

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

2521 COUNTRYSIDE BLVD., LLP,
COUNTRYSIDE PROPERTY PRINCIPALS,
LLC, AND 2505 ENTERPRISE, LLC

APPELLANTS,

VS.

Case No. 19-6416

CITY OF CLEARWATER, CITY OF
CLEARWATER COMMUNITY DEVELOPMENT
BOARD, AND PINELLAS EDUCATION
ORGANIZATION, INC., D/B/A ENTERPRISE
HIGH SCHOOL

APPELLEES

_____ /

FINAL ORDER

Appellants, 2521 Countryside Blvd., LLP, Countryside Property Principals, LLC, and 2505 Enterprise, LLC (collectively referred to as Appellants), seek review of a development order issued by Appellee City of Clearwater Community Development Board (Board) on December 3, 2019 (Development Order), pursuant to section 4-505 of the City of Clearwater Community Development Code (2019) (Code).¹ Administrative Law Judge Hetal Desai of the Division of Administrative Hearings (DOAH) held a hearing for oral arguments on January 23, 2020 (Oral Argument), in Clearwater, Florida.²

¹ All references to statutes and local ordinances are to the 2019 versions.

² Appellee City of Clearwater (City) has contracted with DOAH to review appeals brought pursuant to section 4-505 of the Code.

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STATEMENT OF THE ISSUES ON APPEAL

The ultimate issue in this appeal is whether to approve, approve with conditions, or deny the Development Order issued to Appellee Pinellas Education Organization, Inc., d/b/a Enterprise High School (Applicant or School), by the Board on December 3, 2019. Specifically, the following issues must be resolved:

1. Whether Appellants have standing to appeal the Development Order.
2. Whether the issues raised by Appellants at the Oral Argument were properly preserved for appeal.
3. Whether there is substantial competent evidence in the record to support approval of the

Development Order.³

4. Whether the Board's decision departs from the essential requirements of the law.

5. If the Development Order is affirmed, whether any additional conditions are appropriate.

PROCEDURAL HISTORY

Appellee School filed an application to renovate an existing building to operate a high school at 2495 Enterprise Road, in Clearwater, Florida.⁴ The Board held a quasi-judicial public hearing on the application on November 19, 2019 (Board Hearing). The Board approved the School's application with conditions and the City issued the Development Order on December 3, 2019.

On December 4, 2019, two separate Appeal Applications were filed regarding the Development Order: (1) by 2521 Countryside Blvd., LLP, Countryside Property Principals, LLC, Bruce Levine, and Joan Levine; and (2) by 2505 Enterprise, LLC, and Greg Willsey, and Sandra Willsey. The Appeal Applications were fairly similar and raised a number of issues: four issues pertaining to traffic and parking requirements; and one issue as to whether a high school is a compatible use with the surrounding area.

The City referred the matter to DOAH on December 4, 2019, and it was

³ Section 4-505C states, "The burden shall be upon the appellant to show that the decision of the community development board cannot be sustained by substantial competent evidence before the board, or that the decision of the board departs from the essential requirements of law."

⁴ The School's application went through a Level Two approval process which requires a quasi-judicial public Board hearing to approve flexibility (i.e. deviation) from the minimum development standards set forth in the Code. *See* Code at §4-401. Level Two approvals must meet both the general applicability criteria and the flexibility criteria outlined by the Code. *See* Code at Art. 4, Divisions 1, 3, 4 and 6.

assigned to an administrative law judge. On December 13, 2019, a telephonic scheduling conference was held to determine the record on appeal and set the oral argument hearing. During that conference the parties agreed not to submit pre-argument briefs, but rather, chose to file post-hearing proposed final orders.

The Oral Argument was held at the Clearwater Library and was open to the general public. Applicant, the City, the Board, and all persons who were granted party status at the Board Hearing were allowed to present arguments at the Oral Argument. *See* Code at 4-505B. At the Board Hearing the following people were granted party status: Dr. Richard Gottlieb, who was represented by Todd Pressman; Sandra Willsey; Greg Willsey; and Todd Burch.

The transcript of the Oral Argument was filed with DOAH on February 19, 2020. Pursuant to section 4-505D, the proposed final orders were due within 20 days after the filing of the transcript, or no later than March 11, 2020. Per the City's request, the parties were granted an extension to submit proposed final orders. The additional time was to allow the parties to collaborate on a master index to the record on appeal (Index), which they intended to cite to in their proposed orders. The Index and the proposed final orders were timely submitted on March 23, 2020.⁵

⁵ At the Oral Argument, the parties stipulated that the undersigned could take official recognition of the Code provisions and City of Clearwater Comprehensive Plan (Comprehensive Plan) found online. As such, the undersigned takes official recognition of the Code found at https://library.municode.com/fl/clearwater/codes/community_development_code?nodeId=CODECO (last visited April 14, 2020); and of the Comprehensive Plan found at <https://www.myclearwater.com/government/city-departments/planning-development/divisions-/development-review-zoning/comprehensive-plan> (last visited April 14, 2020).

FACTS IN THE RECORD

Pursuant to section 4-505A, the record includes the application file of the Clearwater Planning and Development Department (Planning Department); the agenda packet of the Board Hearing; all exhibits accepted into evidence at the Board Hearing; and the streaming video of the Board Hearing.⁶ The following findings of fact are supported by substantial competent evidence found in the record.

Parties and Property

1. The School filed an application with the Planning Department to renovate a 16,696 square foot building located on a 1.730 acre site at 2495 Enterprise Road in Clearwater, Florida (proposed development).
2. The proposed development is in a retail/office plaza known as Village at Countryside (Plaza), located on the east side of Enterprise Road, just south of Countryside Boulevard in Clearwater, Florida. The Plaza consists of 11 parcels, including a large vacant building that formerly housed a Toys-R-Us store. The Plaza is located within the US 19 Corridor Redevelopment Plan, and has a designation of "US 19 District, Regional Center sub-district" (US 19-RC). Property within US 19-RC is subject to the special zoning district and development standards found at Appendix B of the Code.⁷
3. The School seeks to operate Enterprise High School, a charter high school, at the proposed development site.⁸ As explained below, relevant to this appeal is the number of students at the School and whether there will be adequate parking for the proposed development as required by the Code.

⁶ See Video of Board Hearing held November 19, 2019, on Agenda FLD2019-8026 at time marker 9:25 at http://clearwater.granicus.com/MediaPlayer.php?view_id=50&clip_id=3782 (last visited April 1, 2020).

⁷ See Code at Appendix B – *US 19 Zoning District and Development Standards*, found at https://library.municode.com/fl/clearwater/codes/community_development_code?nodeId=APXBUS19ZODIDEST (last visited April 14, 2020).

⁸ Enterprise High School is an existing charter school which intends to move from its current location to the proposed development site. The School is subject to section 1013.33, Florida Statutes.

4. Appellants own and operate property within the Plaza and adjacent to the proposed development site. Specifically, Bruce and Joan Levine own Appellants 2521 Countryside Blvd., LLP,⁹ and Countryside Property Principals, LLC. The LLP and/or LLC operate the Countryside Foot and Ankle Center.¹⁰ The Countryside Foot and Ankle Center's administrator, Todd Burch, was granted party status at the Board Hearing.

5. Greg and Sandra Willsey own Appellant 2505 Enterprise, LLC, which is a property in the Plaza. The Willseys were also granted party status at the Board Hearing.

6. At the conclusion of the Board Hearing, the Board voted to approve the School's application. On December 3, 2019, a Development Order was issued to memorialize the Board's action.

7. Thereafter, Appellants filed the Appeal Applications with a document titled "Notice and Statement" which stated the following grounds for the appeals:

The Neighbors assert that the decision of the Community Development Board ("the Board") was not supported by substantial competent evidence and was a departure from essential requirements of law. Specifically:

1. The Board's decision was based upon a high school with two, 200-student shifts. However, the record below established that these student shifts would substantially overlap during the noon hour. In other words, the evaluation of the proposed change of use was based on impacts and site requirements that were substantially less than what would actually occur on the site.

⁹ The Appeal Application lists this entity as 2521 Countryside Boulevard Land Trust.

¹⁰ Although Appellants state that Bruce Levine was granted party status at the Board Hearing, there is no substantial competent evidence in the record supporting this statement. See Appellees' Proposed Final Order at p. 3; compare Tab 30 of the Index, *Board Meeting Minutes for November 19, 2019*, at p. 3 and 5.

2. The Board's decision was based on a traffic analysis provided by the applicant that used a wrong ITE trip generation code - an elementary school instead of a high school - so it cannot be relied upon as a basis for the underlying decision.

3. The change of use to a high school required that the applicant establish that it had one parking space per three students. There is no substantial competent evidence to establish that this parking requirement was satisfied. To the contrary, the substantial competent evidence establishes that the parking on the property failed to meet this requirement. In fact, granting this change of use would result in a substantial oversubscription of the available parking at the site.

4. The proposed use would create tortured on-site parking and traffic circulation patterns that would substantially impact the existing medical office uses on the property, including a kidney dialysis office that serves a substantial elderly population. There is no substantial competent evidence to support the finding that the change of use would "have no impacts on the adjacent retail plaza." To the contrary, the change of use would have substantial impacts on the current retail and office plaza.

5. The proposed change of use would have substantial negative impacts on the surrounding community and is incompatible with the existing surrounding retail, office and residential uses.

8. At the Oral Argument, Appellants raised for the first time whether the operation of a school is an inconsistent use with: (1) an Amended and Restated Declaration of Establishment of Restrictive Covenants, Conditions, and Restrictions, and Grants of Easements dated December 7, 1983 (the "Parking Easement"); and (2) the Comprehensive Plan.

The Studies

9. The first four issues raised in the Appeal Applications are related to the Parking Study and Traffic Study (collectively referred to as the Studies) which were submitted by the School as part of its application. The Parking Study, dated September 2, 2019, consists of overall parking calculations; aerial photographs of the development site and surrounding areas; and the Parking Easement.

10. The purpose of the Traffic Study was to analyze the impact of the development on the traffic intersection at Countryside Boulevard and Enterprise Road, as well as the full access drive at the site. The 50-page Traffic Study, dated October 18, 2019, included numerous charts, maps, and tables with underlying information and data relating to the traffic counts for the proposed development. Jerry Dabkowski, a local traffic engineer who prepared the Studies for the School, testified at the Board Hearing about the traffic and parking calculations.

11. To rebut the Studies, at the Board Hearing Mr. Pressman presented a two-page letter from a professional engineer dated November 15, 2019, titled "Traffic Study Review." Relevant to the appeal, the letter finds fault in the number of students and the "ITE Code" used in the Traffic Study and in the Planning Department's Staff Report and Recommendation (Staff Report), dated November 19, 2019, which was also presented to the Board. These factors would affect the calculations for the number of parking spaces required for and the trip distribution caused by the proposed development.

Number of Students

12. Appellants argue the parking calculations should be based on the total number of students enrolled at the School, or 400 students. The Studies and the Staff Report calculated the traffic and number of parking spaces necessary based on two shifts with 200 students per shift.

13. At the Board Hearing, Donna Hulbert, the School's Director, testified that unlike a traditional high school, the School operated in two shifts to

allow the students to hold employment while completing their high school education. Although the School intends to enroll a total of 400 students, she explained, each of the two shifts would have a maximum of 200 students. Additionally, the students are eligible for a public transportation bus pass, which some students utilize instead of driving their personal vehicles.

14. The Study establishes that "[t]o reduce the impacts during the AM and PM peak hours, the school intends to split the day into two shifts, each with 200 students attending." Although there was conflicting information between the School's application and Ms. Hulbert's testimony at the Board Hearing about whether the shifts would overlap, the Staff Report recommends approval of the application because, "[t]he applicant has provided the school will operate in two shifts . . . with no more than 200 students present per shift." There is substantial competent evidence that there will be only 200 students at the School at a time, and that this number was correctly used in calculating the required parking spaces and the trip generation for the proposed development.

ITE Trip Calculation

15. Appellants argue the Traffic Study utilized the wrong Institute of Transportation Engineers' (ITE) Trip Generation Code, 520, which is the code applicable to an elementary school. The Study, however, states it utilized ITE Code 530 from the *Institute of Transportation Engineers' Trip Generation*, 10th Edition for Office, to calculate the change in trips attributed to the proposed development. A copy of the ITE Code 530 was attached to the Traffic Study. Additionally, Mr. Dabkowski testified that ITE Code 530 was the correct code for high schools.

16. There is substantial competent evidence that ITE Code 530 was used in calculating the change in trips for the Traffic Study which was relied upon in the Staff Report, and which was accepted by the Board.

Parking Requirements

17. Table 2 in section B-303, *Permitted uses and parking*, provides the following parking requirements relevant to this appeal.

Use	Regional	Use Specific Standards	Minimum Off-Street Parking Spaces
Retail Plaza	BCP[Level 1 Minimum Standard(Building Construction permit)]	[Not included]	4/1,000 SF GFA
Schools	FLD [Level 2 Flexible Development (Board approval required)]	1. All off-street parking is located at least 200 feet from any property designated as residential in the Zoning Atlas	1 per 3 students

18. Based on this criterion, the School would require 67 parking spaces (200 students/3 = 66.6667).

19. The Staff Report and Studies establish the proposed site has 55 parking spaces, but five of these spaces cannot be used because they are within 200 feet from a parcel designated as Residential. Thus, there are 49 available parking spaces "on site," leaving 18 spaces to be designated.

20. As stated earlier, the proposed site is one of 11 parcels in the Plaza. The Parking Study contains a copy of a Parking Easement that allows cross-parking among the parcels. Based on the square footage of the buildings on the parcels (including the proposed development site), the entire Plaza is required to have 975 parking spaces. The Plaza actually has 1,137 parking spaces, an excess of 162 parking spaces.

21. The Code also requires off-street parking spaces be located within 600 feet of the principal and accessory uses they serve. See Code at § 3-1404A.

Next to and within 600 feet of the proposed development site is currently a vacant building that formerly housed a Toys-R-Us store. That parcel has 228 parking spaces, but only 177 spaces are required for that building, leaving an extra 51 parking spaces.

22. Based on the excess spaces available through the Parking Easement, there is substantial competent evidence supporting the City's staff finding of adequate parking spaces to satisfy the additional 18 spaces necessary for the proposed development, and the Board's approval of the same.

Compatible Use

23. The fifth issue raised in the Appeal Applications is regarding the use of the proposed development site as a charter high school. Whether this site is appropriate for the type of school operated by the Applicant was a topic of discussion among the Board members at the Board Hearing.

24. At the Board Hearing, Planning Department Manager Mark Parry testified as an expert witness. Mr. Parry explained the nature of the US 19-RC standards and gave his opinion that the proposed development complies with all applicable provisions of the Code, including the use requirements.

25. In contrast, Appellants expressed anecdotal fears that the types of students attending the School would disrupt Appellants' medical businesses. For example, at the Board Hearing, Mrs. Willsey expressed concern that the students at the School were known to have "behavioral problems." Mr. Burch spoke about the increased number of pedestrians in the Plaza and cited to a letter in the record from Dr. Levine: "For us to have to monitor and police our properties for trespassing students would be untenable." There was no actual evidence in the record that the School's operations would cause any problems such as increased crime or trespassing in the area.

26. At the Oral Argument and in their proposed final order, however, Appellants' argument shifted away from the potential effects of the students in the area and instead offered the new arguments that the School was inconsistent with the Parking Easement which states the Plaza shall be used

"for commercial purposes only, including without limitation the operation of merchandising establishments, restaurants, and professional offices."¹¹

Regardless, as explained below, this argument is not appropriate on appeal because it was not raised at the Board Hearing or in the Appeal Applications.

27. At the Oral Argument, Appellants also argued that the School is an inconsistent use with the Comprehensive Plan. Appellants cited a paragraph from the Staff Report:

The proposal includes a new charter school with grades nine through 12 and constitutes a public educational facility as defined by Policy J.2.1.2. The school will be located within the US 19–RC future land use designation. The prior designation was Commercial General (CG). The intent is that all uses permitted in the CG are also permitted in the US 19–RC classification. The City is planning to update the Comprehensive Plan to reflect this. Schools are a listed permitted use in the CG classification.

As explained below, this argument is also inappropriate because it was not raised at the Board Hearing or in the Appeal Applications.

28. Appellants also argue the proposed development is an inconsistent use with the existing businesses because the adjacent properties are commercial in nature and the School is not commercial. The Code, however, clearly allows Schools as an allowable use in the US 19-RC zoning district, and in the

¹¹ The Complete section of the Parking Easement titled "Uses" states:

2.1 Uses in General The Property, consisting of both the Building Area and the Common Areas, shall be used for commercial purposes only, including without limitation the operation of merchandising establishments, restaurants, and professional offices. No portion of the Property shall be used or operated as a discotheque, bar or cocktail lounge (except in connection with a restaurant) ... theatre, bowling alley, skating rink, roller disco or catering hall, funeral parlor, or for the sale of pornographic literature or material, or an adult book store or so called "head shop" or for a video or other game arcade, flea market, or for a use which would be noxious or immoral or otherwise constitute moral turpitude or constitute an undignified, disreputable use.

previous zoning designation of CG. *See* Code at § B-303. Moreover, unlike the Parking Easement, the Code does not divide use categories into "Commercial" and "Non-Commercial." Rather, the uses are categorized as "Residential" and "Non-Residential." *Id.* Based on the Code and the review of the application submissions, the Staff Report concluded the School will be an appropriate use in the area.

Based on Staff visits, aerial photographs and material submitted by the applicant it is evident that the proposal will be in harmony and consistent with the scale, bulk, coverage and character of adjacent properties and, generally, with properties in the greater neighborhood. The reuse of the 16,700 square foot building with a school will not result in any adverse visual impacts on adjacent properties. Since the character of the site will not change with the proposal, and it is currently similar in nature vis-a-vis placement of other uses in the area it is not expected to impair the value of those properties. The proposal will likely have no effect, negative or otherwise, on the health or safety of persons residing or working in the neighborhood.

29. The testimony of Mr. Parry, coupled with the Staff Report, constitute substantial competent evidence supporting the Board's finding that the School is a compatible use with the area.

CONCLUSIONS OF LAW

30. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties pursuant to section 4-505 of the Code. Under that provision, the hearing officer's decision shall be final.

31. As an initial matter, Appellees challenge Appellants' standing to bring this appeal. Section 4-502B of the Code allows an appeal of the Board's decision to be initiated by "any person granted party status." Because the individual owners and/or representatives of Appellants were granted party status at the Board Hearing, all of the Appellants have standing to bring this

appeal.

32. As to the merits of the appeal, the burden is upon Appellants to show that the Board's decision cannot be sustained by "substantial competent evidence" in the record or that the decision departs from the essential requirements of law. *See Code at § 4-505C.*

33. Substantial competent evidence is evidence that a reasonable mind would find adequate to support the facts found and conclusions reached. *Degroot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957) (construing competent substantial evidence to be sufficiently relevant and material to support the decision on appeal). It need not result in the best decision, or even a wise decision, in the view of an appellate court. *See Dusseau v. Metro. Dade Cnty.*, 794 So. 2d 1270, 1275-76 (Fla. 2001).

34. The undersigned, acting in an appellate capacity, cannot reweigh conflicting evidence presented to the Board or substitute her judgment for that of the Board on the issue of credibility of witnesses or reliability of evidence. *See Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995).

35. Regarding the traffic and parking issues, Appellants essentially argue their expert's report is more accurate than the School's Studies, the Staff Report, and the testimony regarding the traffic and parking calculations. While there may have been conflicting evidence on some of these issues, the Board resolved these conflicts in favor of the School. Therefore, Appellants have not shown the Board's decision in finding the School has satisfied the parking and traffic requirements, and approving the application is unsupported by substantial competent evidence.

36. Regarding the compatible use issue, the School is a permitted use in US 19-RC (and the previous designation of CG), and therefore is presumed to be a compatible use.¹² See *Ocean Concrete, Inc. v. Indian River Cnty. Bd. of Cnty. Commissioners*, 241 So. 3d 181, 188 (Fla. 4th 2018) ("It is axiomatic that if an area is zoned for a particular use, that use is deemed compatible with surrounding uses. Before the County amended the code [the use was a] permitted use on Appellants' property. Therefore, the use [] was per se compatible with the surrounding land uses." (citations omitted)); and *Nostimo, Inc. v. City of Clearwater*, 594 So. 2d 779, 781 (Fla. 2d DCA 1992) (holding use of property was compatible with surrounding or adjacent uses because it was a permitted use). The only direct testimony at the Board Hearing against finding that the School was a compatible use was the testimony of the Willseys and Mr. Burch. Such generalized concerns and opinions from neighbors and citizens, which often are speculative, based on fear and similar emotions, and based on unsubstantiated facts are not substantial competent evidence. See *City of Hialeah Gardens v. Miami-Dade Charter Found., Inc.*, 857 So. 2d 202 (Fla. 3d DCA 2003); *Marion Cnty. v. Priest*, 786 So. 2d 623 (Fla. 5th DCA 2001); *Metro. Dade Cnty. v. Section II Prop. Corp.*, 719 So. 2d 1204 (Fla. 3d DCA 1998); *Metro. Dade Cnty. v. Blumenthal*, 675 So. 2d 598, 607 (Fla. 3d DCA 1996) (en banc).

37. The issue of whether the Board's decision "depart[ed] from the essential requirements of the law" is synonymous with whether the Board "applied the correct law." *Haines City Cmty. Dev.*, 658 So. 2d at 530. Here,

¹² Appellants erroneously argue public educational facilities are not an allowable use within the Commercial General (CG) zoning designation. To the contrary, Appendix B of the Code, relating to the US 19-RC special district, and the Comprehensive Plan establish that educational facilities are allowable uses in the area's previous category of CG. Appellants seem to have relied on the wrong version of the Comprehensive Plan, section J. See Appellants' proposed final order at ¶¶25 - 29 (arguing schools are not permitted in the CG classification). The applicable version clearly allows a school in the "Commercial General" category. See Section J.2.1.3, Comprehensive Plan ("Public educational facilities of the School District are an allowable use within the following land use categories in the City ... Commercial General") found at <https://www.myclearwater.com/home/showdocument?id=1068> (last visited April 14, 2020).

Appellants essentially argued for the first time at Oral Argument that the Board failed to apply the correct law because it did not consider the "Uses" provision in the Parking Easement and because the application is allegedly inconsistent with the Comprehensive Plan. As stated above, these arguments were not considered by the Board, because they were never raised at the Board Hearing.

38. It is fundamental that an issue not raised before the deciding tribunal cannot be raised for the first time on appeal. *See First Savings Corp. of Tex. v. S & B Partners*, 548 So. 2d 1156, 1158 (Fla. 5th DCA 1989); *Battaglia Fruit Co. v. City of Maitland*, 530 So. 2d 940, 943 (Fla. 5th DCA 1988). The undersigned, in an appellate capacity, may not consider and resolve an issue raised for the first time on appeal. *See Sunset Harbour Condo. Ass'n v. Robbins*, 914 So. 2d 925, 928 (Fla. 2005) ("As a general rule, it is not appropriate for a party to raise an issue for the first time on appeal.").

39. The general statements made by Mr. Pressman, Mr. Burch, and the Willseys (about traffic, parking, or the types of students that would attend the School) did not provide the Board (or the undersigned) with a reasonable opportunity to consider these late raised issues. For example, The Board was never asked to enforce the Parking Easement's "Uses" section. The Board also was not given an opportunity to evaluate whether the permitted use of "Schools" in Table 2 of section B-303 was inconsistent with the Comprehensive Plan. Had these arguments been raised at the Board Hearing, the Board members could have sought input or opinions from City staff or other witnesses before taking a vote on the application. Therefore, the undersigned declines to address the alleged conflicts with the Parking Easement or the compatibility with the Comprehensive Plan.

Conditions to the Development Order

40. Appellants correctly note that the Development Order does not contain any conditions that would cap the number of students at the School per shift. According to the Staff Report, based on the square footage of the proposed

development site, the School could have as many as 521 students. At the Oral Argument and in their proposed final order, Appellees admitted there was nothing in the record mandating that the School operate in two shifts, cap enrollment at 400 students, or limit each shift to a 200-student enrollment.

41. Section 4-505D authorizes the undersigned to approve, approve with conditions, or deny the requested development application. The Code provides no guidance as to when a hearing officer can approve a development application and impose additional conditions. Although an appellate court has wide discretion in disposing of a case, that discretion is not without limits. *C.f. R.J. Reynolds Tobacco Co. v. Prentice*, 2019 Fla. App. LEXIS 16147, at *3–4 (Fla. 1st DCA Oct. 24, 2019) (“It is a long-standing legal principle that appellate courts have broad powers to make such disposition of the case as justice requires ... [b]ut that discretion is not without limits.” (citation and quotations omitted)); *Tracey v. Wells Fargo Bank, N.A. as Tr. for Certificateholders of Banc of Am. Mortg. Sec., Inc.*, 264 So. 3d 1152, 1160 (Fla. 2d DCA 2019) (“What drives that discretionary decision? The potential considerations may be myriad, but when the question arises, the appellate courts' decisions on the scope of remand universally harken to basic principles of equity and fairness fashioned to the particular facts and circumstances of the case.”).

42. Here, Appellants did not meet their burden to overturn the Board's approval of the Development Order, but they have raised legitimate concerns regarding the Development Order's failure to explicitly require the School to operate two shifts and cap enrollment at 200 students per shift. These were the underlying facts utilized in the Studies and Staff Report and presented to the Board. Because there is substantial competent evidence in the record that the satisfaction of the parking requirements is contingent on the School operating on shifts and a 200 student per shift enrollment limit, the undersigned finds these are fair and reasonable conditions to add to the Development Order. *See generally, Delgado v. Ag. for Health Care Admin.*,

237 So. 3d 432, 439 (Fla.1st DCA 2018) (reversing denial of award, but finding remand for further evidentiary proceedings was unnecessary given the ALJ's finding of fact as to calculation of potential amount of award was "fair, reasonable, and accurate.").

DETERMINATION

Because Appellants did not meet their burden to show that the decision of the Clearwater Community Development Board cannot be sustained by substantial competent evidence in the record or that the decision departs from the essential requirements of law, the Development Order subject to the conditions identified in the City of Clearwater's letter issued December 3, 2019, therein is AFFIRMED, with the additional conditions: (1) the School operate in two shifts, and (2) the School enroll no more than 200 students per shift. Pursuant to Section 4-505D of the Community Development Code, an affirmation of the Board's decision with the additional condition shall be the final action of the Board.

DONE AND ORDERED this 23rd day of April, 2020, in Tallahassee, Leon County, Florida.



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NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to Section 4-505D of the City of Clearwater Community Development Code by appealing to the appropriate court by a petition for certiorari.