD OF COUNTY COMMISSIONERS CHAMBERS
111 NW 1ST, STREET, 2ND FLOOR
MIAMI-DADE COUNTY, FLORIDA

BOARD OF COUNTY COMMISSIONERS
DATE 04/24/2014
THURSDAY
TIME 9:30 AM

SIZE OF PROPERTY: 18.95 ACRES

IF FURTHER INFORMATION IS NEEDED, PLEASE CALL
(305)375-2640, HEARING SECTION, OR VISIT OUR
WEB PAGE TO VIEW THE HEARING FILE AT:
WWW.MIAMIDADE.GOV/ZONING/TRACK/HOME.ASP

10	54	40
Sec.	Twp.	Range

**ZONING HEARING APPLICATION
MIAMI-DADE COUNTY
DEPARTMENT OF PLANNING & ZONING**

RECEIVED
210-016
FEB 17 2010
ZONING HEARINGS SECTION
MIAMI-DADE PLANNING AND ZONING DEPT.
BY J

LIST ALL FOLIO #S: 30-4010-000-0020

Date Received _____

1. **NAME OF APPLICANT** (Provide complete name of applicant, exactly as recorded on deed, if applicable. If applicant is a lessee, an executed 'Owner's Sworn-to-Consent' and copy of a valid lease for 1 year or more is required. If the applicant is a corporation, trust, partnership, or like entity, a 'Disclosure of Interest' is required).

Tadpole Investments, Inc., dba Marquise Jewelry

2. **APPLICANT'S MAILING ADDRESS, TELEPHONE NUMBER:**

Mailing Address: 8561 SW 24th Street

City: Miami State: Florida Zip: 33155 Phone#: (305) 266-8420

3. **OWNER'S NAME, MAILING ADDRESS, TELEPHONE NUMBER:**

Owner's Name (Provide name of ALL owners): Columbia - BBB Westchester Shopping Center Associates

Mailing Address: c/o Ideal Management, 12602 SW 88th Street

City: Miami State: FL Zip: 33186-1867 Phone#: (305) 662-8999

4. **CONTACT PERSON'S INFORMATION:**

Name: Augusto Maxwell Company: Akerman Senterfitt

Mailing Address: One Southeast Third Avenue, 25th Floor

City: Miami State: Florida Zip: 33131-1714

Phone#: (305) 755-5827 Fax#: (305) 374-5095 E-mail: augusto.maxwell@akerman.com

5. **LEGAL DESCRIPTION OF ALL PROPERTY COVERED BY THE APPLICATION**

(Provide complete legal description, i.e., lot, block, subdivision name, plat book & page number, or metes and bounds. Include section, township, range. If the application contains multiple rezoning requests, then a legal description for each sub-area must be provided. Attach separate sheets, as needed).

10 54 40 18.896 AC M/L S785FT OF W1250FT & S50 FT & LESS E 150FT OF W335FT OF N150FT OF S253.20FT & LESS BEG 912.12FTE & 50FTN OF SW COR OF SEC CONT N244FT W140.37FT.

6. **ADDRESS OR LOCATION OF PROPERTY** (For location, use description such as NE corner of, etc.)

8561 Southwest 24 Street at the cross-section between 87th Avenue and 24th Street.

7. **SIZE OF PROPERTY** (in acres). 19 Acres (total) (divide total sq. ft. by 43,560 to obtain acreage)

1125 ft (leased by Applicant)

8. **DATE** property acquired leased: March 2002 (month & year)

9. **Lease term:** 10 years

PTXA 2275 SW 87 ave
(M2832902:1)

RECEIVED
210-016
FEB 17 2010
ZONING HEARINGS SECTION
MIAMI-DADE PLANNING AND ZONING DEPT.
BY ALL

10. IF CONTIGUOUS PROPERTY IS OWNED BY THE SUBJECT PROPERTY OWNER(S), provide complete legal description of said contiguous property.

Not Applicable

11. Is there an option to purchase or lease the subject property or property contiguous thereto? no yes (If yes, identify potential purchaser or lessee and complete 'Disclosure of Interest' form)

12. PRESENT ZONING CLASSIFICATION: BU-2

13. APPLICATION REQUESTS (Check all that apply and describe nature of the request in space provided) (DBC's require special exception to permit site plan approval unless rezoning 3 acres or less to residential categories)

District Boundary Changes (DBC) [Zone class requested]: _____

Unusual Use: _____

Use Variance & Special Exception: to permit a jewelry pawn shop in connection with a jewelry store in the BU-2 district as would be permitted in the BU-3 district.

Alternative Site Development: _____

Modification of Declaration or Covenant: _____

14. Has a public hearing been held on this property within the last year & a half? no yes. If yes, provide applicant's name, and date, purpose and results of hearing, and resolution number:

15. Is this hearing is as a result of a violation notice? no yes. If yes, give name to whom the violation notice was served: Tadpole Investment, Inc. d/b/a Marquise Jewelry and describe the violation:

Unauthorized use in a Business - Special District (BU-2)

16. Describe structures on the property: Strip Mall

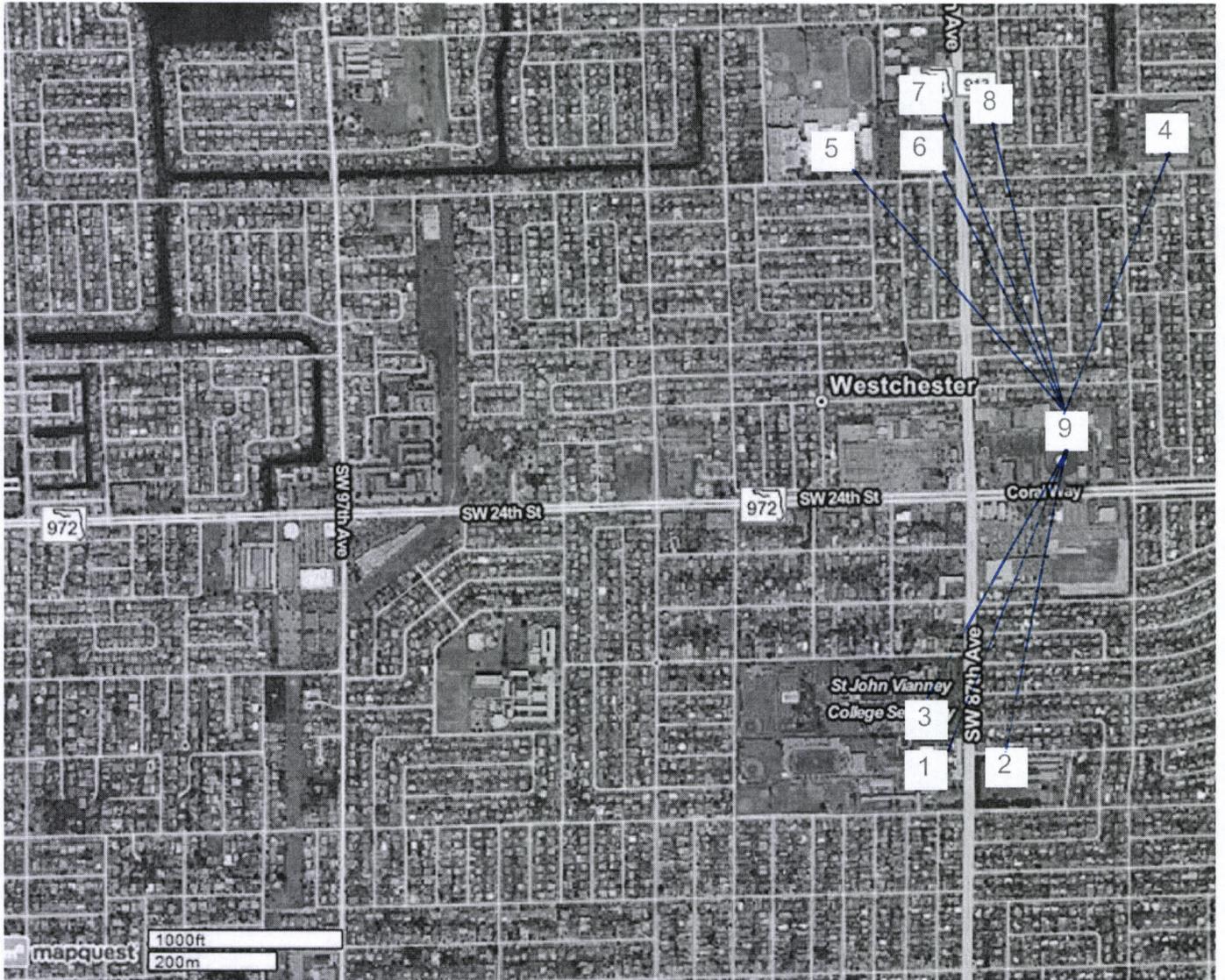
17. Is there any existing use on the property? no yes. If yes, what use and when established?

Use: SEE ABOVE

Year: 2002

RECEIVED
Z10-046
FEB 17 2010

ZONING HEARINGS SECTION
MIAMI-DADE PLANNING AND ZONING DEPT.
BY: _____



<http://www.mapquest.com/#c648bf3a87c3c5311ca45795>

Legend of locations:

1. St. Brendan High School and Middle School
2. Banyon Park and Elementary School
3. Christopher Columbus High School
4. Everglades K-8 School
5. Coral Park High School
6. Church
7. Basketball court frequented by children
8. Montessori School for children
9. TADPOLE INVESTMENTS

ATTACHMENT #4

P-1

March 24, 2010

Re: Hearing number 10-016

Regarding the pawn shop special exception permit:

I **OPPOSE** a Pawn Shop operating in a BU-2 Zone. Please keep this on file with respect to this hearing.

It is bad enough that we already have loads of discount, cheap markets in the area. We don't need another one. I don't want my neighborhood to look like Downtown Miami. I pay over \$6,000 in property taxes for one house. I prefer to bring stores that attract a better clientele.

Respectfully anonymous...

Keith H.
5794 SW 4
Miami, FL 33155

7012 2210 0002 4820 8581



RECEIVED
APR 14 2014
DEPARTMENT OF
PLANNING AND ZONING

Miami-Dade County
Department of Regulatory and Economic Resources
Agenda Coordinator
111 NW 1 Street, Suite 1110
Miami, Florida 33128-1974

Hearing #: 10-016

U.S. POSTAGE
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UNITED STATES
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AT TOP OF ENVELOPE TO THE RIGHT

