

ORIGINAL

RESOLUTION NO. R-91- 1744

RESOLUTION DENYING ZONING PETITION NO. 91-1
FOR A REZONING
PETITION OF JAMES L. & DANNY J. SHAW

WHEREAS, the Board of County Commissioners, as the governing body, pursuant to the authority vested in Chapter 163 and Chapter 125, Florida Statutes, is authorized and empowered to consider petitions relating to zoning; and

WHEREAS, the notice and hearing requirements, as provided for in Chapter 402.5 of the Palm Beach County Zoning Code, have been satisfied; and

WHEREAS, Petition No. 91-1 was presented to the Board of County Commissioners of Palm Beach County, sitting as the Zoning Authority, at its Public Hearing conducted on September 26, 1991; and

WHEREAS, the Board of County Commissioners, sitting as the Zoning Authority, pursuant to the Zoning Code of Palm Beach County, Florida, Sections 102 and 402.5, has considered the evidence and testimony presented by the applicant and other interested parties, and the recommendations of the various county review agencies and the recommendations of the Planning Commission; and

WHEREAS, the Board of County Commissioners, sitting as the Zoning Authority, made the following findings of fact:

1. That Petitioner's rezoning request was for the single purpose of legitimizing a specific, existing, continuing and future planned use; to wit: Shaw Trucking, Inc.
2. That Petitioner's existing, continuing and future planned use on this property involves materials, processes or machinery which are causing and will continue to cause undesirable effects upon nearby and adjacent residential and commercial properties.
3. That Petitioner's existing, continuing and future planned use on this property is too intense for and not consistent with the Light Industrial (IL) Zoning District as referenced in the Palm Beach County Zoning Code and Comprehensive Plan.

WHEREAS, Chapter 402.5 of the Zoning Code, requires that the action of the Board of County Commissioners, sitting as the Zoning Authority, be adopted by resolution.

NOW, THEREFORE, BASED ON THE ABOVE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that Petition No. 91-1, the petition of JAMES L. AND DANNY J. SHAW, BY SARA LOCKHART, AGENT, for a REZONING FROM AR TO IL on a parcel of land lying in Tract 16, Block 4, PALM BEACH FARMS COMPANY PLAT NO. 3, Plat Book 2, pages 45 to 54, being described as: the West 1/2 of said Tract 16, less the South 132.00 feet of the West 330.00 feet and less the South 122.00 feet of the East 165.00 feet of the West 495.00 feet of Tract 16; SUBJECT TO a road right-of-way over the West 8.00 feet of Tract 16; TOGETHER with a 10.00 foot easement over the North 10.00 feet of the South 132.00 feet of the East 322.00 feet of the West 330.00 feet as reserved, Deed Book 997,

Page 19, and being located on the S.E. CORNER OF INTERSECTION OF SKEES RD. AND PALMDALE RD., was denied on September 26, 1991, with prejudice.

Commissioner Roberts moved for approval of the Resolution.

The motion was seconded by Commissioner McCarty and, upon being put to a vote, the vote was as follows:

Karen T. Marcus, Chair	--	AYE
Carole Phillips	--	AYE
Carol A. Roberts	--	AYE
Carol J. Elmquist	--	AYE
Mary McCarty	--	AYE
Ken Foster	--	AYE
Maude Ford Lee	--	AYE

The Chair thereupon declared the resolution was duly passed and adopted this 26th day of November, 1991.

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

PALM BEACH COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

JOHN B. DUNKLE, CLERK

BY: Maureen Culla
COUNTY ATTORNEY

BY: Maureen K. Benson
DEPUTY CLERK

4. On August 27, 1986, SHAW purchased property located West of Florida's Turnpike, North of Belvedere Road, and East of and adjacent to Skees Road in unincorporated Palm Beach County.

5. At that time, and all times material hereto, the property was zoned Agricultural Residential.

6. The previous owners of the property conducted a construction equipment operation on the premises and were doing so by way of a non-conforming use exception which was grandfathered in under the Palm Beach County Zoning Code in 1973.

7. Prior to purchase of the property, SHAW obtained assurances from Palm Beach County officials that the work which was to be performed by SHAW on the site fell within the scope of the existing non-conforming use exception.

8. Once taking possession of the property, the activities, which were being conducted by SHAW on the subject property, were substantially similar to those activities which were carried on by the previous owners, and which were further allowed under the existing non-conforming use exception.

9. In 1989, Palm Beach County implemented its Comprehensive Plan, including a section with respect to land use. The Land Use section of the Comprehensive Plan specifically identified the property belonging to SHAW as being zoned for Industrial Use.

10. In or about October, 1990, SHAW filed its general application for rezoning for the subject property from Agricultural/Residential to Light Industrial district, while also seeking a special exception for an office/warehouse operation.

11. On May 2, 1991, the Planning Commission reviewed both requests. The Planning Commission approved SHAW's request for the rezoning by a vote of 7-0. However, the Planning Commission only approved SHAW's request for the special exception by a vote of 5-2, and the granting of the special exception was subject to 59 special conditions imposed by the Planning Commission.

12. Prior to consideration by the COUNTY COMMISSION and under the authority of Section 402.4 F.2. of the County Zoning Code, SHAW withdrew the special exception.

13. On September 26, 1991, SHAW's Petition for rezoning was presented to the COUNTY COMMISSION, sitting as the zoning authority for Palm Beach County.

14. The Local Government Comprehensive Planning and Land Development Regulation Act (Florida Statute Section 163.3161 et. seq.), grants power to municipalities and counties to adopt and amend comprehensive plans to guide their future development and growth, and also requires that upon the implementation of the comprehensive plans, that there be appropriate adoption and enforcement of local regulations by the land development regulatory authority, in this case, the COUNTY COMMISSION.

15. Despite the recommendation of the Planning Commission, and the written recommendation by its own staff, the COUNTY COMMISSION denied SHAW's Petition for rezoning despite the implementation of the Palm Beach County 1989 Comprehensive Plan.

COUNT I

16. SHAW realleges, reavers, and reaffirms paragraphs 1 through 15 as though fully set forth herein.

17. This is a cause of action invoking the equity jurisdiction of this Court and seeking a mandatory injunction.

18. Mandatory injunctions are proper where clear legal right has been violated, irreparable harm has been threatened, and there is a lack of adequate remedy at law. Department of Health and Rehabilitative Services of the State of Florida vs. Weinstein, 447 So.2d. 345 (Fla. 4th DCA 1984).

19. The implementation of the Palm Beach County 1989 Comprehensive Plan as it pertains to land use, provides a clear legal right to SHAW for the classification and rezoning of the property owned by SHAW to be utilized in an industrial fashion. The actions of the COUNTY COMMISSION in failing to comply with the directives of the Palm Beach County 1989 Comprehensive Plan is a violation of SHAW's clear legal right.

20. SHAW will sustain irreparable harm due to the denial of its application for rezoning as this denial will limit the activities which can be conducted on the property in question.

21. This action arises from the denial of SHAW's Petition for rezoning, and as such, there is no adequate remedy at law which could rectify the situation.

22. Accordingly, Plaintiff, SHAW, would seek to invoke the equity jurisdiction of this Court for the issuance of a mandatory injunction which would order the COUNTY COMMISSION to grant

SHAW's application for rezoning in accordance with the Palm Beach County 1989 Comprehensive Plan and Florida Statutes pertaining to same.

WHEREFORE, Plaintiff, SHAW TRUCKING, INC., respectfully requests that this Court enter an order requiring the COUNTY COMMISSION to approve SHAW TRUCKING, INC.'s application for rezoning the property in question from Agricultural/Residential to Light Industry district and any and all such further relief as this Court may deem just and proper.

COUNT II

23. SHAW reaffirms, reavers, and realleges all general allegations Numbered 1 through 15.

24. This is an action for declaratory judgment brought pursuant to Chapter 86, Florida Statute.

25. SHAW is in doubt as to its rights to conduct its business operation on its Skees Road property.

26. SHAW's doubt arises from what appears to be an irreconcilable conflict between the rights afforded SHAW under the Palm Beach County Comprehensive Plan and the September 26, 1991, action by the COUNTY COMMISSION denying SHAW's Petition for Rezoning. Further the conflict arises from the COUNTY's position in the pending action, Shaw Trucking, Inc. v. Palm Beach County, Florida and Code Enforcement Board of Palm Beach County (Case No. CL-87-4960-AG), wherein the COUNTY acknowledges that SHAW is

entitled to operate a business pursuant to a valid non-conforming use, yet also asserts that SHAW has in some manner and form modified or expanded that non-conforming use.

27. The COUNTY's Comprehensive Plan was adopted pursuant to the Local Government Comprehensive Planning and Land Development Regulation Act (Florida Statute 163.3161-163.3215) hereinafter referred to as the "Act"). The Act provides that it is the intent of the Act, inter alia:

That adopted comprehensive plans shall have the legal status set forth in this Act and that no public or private development shall be permitted except in conformity with comprehensive plans or elements or portions thereof, prepared and adopted in conformity with this Act. Florida Statute 163.3161(5).

28. The COUNTY COMMISSION adopted its current comprehensive plan in accordance with the Act.

29. The COUNTY cannot legally ignore its own comprehensive plan and has a duty to issue development orders consistent with its comprehensive plan and the Act.

30. The Comprehensive Plan adopted by the COUNTY changed the land use designation for the property owned by SHAW from Agricultural/Residential to Industrial.

31. SHAW's application to rezone the property would represent a rezoning to the least intensive category of industrial use available under the COUNTY's zoning regulations.

32. There is a present and actual controversy between SHAW and the COUNTY as is exemplified by the COUNTY COMMISSION's action in failing to rezone the property in accordance with the Comprehensive Plan and the Act and SHAW's in doubt as to its

rights and duties as they now exist. There is an additional present and actual controversy exemplified by the COUNTY's characterization of SHAW's use as non-conforming when such use is clearly contemplated by the land use section of the Comprehensive Plan.

WHEREFORE, SHAW prays:

A. This Court takes jurisdiction pursuant to Chapter 86, Florida Statutes;

B. That the Court render a declaratory decree which declares SHAW's rights and status under the COUNTY's Comprehensive Plan and the COMMISSION action denying SHAW's request to rezone its property consistent with the Comprehensive Plan:

C. Resolve by decree the apparent conflict between the Comprehensive Plan, the COUNTY's failure to enter a development order conforming the zoning of SHAW's property to the Comprehensive Plan:

D. Resolve by decree the apparent conflict between the Comprehensive Plan, the COMMISSION's failure to enter a development order consistent with its Comprehensive Plan, and the COUNTY's characterization of SHAW's business operation as non-conforming; and

E. Grant such other and supplemental relief as is necessary and proper to insure that SHAW's rights and status are not infringed or violated by any action of the COUNTY.

COUNT III

33. SHAW reaffirms, reavers, and realleges general allegations numbered 1 through 15.

34. This is an action seeking damages in excess of \$10,000.00 for inverse condemnation.

35. SHAW's constitutional right to make use of its property in a reasonable and beneficial manner permissible under the Palm Beach County 1989 Comprehensive Plan for Land Use and Palm Beach County Zoning Code, is being interfered with to such an extent that the COUNTY COMMISSION's denial of SHAW's application for rezoning is confiscatory in nature and amounts to a taking without compensation.

36. The COUNTY COMMISSION, in denying SHAW's application for rezoning, is acting in a negligent, coercive, oppressive, or otherwise illegal manner with the deliberate and calculated design to deprive SHAW of its property and profits derived therefrom without due process of law and without just compensation.

37. By the COUNTY COMMISSION's denial of SHAW's application for rezoning, SHAW is deprived of any reasonable and beneficial use of the property.

38. SHAW, as the direct and proximate cause of the COUNTY COMMISSION's conduct, has or will incur damages exceeding \$600,000.00 consisting of the estimated fair market value of the land taken in the deprivation and loss of the use thereof.

39. SHAW has not been paid any sums by the COUNTY COMMISSION for its taking of the property.

WHEREFORE, SHAW TRUCKING, INC., respectfully requests that this Court enter a judgment awarding the damages based upon the COUNTY COMMISSION'S inverse condemnation of SHAW'S property and any and all such further relief as this Court may deem just and proper.

SHAW TRUCKING, INC.

BY: James A. Shaw
JAMES SHAW, President

STATE OF FLORIDA)
COUNTY OF PALM BEACH)

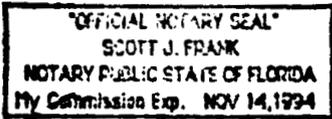
SS:

BEFORE ME, appeared JAMES SHAW, as President of SHAW TRUCKING, INC., known to me personally and verified that the allegations of this Complaint are true and correct.

SWORN TO AND SUBSCRIBED before me this 28 day of October, 1991.

Scott J. Frank
Notary Public

My commission Expires:



JOSIAS & GOREN, P.A.
Attorneys for Shaw Trucking, Inc.
3099 East Commercial Boulevard
Suite 200
Fort Lauderdale, FL 33308

BY: James A. Cherof
JAMES A. CHEROF, ESQ.

JAC: aw
[\\P\SHAW\COMPLNT.DOC]

BA

IN THE CIRCUIT COURT OF THE
15TH JUDICIAL CIRCUIT IN AND
FOR PALM BEACH COUNTY, FLORIDA

CASE NO. CL-87-4960-AG

SHAW TRUCKING, INC., a
Florida corporation,

Plaintiff,

vs .

STIPULATION AND AGREED ORDER

PALM BEACH COUNTY, FLORIDA,
and CODES ENFORCEMENT BOARD
OF PALM BEACH COUNTY,

Defendants.

_____ /

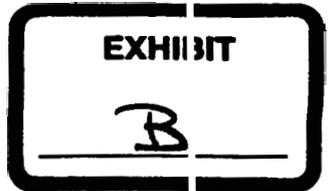
STIPULATION

1. The parties have engaged in settlement discussions and have reached an agreement to resolve this matter. The agreement is contingent upon:

a. SHAW TRUCKING, INC., initiating a Rezoning Application with respect to the property that is the subject of this action.

b. Rezoning of the property by PALM BEACH COUNTY based upon the application. It is understood by the parties to this stipulation that the ultimate decisions to rezone is vested with the Palm Beach County Commission and that this stipulation does not represent any agreement between the parties that the Palm Beach County Commission must approve SHAW'S application for Rezoning.

2. It is anticipated that it will take four to six months for the Rezoning application to reach the Palm Beach County Commission for final approval or disapproval.



3. The parties believe that it is in the interest of justice and economically wise that this action be abated while the rezoning of the property is pursued.

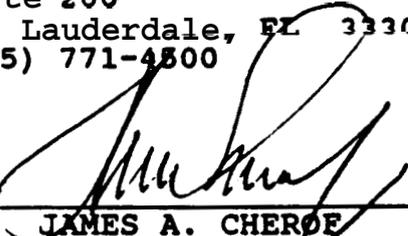
4. This case is currently set for trial on the Trial Docket commencing Monday, February 12, 1990.

5. The parties stipulate to the removal of this case from the February 12, 1990 trial docket and request the entry of an Order abating the matter for six (6) months.

6. The parties stipulate to the entry of the following Agreed Order.

DATED 1/19/90

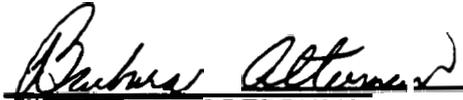
JOSIAS & GOREN, P.A.
3099 East Commercial Blvd.
Suite 200
Ft. Lauderdale, FL 33308
(305) 771-4500

By: 

JAMES A. CHEROE
Fla. Bar No. 291846

DATED 1/24/90

COUNTY ATTORNEY
Box 1989
West Palm Beach, FL 33402
(407) 355-2225

By: 

BARBARA ALTERMAN
Fla. Bar No. 767204

AGREED ORDER

THIS CAUSE came on to be heard on the foregoing Stipulation. The Court having considered the Stipulation and being fully advised of the premises, it is

ORDERED:

1. This case is removed from the trial docket which commences February 12, 1990.

2. This case is abated for a period of six (6) months from the entry of this Order.

3. The parties are directed to comply with the terms of their stipulation and to file a Joint Status Report by April 1, 1990 and on the expiration of the six month abatement period.

DONE AND ORDERED in chambers, Palm Beach County, Florida, this _____ day of _____, 1990.

SIGNED AND DATED

JAN 26 1990

CIRCUIT JUDGE

Stephen A. Rapp
Circuit Judge

copies furnished:

Barbara Alterman, Esq.
Assistant County Attorney

James A. Cherof, Esq.
Attorney for Plaintiff