

RELIGIOUS INSTITUTIONS

AND

LOCAL LAND USE CONTROLS

Prepared by:

The Pinellas Planning Council

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LOCAL LAND USE CONTROLS

Pinellas Planning Council

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Acknowledgments

This is a background report designed to assist local governments in the administration and regulation of religious institutions in Pinellas County. The report was written by Deborah Blews under the direction of Principal Planner Michael C. Crawford and Executive Director David P. Healey. We would like to thank the members of the Planners Advisory Committee and the Pinellas Planning Council for their input in the development of this report.

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Attachment

Planners Advisory Committee Questionnaire A-1

I. Introduction

The intent of this report is to provide objective background information which will serve as a resource to local governments in Pinellas County as they address the regulation of religious institutions. This paper discusses the definitions of, and distinctions between, churches, religious institutions, and religious societies. The report categorically analyzes in sequential order governmental regulation of religious institutions on a national, state, and local level. It contemplates proposed federal legislation, H.R. 1691, which has specific implications for local governments and religious institutions. It provides examples of accessory uses to religious institutions, specifically, day care centers, homeless shelters, and outreach programs.

The report also focuses on religious institutions within Pinellas County. It discusses religious institutions as provided for in the *Rules Concerning the Administration of the Countywide Future Land Use Plan* (“Countywide Rules”). It also provides quantitative data regarding religious institutions in a sampling of comprehensive plans, land development regulations, and the results of a questionnaire that was submitted to the Planners Advisory Committee. It delves into the various procedures used in the location of religious institutions which may help to mitigate the impacts of the institutions on abutting properties and neighborhoods. Lastly, it provides a summation which includes suggested guidelines that local government may find helpful in the review of their plans and regulations pertaining to religious institutions.

II. Conceptualizing Religious Institutions

There is no unified definition for religious institutions. It is common practice to refer to religious institutions, churches, and places of religious worship interchangeably. Reverend Lyle E. Schaller, a former city planner and scholar, opines that it is difficult to define some religious institutions because it is a matter of degree related to the number of members and the wide range of related activities the institution offers.¹

Religious institutions may include churches, synagogues, mosques, temples, other institutions, and their members who have a religious belief.² The House of Representatives recently defined religious practice as “any exercise of religion, whether or not compelled

¹Jim Schwab, “Zoning and Big Box Religion,” *Zoning News*: November 1996, 1-4, 3.

²Michael W. McConnell, “Institutions and Interpretation: A Critique of *City of Boerne v. Flores*.” *Harvard Law Review*: Fall 1997, 153-195, 157.

by, or central to, a system of religious beliefs, and includes (A) the use, building or conversion of real property by a person or entity intending that property for religious exercise; and (B) any conduct protected as exercise of religion under the First Amendment to the Constitution.”³

There are legal distinctions between a religious society, a church, and a religious corporation.⁴ A *religious society* is one which members join to pursue and exercise religious beliefs of any type. It may be incorporated and may have premises. In contrast, a *church* is generally referred to as a group of individuals who assemble and declare the Christian religion irrespective of a particular denomination. A *religious corporation* is a contrived creation of the state which is intended to provide a statutory schema for its members. Given these distinctions, it is suggested that “religious institution” is the preferred term to be used by local governments.

III. Legislation and Court Decisions

Generally stated, local government regulation carries a presumption of constitutionality and the challenger has a burden of proof in the courts. However, there is tension between the constitutional right to religious freedom and governmental regulation of the property of religious institutions. The issue has prompted litigation on the national, state, and local levels of government. This is of specific significance to local governments because they are compelled to justify their regulatory decisions related to religious institutions when that regulation is challenged in the courts.

The First Amendment of the U.S. Constitution, among other things, provides that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”⁵ The Amendment is applied to state and local governments by the Fourteenth Amendment to the U.S. Constitution.

In the landmark U.S. Supreme Court case, *Sherbert v. Verner*, a South Carolina resident was denied unemployment benefits when she was discharged for not working on her day of Sabbath.⁶ In ruling that the appellant’s First Amendment rights were violated, the Court set forth the well-established constitutional proposition that the government must justify a

³*Religious Liberty Protection Act of 1999*, H.R. 1691, July 15, 1999, Sec. 8 (1).

⁴See generally *Corpus Juris Secundum*, 77 C.J.S. §1-§2.

⁵U.S. Constitution, Amendment I.

⁶*Sherbert v. Verner*, 83 S.Ct. 1790, 374 U.S. 398 (1963).

compelling interest when substantially interfering with religious practices. This rule of law was also supported by another benchmark decision, *Wisconsin v. Yoder*, where Amish parents did not send their children to school beyond the Eighth grade because of their faith.⁷ The U.S. Supreme Court considered whether the state's interest in compulsory education was a sufficiently compelling governmental interest to substantially infringe upon the appellee's free exercise of religion. The Court stated that a seemingly neutral law can have the effect of "unduly burden[ing]" the free practice of religion. It ruled that Wisconsin's interest in education did not outweigh the First and Fourteenth Amendments to the Constitution.

In *Employment Division of Human Resources v. Smith*, the Supreme Court denied unemployment benefits to the plaintiffs because of sacramental use of peyote.⁸ The plaintiffs claimed that the use of peyote was a religious practice and challenged the state law of general applicability which made its use illegal. The Court expounded a narrow view of the First Amendment. It held that laws that are neutral as to religion and apply generally to all citizens are "categorically exempt from constitutional scrutiny even when they prohibit or substantially burden religious exercise."⁹

Subsequent to the *Smith* ruling, the *Religious Freedom Restoration Act of 1993* ("RFRA-I") passed unanimously in the House of Representatives and by a 97-3 vote in the Senate.¹⁰ It was signed into law by President Clinton. The central tenet of RFRA-I was that it afforded the most stringent constitutional test in protecting religious exercise from governmental intrusion. The practical effect of the law was that it overruled or superseded the Supreme Court ruling of *Smith*. RFRA-I declared that the government cannot substantially impede a person's religious practice unless the government can prove that the regulation serves a compelling governmental interest and the least intrusive means are employed. The law applied to every government agency and official, and had retroactive application.

The *City of Boerne, Texas v. P.F. Flores* is a recent U.S. Supreme Court case in which the city denied a building permit for an addition to a church because it would have substantially

⁷*Wisconsin v. Yoder*, 92 S.Ct. 1526, 406 U.S. 205 (1972).

⁸*Employment Division Department of Human Resources v. Smith*, 494 U.S. 872 (1990).

⁹McConnell, "Institutions and Interpretation", 153.

¹⁰*Religious Freedom Restoration Act*, 42 U.S.C. §2000 bb (b) (1)- (b) (2).

altered the historic character of the area.¹¹ The Supreme Court ruled that Congress violated the separation of powers doctrine by attempting to overrule *Smith* via RFRA-I. That is, Congress attempted to interpret the law, which is the sole province of the Court. Also, the Court held that it was unconstitutional for Congress to impose RFRA-I on the states. The effect of the Court's ruling was that the church was precluded from making radical changes to the structure.

There was an adverse reaction by many states to the Court's ruling in the *City of Boerne*. In fact, the Florida Legislature passed the *Religious Freedom Restoration Act* effective June 17, 1998, essentially, reenacting RFRA-I on a state level. The following is Florida's version of RFRA-I:

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 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 governmental interest.¹²

Congress is currently considering "RFRA-II" named the *Religious Liberty Protection Act of 1999* under H.R. 1691. The bill has passed through the House of Representatives and was forwarded to the Senate as of July 16, 1999. Similar to RFRA-I, it is receiving bipartisan support. While Congress has adjourned for this session, the Senate has the remainder of 2000 to act on the bill. The bill states that the "government shall not substantially burden a person's religious exercise in any program or activity operated by the government."¹³

In the bill, there is also specific attention to local governments and their regulation of religious institutions. It states that the government cannot substantially burden a person's religious practice without justifying a compelling governmental interest and employing the least restrictive means in furthering that interest. The bill also provides that local governments will regulate religious institutions in the same manner as non-religious institutions. It declares that local governing authorities shall not "unreasonably" bar or limit religious institutions that are "principally devoted to religious exercise."¹⁴

¹¹*City of Boerne, Texas v. P.F. Flores*, 117 S.Ct. 2157(1997).

¹²*Religious Freedom Restoration Act of 1998*, F.S. 761.03, June 17, 1998.

¹³*Religious Liberty Protection Act of 1999*, H.R. 1691, Sec. 2 (a) (1).

¹⁴*Ibid.*, Sec. 3 (b) (1) (D).

A. Accessory Uses

Accessory uses of religious institutions are those that are secondary to the primary or principal use of the practice of religion. It is a litigious issue determining what type of activities related to accessory uses constitute “religious expression” that is afforded the protections of the U.S. Constitution and federal legislation. It appears some auxiliary uses to churches are within the purview of religious activities.

1. Examples

a. Day Care Centers

In *Rae Shim and Washington Wines and Liquors, Inc. v. Washington Township Planning Board*, a church, which was located in a residential low density area and was a permitted use, applied to the local planning board (“Board”) for expansion.¹⁵ The church proposed adding a sanctuary, hall, offices, a library, and day care center. The plaintiffs objected to the Board’s site plan approval for the expansion. They also argued that the addition of the day care “constituted a variant use” mandating a separate site plan approval and variance procedure. Their argument revolved around the issue that the city code did not specifically enumerate a day care center as a primary use within the zoning category.

The court analyzed a local ordinance that set forth a three-prong test as part of their accessory use definition. The general definition of an accessory use requires that it be: “(1) subordinate to and serve a principal use; (2) located on the same lot as the principal use; and (3) customarily incidental to the principal use.”¹⁶ The court addressed the issue that there was not an express enumeration for day care facilities as an accessory use for churches in the local code. The court stated that it was a well-settled rule that accessory uses are “implied as a matter of law as a right which accompanies the principal use” and that there was a legally implied right to operate a day care center because it was an accessory use “incidental, subordinate, and customarily associated with the principal use” of the church.¹⁷ The court resolved the issue of whether a day care was an accessory use using zoning analysis (i.e., the application of the three-prong accessory use definition) and did not decide that a

¹⁵*Rae Shim v. Washington Township Planning Board*, 689 A.2d 804, 805 (1997).

¹⁶*Ibid.* at 807.

¹⁷*Ibid.* at 807, 808.

day care was “customarily incidental to a church’s principal use under the First Amendment.”¹⁸

However, the court recognized that there has been “criticism of the ‘customarily incidental’ standard in deciding whether a particular activity is an accessory use to a church.”¹⁹ The court supported analysis set forth by Mark W. Cordes, who wrote a leading law review article, “Where to Pray? Religious Zoning and the First Amendment” in 1987. Cordes stated that churches have a right to engage in activities related to their religious purpose “as long as the activity does not substantially interfere with surrounding uses. *The focus of the inquiry should be on the impact a particular secondary use has on its surroundings.*”²⁰

b. Homeless Shelters

In *Western Presbyterian Church v. Board of Zoning Adjustment*, a church in Washington, D.C., sued the Board of Zoning Adjustment (“Board”) to continue the provision of meals to homeless people.²¹ The church was relocating to an upscale neighborhood near the Kennedy Center. The court cited the complaints of many citizens within the community who were concerned by the potential negative impacts of having the meal program operating in the area (i.e., increased crime, harassment, and decline in property values.)

The Board prohibited the church from operating the meal program, justifying their decision in the application of the local zoning regulations. The court defined the issue as a “conflict between a municipality’s exercise of its power to regulate the use of real property within its jurisdiction and its citizens’ constitutional rights to free exercise of their religion or beliefs.”²² The court stated that feeding homeless individuals was a part of charity which is related to the practice of religion. It held that the Board’s attempt to regulate religious

¹⁸*Ibid.* at 810.

¹⁹*Ibid.* at 811.

²⁰*Ibid.* at 812; see also Mark W. Cordes, “Where to Pray? Religious Zoning and the First Amendment”, 35 *U. Kan. L. Rev.* 697, 743 (1987).

²¹*Western Presbyterian Church v. Board of Zoning Adjustment*, 862 F. Supp. 538 (1994).

²²*Ibid.* at 544.

practices through its zoning, which placed a “substantial burden on the free exercise of religion,” violated the First Amendment and RFRA-I.²³

Similarly, in *Jesus Center v. Farmington Hills Zoning Board of Appeals*, a church operated a temporary homeless shelter as an accessory use.²⁴ The church not only accepted individuals within the immediate area, but also bused in those that were in need from other communities. The church was zoned in a single-family residential district. Many citizens objected to the influx of homeless people who panhandled, trespassed, loitered, and urinated in public. The citizens claimed that they feared for their health and safety. The court held that operating the shelter was related to the exercise of religion and was protected, by the then legally controlling federal legislation, RFRA-I.

In both cases, *Western Presbyterian Church* and *Jesus Center*, the churches presented a willingness and an ability to mitigate against the adverse impacts. They recognized a responsibility in the community and accepted the duty to ensure that their programs would not be harmful to the citizens.²⁵ It should be noted that these cases were decided prior to the 1997 Supreme Court decision, *City of Boerne, Texas*, which held RFRA-I unconstitutional.

In *Daytona Rescue Mission, Inc. v. The City of Daytona Beach*, 885 F.Supp. 1554 (M.D. 1995), the Daytona Rescue Mission (“DRM”) provided outreach programs, operated a homeless shelter and conducted worship services.²⁶ Prior to the formation of DRM, the founder looked at two different site locations. He requested the City Planning Board allow the DRM as a semi-public use in a M-1 (local industry) and R-3 (residential) districts where churches were permitted as conditional uses. The land development regulations explicitly stated that homeless shelters and food banks were not customarily related accessory uses to a church. The effect was that the church would have to go through the zoning requirements to allow the homeless shelter and food bank, the same as any other entity attempting to operate the same uses. The plaintiff charged that the land development regulations violated the First Amendment and RFRA-I. The court applied the three-part test as declared in *Grosz*

²³*Ibid.* at 547.

²⁴*Jesus Center v. Farmington Hills Zoning Board of Appeals*, 544 N.W.2d 698 (1996).

²⁵*Western Presbyterian Church*, 862 F. Supp. at 546.; *Jesus*, 544 N.W.2d at 705.

²⁶*Daytona Rescue Mission, Inc. v. City of Daytona Beach*, 885 F. Supp.1554 (M.D. 1995).

to determine whether the free exercise clause of the First Amendment has been violated.²⁷ The test is: (1) the law must regulate conduct, as distinct from belief; (2) the law must have a secular purpose and a secular effect; (3) if the two threshold inquires are met, the court balances the government and religious interest. In applying the test, the court found that the regulations passed the first two inquires. In finding that the zoning regulations outweighed the religious interest, the court recognized as a “significant interest the preservation of government’s ability to regulate zoning.”²⁸ Finally, the court found that the regulation did not impose a “substantial burden” on the practice of religion, therefore the government did not have to show a compelling reason for the regulation.²⁹

c. Outreach Programs

It is a modern trend for churches to engage in providing social services to their members and citizens at large. Religious institutions are not only meeting for just prayer and fellowship. In fact, many of the ancillary social services that are provided by churches are part of their “broad based commitment” to their community values.³⁰ These institutions sometimes provide drug and alcohol rehabilitation, counseling, support groups and other types of social education. Also, churches may serve as a catalyst for other social activities, such as concerts and neighborhood family activities.

B. Controlling Impacts

It is firmly established that there is not an unqualified right to the free exercise of religion; only the right to hold a religious belief is paramount.³¹ The government can place reasonable “restrictions and regulations on the time, place and manner” of the practice of religion.³² For

²⁷See *Grosz v. City of Miami Beach, Fla.*, 721 F.2d 729 (11th Cir. 1983).

²⁸*Daytona Rescue Mission, Inc.*, 885 F. Supp. at 1558.

²⁹There is a distinction between substantial burdens to religious practices, and incidental burdens to religious exercise. The First Amendment and federal legislation prohibit substantial burdens, not incidental impediments to religious practice.

³⁰*Shim*, 689 A.2d at 811.

³¹*Sherbert*, 374 U.S. at 402 (1963); *U.S. v. Silberman*, 464 F. Supp. 866, 872 (1979).

³²*Ibid.*

example, land development regulations may provide that “a proposed church show that its use is compatible with the neighborhood, will not be detrimental to the *health, safety and general welfare* of the residents” and that it is in compliance with the land development regulations.³³ Local governments must take into consideration the secondary harmful effects associated with the location of uses.

An indisputable purpose of a church use is to promote “the religious activities of its congregation. This purpose in turn implicates the safety and welfare of the residential area at issue given the likelihood of increased traffic and the potential for parking problems.”³⁴ In fact, based on the data and analysis in the traffic comparison study prepared by the Pinellas Planning Council (“PPC”), it is clear that church uses in Pinellas County generate substantially more traffic on Sundays compared to any other day of the week and in comparison to otherwise lower density permitted uses allowed in residential areas.³⁵ Also, it was determined that churches that included ancillary uses, such as day care centers, can generate considerable traffic during week days and during morning and evening peak hours.

IV. Religious Institutions in the Context of Pinellas County

During the past year, the PPC investigated and analyzed possible amendments to the *Countywide Rules* to better accommodate religious institutions within Pinellas County. There has been analysis pertaining to the number and size of existing church properties relative to the *Countywide Future Land Use Plan* (“Countywide Plan Map”) category, number and size of *Countywide Plan Map* amendments for churches, and how local governments address churches within their comprehensive plans and land development regulations.

A. Countywide Rules

Religious institutions are allowed in the following Countywide Plan Classifications: Residential, Mixed Use, Commercial, Industrial, Public/Semi-Public, and Special Designations. Religious institutions are a permitted use in twenty-five (25) out of thirty (30)

³³*U.S. v. Village of Airmont*, 839 F. Supp. 1054, 1065 (1993). *Emphasis Supplied*. See also *Wisconsin*, 92 S.Ct. 1526, 1535.

³⁴*Grace Community Church v. Town of Bethel, et. al.*, 622 A. 2d 591, 596 (1993).

³⁵*Pinellas Planning Council Agenda Memorandum*, Item VII.C, Table IV.

Countywide Plan Categories. Twenty (20) of the Plan Categories have a five-acre threshold, after which an amendment to an Institutional Plan Category is necessary. The Transportation/Utility Plan Category has a ten-acre threshold. The Institutional Plan Category allows religious institutions without restriction as to acreage, and the Community Redevelopment District and Central Business District Categories allow for the use as specified in the respective redevelopment plans for such categories.

The customary accessory uses to religious institutions are also allowed as primary uses in the Institutional Plan Category. That is, private schools, cemeteries, social/public service agencies, child day care, and libraries are explicitly enumerated, among others, as primary uses. Additionally, each local government future land use plan category and land development regulation must be consistent with the *Countywide Rules*. Local governments may choose to adopt the *Countywide Rules* or be more restrictive, however they may not be more lenient than what is set forth in the *Countywide Rules*.

The *Countywide Rules* are deficient in the following respects: 1) they fail to provide a definition of church or religious institutions; and 2) the Rules refer to the use of “child” day care center where the word “child” should be deleted because some of the accessory uses to religious institutions include senior day care centers. Also, the *Countywide Rules* should define “social/public service agencies” as an entity that is distinct from the services generally offered by a religious institution.

B. Background to Recent Countywide Rule Amendment

The PPC has analyzed existing church uses, their locations, sizes, ancillary uses, and the impacts generally associated with them.³⁶ The PPC found that there are 948 religious institutions located in Pinellas County. Of those, 742 or 78.3% are on sites three (3) acres or less in size. Of the total number of religious institutions within in Pinellas County, three-quarters are in three (3) Countywide Plan Categories: Residential Urban, Residential Medium, and Institutional. It was also found that at some point church uses generate impacts that exceed typical uses under a Residential Plan Category. Specifically, religious institutions generate traffic volume that is comparable to those generated by residential uses on weekdays. However, on weekends, which are typically days of worship, the amount of traffic generated can be three (3) to five (5) times greater than its residential counterpart.

³⁶*Pinellas Planning Council Agenda Memorandum*, March 20, 1999, Item VII.C, Table III.

On March 16, 1999, the Countywide Planning Authority adopted Ordinance No. 99-22 amending the *Countywide Rules*, in part based upon the background information discussed previously. The amendment increased the acreage threshold from three (3) to five (5) acres, allowing institutional uses, including “church; religious institution” uses, of up to five (5) acres in all Residential and Mixed Use Countywide Plan Classifications without requiring a *Countywide Plan Map* amendment.³⁷ An amendment to the Countywide Institutional Plan Category is required for a religious institution use and related ancillary uses beyond the five-acre limit for these plan classifications.

Included in Ordinance No. 99-22 is a provision for an “Institutional Overlay” designation. “The purpose of the Institutional Overlay designation is to allow a local government the option of narrowing the range of permitted uses allowed in the Institutional Plan Category and to preserve the otherwise applicable provisions of the underlying principal Countywide Plan Category as to permitted uses and density/intensity standards.”³⁸ This amendment to the *Countywide Rules* provides a broad framework which local governments can choose to use as written, or they may choose to be more restrictive as to allowable uses and intensities.

C. Treatment in Local Government Comprehensive Plans

In a sample of sixteen (16) out of the twenty-five (25) future land use elements in the comprehensive plans for the local governments in Pinellas County, thirty-one percent (31.3%) state that because of the broad range of public services churches offer, church uses should be evaluated and located on the basis of their individual merits. The remaining elements do not have an express provision. Most local governments refer to “churches” or “religious institutions,” yet they do not define these terms. Approximately nineteen percent (18.8%), provide that there should be compatibility with the surrounding character of the community in consideration of other uses and transportation impacts.

³⁷Ordinance 99-22 amending *Pinellas County Rules Concerning the Administration of the Countywide Future Land Use Plan, As Amended*, effective March 16, 1999.

³⁸*Pinellas County Rules Concerning the Administration of the Countywide Future Land Use Plan, As Amended*, Article 2, Division 2.3, Section 2.3.3, Subsection 2.3.3.7.3, 1998.

D. Implementation in Local Government Land Development Regulations

After a review of local land development regulations in January, 1999, it was determined that over seventy percent (70.8%) of the local governments in Pinellas County do not include a definition of religious institution or church use in their land development regulations.³⁹ Fifty-four percent (54.2%) of the local governments require the location of a religious institution to be reviewed under the process of special exception or conditional use. Almost sixty-three percent (62.5%) of the local governments have provisions requiring compatibility with surrounding uses.

1. Planners Advisory Committee Questionnaire

The Planners Advisory Committee (“PAC”) is comprised of the Planning Directors or their appointee representing the member local governments in Pinellas County. The members advise the PPC on technical matters within their respective jurisdictions. Attached to this report is a questionnaire that was submitted to the members of the PAC on October 26, 1999, soliciting basic information on how municipalities regulate religious institutions in Pinellas County. The informal surveys were faxed to each of the fourteen members of the PAC. Ten of the members responded by either returning the fax or by participating in an informal telephone survey that was structured from the questionnaire. The following section provides a summary of the questionnaire responses.

a. Size

Eighty percent (80%) responded that the traditional church was the most common size within in their jurisdiction. Twenty (20%) responded that expanding churches are increasingly more common. Ten percent (10%) reported that store-front or strip-center churches are common and, ten percent (10%) found that store-front churches are increasingly common. Thirty percent (30%) reported that store-front churches are not common within their jurisdiction. Ten percent (10%) reported that “megachurches” were the most common in their jurisdiction, and ten percent (10%) reported that this very large size church was common. Thirty percent (30%) reported that megachurches were not common in their geographic area.⁴⁰ One respondent reported that there were no typical religious institutions in the community. Instead, church services are a permitted use in the auditorium of the town hall.

³⁹*Pinellas Planning Council Agenda Memorandum*, March 20, 1999, Item VII.C, Table III.

⁴⁰Megachurches are commonly referred to as very large churches that have many accessory uses and extensive parking.

b. Procedures

Seventy percent (70%) use the special exception or conditional use process as the regulatory process for the location of church uses within their jurisdiction. It was reported that this regulatory process was an effective means of analyzing church uses on a case-by-case basis. Thirty percent (30%) allow churches as a permitted use in the plan category of Institutional.

c. Standards

Forty percent (40%) report that they calculate impacts based upon the proportionate amount of accessory uses to determine the total impacts of the combined use. Twenty percent (20%) restrict other uses in relation to religious institution uses (i.e. the sale of alcoholic beverages and adult entertainment establishments within specified distances of the religious institution).

d. Types of Impacts

Twenty percent (20%) report that impacts on abutting areas are relative to the particular religious institution use. Forty percent (40%) claim that traffic has a high impact, twenty percent (20%) claim that traffic is a moderate to high impact, and ten percent (10%) claim that it is a moderate impact.

Thirty percent (30%) report that parking is a high impact. Twenty percent (20%) report that it is moderate to high impact. Ten percent (10%) claim that it is a moderate impact. Ten percent (10%) of the municipalities report that shuttle services are utilized to address the impacts of parking.

Twenty percent (20%) report that access is a moderate to high impact and thirty percent (30%) report access is a moderate impact.

Twenty percent (20%) report that lighting is a moderate impact. Ten percent (10%) report that it is moderate to low and ten percent (10%) report that it is a low impact.

Ten percent (10%) report that noise is a high impact. Twenty percent (20%) report it as moderate. Thirty percent (30%) report it as a low impact.

e. Accessory Uses

Sixty percent (60%) of the jurisdictions report that day care centers and schools are the most common accessory uses to religious institutions.⁴¹ Twenty percent (20%) of the jurisdictions reported that “mission type” accessory uses are becoming problematic. One respondent reported that future land use plans and local land development regulations should fully review accessory uses to churches.

2. Processes for Approving Religious Institution Locations

There are regulatory mechanisms available to local governments to control the location of church uses. Churches may be listed under enumerated “permitted” uses within zoning categories, or they may be a “conditional use” or “special exception” use where they would be required to show compliance with specific criteria related to location, compatibility, and impacts to municipal services. Pinellas County, for example, utilizes their Board of Adjustment to authorize the location of religious institutions through a special exception process which may include specific conditions for a religious institution to fulfill.

A local government may decide to employ other regulatory methods to control the location of church uses. For example, a local government may require a site plan approval or a conditional use approval. Ancillary uses, such as day care centers, may require conditional use, site plan approval and/or an occupational license. The City of Safety Harbor uses the conditional use process to regulate religious institutions in its jurisdiction. Since churches are subject to the conditional use process, there are standards (height, size, setbacks) that apply. The City of Dunedin also uses a conditional use process to regulate the location of religious institutions, however, it does not provide for any unique standards within this procedure. In the small beach community of Indian Shores, there are no typical religious institutions. Instead, church services are a permitted use within the auditorium at the Town Hall.

a. Distance Requirements

Some land development regulations may provide for distance or separation requirements between a church use and alcoholic beverage sales or adult use establishments. Generally, the intent behind these requirements is to protect religious institution uses from the secondary ill effects of the alcoholic beverage or adult use establishments.

⁴¹In light of Florida’s voucher program, it may behoove local governments to address the issue of the potential impacts related to private school/church uses.

With respect to such distance separation requirements, the preferred practice is for the local government to formally act on any waiver of the requirements, irrespective of which use proposes to encroach within the specified distance separation requirement. It is not recommended that a municipality in effect allow a church to “waive” separation requirements in place of a formal finding by the local government; which action could be considered an improper delegation of power that would violate the establishment clause of the First Amendment of the Constitution. Some local regulations prohibit a variance to distance separation requirements which is permissible, but less flexible.

Also, distance requirements may need to consider cross-jurisdictional issues. Local governments should be clear as to the intent of their land development regulations and coordinate this intent and its administration with their neighboring jurisdictions. For example, if the local governments desire to regulate the specific separation distance of a particular use from *any* religious institution, regardless of jurisdiction, then the language in the land development regulation should specifically provide for this, including how it is to be coordinated with an adjoining jurisdiction. If the local government refers to the location of such uses within their jurisdiction only, then the distance limitation would be construed so as not to consider a neighboring jurisdiction.

b. Controlling Impacts

In the past, it was generally assumed that churches or religious institutions were positive influences within the community and were customarily zoned as permitted uses.⁴² Churches, “once used solely for weekly worship, have become the center of diverse parochial and community activities conducted throughout the week, day and night.”⁴³

However, with the advent of “megachurches” or “church complexes” that can be immense and have a plethora of related uses, including schools, day care centers, counseling centers, gyms, bowling alleys, swimming pools, bingo halls, and outdoor recreation centers, planning for religious institutions has become a daunting task. These uses can have the effect of disrupting a residential community, and some argue that they should be locally zoned in a commercial or industrial category, or along an arterial or collector roadway. Congregations normally do not walk to these institutions from surrounding neighborhoods as in the past, but rather drive from considerable distances. Thus, the impact of increased traffic and congestion

⁴²Julie Bennett, “Church and State: When These Forces Bump, Something’s Got to Give”, *Planning*: June, 1998, pp.10-13, 13.

⁴³*Shim*, 689 A.2d 804, 809 (1997).

can pose a real problem when planning for these uses. Traffic problems may be intensified by some religious institutions busing worshipers from surrounding communities.

Also, accessory uses can be controversial because they have the potential of generating adverse impacts on the surrounding community. The types of impacts generated may relate to size, to the hours of operation, and to the kind of accessory uses that a specific church offers. Potential adverse impacts (i.e. traffic, access, lighting, parking, noise, and other impacts affecting compatibility with the neighboring community) are frequently contentious neighborhood concerns.⁴⁴

V. Conclusion

Because of the magnitude of litigation regarding religious institutions, the issues related to accessory uses, the increasing level of justification needed to support the regulatory decisions of local governments in the zoning of religious institutions, and the recent development of RFRA-II, the appropriate means by which to control the impacts of religious institutions is an important issue for local governments. While churches should not receive preferential treatment, these uses are peculiar in the sense that the First Amendment to the U.S. Constitution, federal legislation, and numerous court cases are implicated.

This report shows that local governments can regulate the location of religious institutions. In fact, it is well-settled that reasonable restrictions on the time, place, and manner of the practice of religion is legally permissible. Local governments in their land development regulations may provide that church uses fulfill certain criteria that serve as safeguards to the health, welfare, and safety of the community. However, if the regulation should be challenged in the courts, local governments may have to show that their regulations fulfill a compelling governmental interest and the least restrictive means were employed to protect this interest.

The report also analyzes the issue of accessory uses to religious institutions. Accessory uses have been defined as those uses that are “(1) subordinate to and serve a principal use; (2) located on the same lot as the principal use; and (3) customarily incidental to the principal use.”⁴⁵ It appears that some accessory uses to churches are within the purview of religious activities. In Pinellas County, day care centers and schools are the most common accessory uses to churches, although an enumeration within the local government land

⁴⁴James Park, “Zoning for the New Religion,” *Florida Planning*, January, 1999, 3-10.

⁴⁵*Shim*, 689 A.2d at 807.

development code of acceptable accessory uses may be in order. However, the issue regarding accessory uses to religious institutions is not solely the type of accessory uses, but rather the accessory uses becoming essentially the primary use of the parcel. That is, the accessory use engulf(s) the primary use of the religious institution and become(s) a primary use. As suggested below, it may be prudent to apply specific standards to accessory uses. If the use goes beyond an identified threshold, then a regulatory process (such as a conditional use process) might be appropriate.

Another observation from the analysis is that there is not a uniform definition of religious institution in the *Countywide Rules* or local land development regulations, despite the fact that the majority of comprehensive plans refer to either religious institutions or churches.

VI. Suggested Guidelines

This report is intended to serve as a resource to local governments in the preparation and administration of local land use regulations concerning religious institutions. Local governments in Pinellas County may need to review the current provisions in their comprehensive plans and land development regulations regarding the treatment of religious institutions. Local governments may want to address particular standards in their land development regulations dealing with lot area, floor area ratio, functional classifications of roadways, and parking standards, as appropriate.

As a starting point in this review process it is suggested, at a minimum, that the following factors be evaluated in terms of their need and applicability to each local government jurisdiction:

- ' DEFINITION OF RELIGIOUS INSTITUTION - For example:
 - C A site, premise, or location that is used principally, primarily, or exclusively for the purpose of religious exercise as protected by the First Amendment to the U.S. Constitution.

- ' DEFINITION AND LIST OF USES ACCESSORY TO A RELIGIOUS INSTITUTION - For example:
 - C Uses accessory to a religious institution shall be subordinate to and serve the principal use, located on the same parcel as the principal use, and customarily incidental to the principal use.
 - C Specific uses accessory to a religious institution may include: (list and define)

- ' REVIEW GENERAL ACCESSORY USE STANDARDS - For example:
 - C Conform or clearly differentiate general accessory use standards with those applicable to religious institutions.
 - C Provide that accessory use(s) occupying more than 25% of lot area or total floor area will be considered a primary use.

PROCEDURE FOR REVIEW AND APPROVAL OF:

(1) Religious Institution - For example:

- C Religious institution in other than an Institutional Plan Category - conditional use and site plan review.
- C Religious Institution in an Institutional Plan Category - site plan review.

(2) Accessory Use(s) - For example:

- C Accessory uses require conditional use and site plan approval when the religious institution is a conditional use.
- C Accessory uses require conditional use and site plan approval when accessory use exceeds 25% of the religious institution floor area.
- C Accessory uses permitted by right with an approved religious institution in the Institutional Plan Category, subject to site plan review.

CRITERIA FOR RELIGIOUS INSTITUTIONS AND ACCESSORY USES, INCLUDING:

(1) Location and Separation Distance - For example:

- C Possible prohibition of religious institutions in selected redevelopment/ entertainment districts.
- C A variance or formal action to waive any required separation distance from an alcoholic beverage, adult use, or similarly regulated establishment.

(2) Lot Area - For example:

- C Maximum lot area - without an accessory use - 20,000 square feet.
- C Maximum lot area - with accessory use(s) - 25,000 square feet.
- C Provide for exception to minimum lot area for a religious institution that is located within multi-tenant building or strip center that contains adequate parking, landscaping, and other ancillary facilities.

(3) Floor Area Ratio (FAR) - For example:

- C Minimum floor area for a religious institution that is an independent structure and within the Institutional Plan Category - .65 FAR
- C Minimum floor area for a religious institution that is an independent structure within the other Plan Categories: .30 to .60 FAR, as listed in the underlying land use Plan Category and not to exceed those listed in the *Countywide Rules*.

(4) Parking Standards - For example:

- C One (1) parking space per three (3) seats in main worship area plus one (1) space per employee. Accessory uses will be calculated as stand alone uses unless joint use is feasible based on non-overlap of hours of operation with the principal use.
- C Shared parking under contractual agreement is encouraged and permissible.

(5) Access Requirements - For example:

- C Number and points of access/egress from the public right-of-way designated per site plan approval.

(6) Street Functional Classifications - For example:

- C Religious institutions over one (1) acre must locate on a roadway designated as a "minor collector" classification or higher.

- c Religious institutions over five (5) acres must locate on a “major collector” classification or higher.

(7) Lighting - For example:

- c Types and placement as per approved site plan.

(8) Outdoor Activities - For example:

- c Limit location and type as per approved site plan.
- c Govern those events that are temporary in nature through a special events permitting process.

The purpose of this report, and the suggested guidelines in particular, is to urge each local government in Pinellas County to review the manner in which it defines and regulates religious institutions and their accessory uses in relationship to the current legislation and case law. This will help to ensure that the intent and objectives of each local government are consistent with such parameters and properly reflected in its land development regulations.

The aforementioned guidelines are intended to serve as a benchmark for local governments to use in the design and administration of regulations that apply to religious institutions. The criteria and standards set forth should be tailored to the specific community and subject to community input.

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ATTACHMENT

Planners Advisory Committee Questionnaire

Responding Jurisdiction: _____

After each question, there is space provided that is intended for any additional comments.

1. How many religious institutions are located within your jurisdiction?

2. Please identify the number of religious institutions, according to acreage, in your jurisdiction.

_____ 1 acre or less

_____ 3 - 5 acres

_____ 1 - 3 acres

_____ More than 5 acres

3. Please rank the following types of religious institutions that are most common in your Town/City.

1 = most common; 2 = increasingly more common; 3 = common; 4 = not common

_____ Traditional Community Church

_____ Expanding Traditional Churches

_____ Megachurches

_____ Storefront / Strip Center Churches

4. What type of process, if any, is used to regulate religious institutions in your jurisdiction?

' Permitted Use

' Conditional Use

' Occupational License
Required

5. What types of special or unique standards (i.e. height, size, setbacks), if any, are used to regulate religious institutions in your jurisdiction?

6. Please list the number of religious institutions in your jurisdiction that have the following accessory uses and any additional uses not listed:

_____ Day Care

_____ Homeless Shelter

_____ School

_____ Outreach Programs (such as counseling)

7. Please rank the following impacts of religious institutions on your jurisdiction using a scale from 1 to 5.

1= high; 2 = moderate to high; 3 = moderate; 4 = moderate to low; 5 = low

_____ Noise

_____ Lighting

_____ Traffic

_____ Parking

_____ Access

8. Are there any additional impacts from religious institutions in your jurisdiction? If so, please identify them below.

9. From a land development standpoint what do you think are the perceived problems of religious institution uses?

10. Do you have any suggestions or recommendations on how to treat religious institution uses within future land use plans and local land development regulations?

Thank you again for completing this survey.