CU 2:09 Request of Jamie McFadden at 961/963 Orange Avenue for Conditional Use Approval to allow the sale and consumption of alcoholic beverages as a component of the 32 seat restaurant due to this location being within 300 feet of residential properties.

This is a request of Mr. Jamie McFadden for conditional use approval to allow the sale and consumption of alcoholic beverages within the 32 seat restaurant planned for the property at 961/963 Orange Avenue (former State Farm Insurance) due to this location being within 300 feet of residential properties.

Attached are the applicant's submittals that describe the type of restaurant they plan to open, a prospective menu and floor plan. You will note on the application page that the hours of operation end at 10:00 PM.

The criteria associated with this type of conditional use are intended to safeguard and protect adjacent residential neighbors from restaurant/bar establishments that can cause nuisances related to "overflow parking on residential streets, noise which is disturbing to the residential occupants or loitering of patrons within residential areas".

Parking does exist in the parking lot on the rear of this property as well as on-street parking along Orange Avenue. A 10 PM closing time does not lend itself to create those noise nuisance conditions that we have experienced with other restaurants that later at night turn into a rowdy bar with late night noisy patrons.

STAFF RECOMMENDATION IS FOR APPROVAL subject to the condition that the hours of sale and consumption of alcoholic beverages end at 10 PM.

NOTE: Any change to that condition requires a future conditional use application, notice to neighbors and rehearing by P&Z/City Commission.
Parcel ID: 302207737601060
Address: 983 N ORANGE AVE

302207737601060 03/30/2006

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Parcel ID: 302207737601060

This map is for reference only and is not a survey.

APPLICATION FOR CONDITIONAL USE
CONDITIONAL USE # ____________________________

General Instructions. To request approval of a Conditional Use, complete this application and submit it to the Planning Department along with a fee of $300 ($500 for building reviews) and all additional information necessary for public hearing before the Planning and Zoning and City Commissions. If applicable, submit eight sets of plans: one typical blueprint, seven 11 x 17 or smaller. All required documents must be submitted with application.

I. APPLICANT

Name: Jamie McFadden
Address: 1516 Sections Pt Ct
        Apopka, Fl. 32712
Phone: 407.865.3699
Email Address: Jamie McFadden @ Hotmail.com

Is the property under contract for purchase or lease? □ Yes □ No

If the applicant is NOT the owner, attach a copy of the purchase or lease contract or option on the property, or a letter signed by the owner of record authorizing the applicant to act as agent for the owner. This information is requested to establish the legal status of the applicant and will be held in confidence, except as the information pertains to the zoning application.

Is the contract for purchase or lease contingent upon this approval? □ Yes □ No

II. PROPERTY

Street Address: 961 + 963 Orange Ave
Zoning Classification: C-3
PARCEL # _______ (same as tax ID number of Orange County property tax records)

Legal Description: Provide complete and accurate legal description below including Plat Book and Page Number OR attach a copy of the legal description to this application.

III. CONDITIONAL USE REQUESTED: The applicant requests Conditional Use Approval for:

Sale of beer with in 300 ft of residences. Hours of operation 5pm-10pm.

IV. CERTIFICATION

I certify that, to the best of my knowledge and belief, all information supplied with this application is true and accurate, and that I am:

□ the owner of the property described herein
□ a party to an agreement for purchase or lease of this property
□ an agent for the owner or purchaser/lessee of this property

If applicable, it is understood and agreed that approval of this application by the Planning and Zoning Commission is contingent upon the recording of restrictive covenants designating the terms and conditions of an approval. These restrictive covenants will be executed by the owner of the property and recorded by the City of Winter Park. Said owner will be responsible for all taxes associated with the recording of this document.

SIGNATURE: ________________________________ DATE: 6/3/09

N:\depts\planning\PCD\Applications\COND USE Application.doc

11/4/2008
Jamie McFadden, Executive Chef/Founder Cuisiniers Catered Cuisine & Events, Winter Park Florida

Chef Jamie’s “Fresh Approach” Cooking style and attention to detail has proven to be the perfect ingredients in creating a very exciting and successful career path.

His formal culinary education which included Baltimore’s International Culinary College and The La Varenne Cooking School in Burgundy France immersed Jamie in Classic French Cuisine, Technique and Theory. During an apprenticeship under Master Chef Peter Timmins at the Park Hotel in County Cavan, Ireland, Jamie gained a true appreciation for “Farm to Table” cooking and realized his passion for the culinary arts.

For 19 years Chef Jamie has called Orlando home and is very grateful for the opportunities and experiences the community has offered him. In 1990 he began to build his reputation as an award winning chef working at various high profile restaurants including his own restaurant, Mimi’s Café & Wine Bar. In 1998 he founded Cuisiniers Catered Cuisine & Events and just celebrated 11 years in creating unforgettable events.

Other career highlights include preparing a Central Florida inspired meal at the James Beard House in New York City. Appearing and Cooking on NBC’s “Today Show” “Dinner in the Sky” segment with Bravo’s 3rd Season “Top Chef” winner Hung Huynh. Teaching at the Walt Disney World, Disney Institute. Participating in cooking events including Alexander Valley Vineyards and Gundlach Bundschu Wineries both located in Sonoma California, the Destin Charity Wine Auction, the Culinary Vegetable Institutes Annual Food and Wine Celebration in Milan, Ohio and the Sarasota Florida & Wine fest and Auction.

In 2007, Restaurant Forum named Chef Jamie one of Central Florida’s Top 20 Chef’s. He is the only caterer to receive this award. Most recently, The Orlando Business Journal named Jamie one of Orlando’s “40 Under 40” which recognizes the rising young professionals who are shaping the economy of Central Florida.

When not in the kitchen, Jamie takes time out to volunteer with the Central Florida Hope & Help Center and Orlando’s Annual Lance Armstrong Foundation Fundraiser.
For Immediate Release
Contact:
Jamie McFadden
Cuisiniers Catered Cuisine & Events
407.975.8763
407.975.8764
Jamiemcfadden@hotmail.com
Cuisinierscater.com

Chef Jamie McFadden Announces His Plans to Open a
New Dining Concept in Winter Park in Early 2010

To coincide with his 20th Anniversary of professional cooking in the Orlando area, Chef Jamie McFadden has announced his plans to introduce “Haute Counter Cuisine” to Central Florida with the opening of “BAR J ME” in the early part of 2010.

The philosophy of this Phil Kean designed space will meld the five senses of sight, smell, sound, touch and of course taste. Guests seated around the open kitchen arena will have the opportunity to converse with the chefs, if they wish, while they peruse the evening’s menus and enjoy “Bar Snacks”. These complimentary mouth amusing Hors d’oeuvres will tease diner’s palates and offer a true taste of the chef’s style of cooking. Moderately priced seasonally inspired entrees and desserts will round out the “fresh approach” menus.

“BAR J ME’s” seasonal menus promise to delight guests palates by utilizing the freshest and highest quality of food available, prepared with cleanly intense, “makes me feel like a kid again” flavors, and unfussy presentations. Manning the front burners as Chef de Cuisine will be Cuisiniers alumni William Sheppard. Menu inspiration will come from 20 plus years of “Hits & Flops”, favorite world flavors and the ever evolving culinary community. A complex wine list will be offered with the majority of wine offerings ranging in price from $24-48.00 per bottle. —END—
BAR J ME

Haute Counter Cuisine
BAR J ME Menu Draft # 2

Bar Snacks

Sausage Croquetas 6

Fennel Cured Olives 4

Almond Stuffed Dated, Smoked Bacon, Balsamic Syrup 7


Chorizo & Crab Fritters, Piquant Honey 7

Butternut Squash Panna Cotta, Micro Celery, Truffle oil 5

Pisco Cured Salmon, Pickled Radish Jam, Micro Greens 6

Blue Crab & Celery Root Remoulade Cornets 4

Chorizo Ragout, Fried Egg, Basque Cheese 7

Crispy Artichokes, Long stem chokes, Lemon-Cracked Pepper aioli 12

ACCOMPANIED WITH YOUR ENTRÉE, PLEASE SELECT ONE OF THE FOLLOWING HOUSE SPECIALTIES. OR ENJOY ALA CARTE AT 9 EACH

Hearts of Palm Soup, Smoked Oyster, Truffle oil

Char Grilled Caesar, Imported Anchovies

Wild Mushroom Cappuccino

Seasonal Greens, roasted zucchini, currants, bleu, toasted almonds, pernod buttermilk
REVOLVING DAILY ENTÉRÉ SELECTIONS

Duck Confit, Sweet Butter Poached Turnips, Sour Cherry Crisp 21

Gulf Coast Paella, Smoked Duck Drummies, Alligator Sausage, Blackened Rock Shrimp, Squid Ink Orzo 23

Yellow Tail Snapper, Pan Seared, Mango Mojo, Curried Cauliflower 31

The Very Best Burger, Smoked Bacon, Huntsman Cheese, House Made Pickles 11

Short Rib “Confit”, Huckleberry Crisp, Truffle Butter Glazed Fava Beans 17

Pulled Pork & Jack Grilled Cheese, Tomatillo Jam, Pommes Frites 10

Bacon Wrapped Lamb Loin, Molasses Demi, Sweet Corn & Chive Mash 25

Jumbo Lump Crab cakes, Fried Green Tomatoes, Sweet Corn Souffle 29

Wild Salmon, Spicy Heirloom Tomato Broth, Guacamole 22

POSSIBLE DESSERT SELECTIONS

Panna Cotta, Orange, Mint and Vanilla Honey 8

Stilton Bread Pudding, Sundried Cherries, Toffee Gelato, Fig Crème Anglaise 9

Profiterole Sundae, Chocolate Cherry Ice Cream, Warm Plum Sabayon 10

Chocolate Mole Pots De Crème 8
Appeal from MTF Enterprises of Winter Park Inc. concerning the zoning interpretation related to the sale of motor vehicles and recreational vehicles from the property at 2190 West Fairbanks Avenue, zoned C-3.

Pursuant to Section 58-91 of the Zoning Code, MTF Enterprises of Winter Park Inc. has filed an appeal contesting the interpretation and determination of the City's Building and Zoning Official that the sale of motor vehicles and recreational vehicles from the property at 2190 West Fairbanks Avenue violates the code provisions regarding nonconforming uses.

In cases of appeals, the Planning Commission's role is like a judicial Court of Appeals. You listen to both sides and both interpretations of the zoning code and then decide which position you agree with. Your decision may be the final decision. However, either party, may within 15 days, following your decision, further appeal your decision onto the City Commission for a final decision. You may recall that the Planning Commission heard previous appeals concerning Keller Outdoor and Holler Chevrolet concerning their use of commercial property.

It is important to understand that this is not like a conditional use application. The Planning Commission is not deciding if you feel the use of the property is appropriate or compatible. You are not negotiating about the operations or landscaping or any other aspect of how the business is conducted. Your decision is whether the zoning code permits a motor vehicle and recreational vehicle sales business to operate at this location or does the zoning code prohibit that business, based upon the facts presented.


On March 12, 2007, the City Commission adopted, following notice mailed to all commercial property owners in the City, Ordinance No. 2706-07. That ordinance, among other things, changed the status of new or used motor vehicle sales businesses from a conditional use status, city-wide, to a conditional use status only within certain geographic areas of the City and otherwise a non-conforming use outside of those specified geographic areas. As a result, the status of the all commercial properties on Fairbanks Avenue, including this particular one at 2190 West Fairbanks Avenue was changed from having the potential for the approval of a conditional use to permit motor vehicle sales to a situation where motor vehicle sales are prohibited.
As a result, the only way MFT Enterprises of Winter Park, Inc. can qualify to be permitted for motor vehicle sales is to prove that they were actively in business within and upon the areas for which they now seek an approval so as to be considered “grandfathered-in” as a “nonconforming use”. Generally “nonconforming uses” may continue to operate, (per Section 58-64), as long as the “use” is not discontinued for more than six months. However, nonconforming uses may only be “grandfathered-in” for the specific portion of the property that has been actively used for motor vehicle sales. Nonconforming uses cannot be enlarged, extended or moved to any other part of the property or building. Also it is very important to note that once a property or building or a portion of the property or building is used for a permitted legal use, then that property or portion of a property or building cannot revert back to a “nonconforming use”, regardless of the time period. In other words, once a property or building or portion of a property or building becomes “conforming” then it cannot thereafter become “non-conforming”.

**Winter Park’s Building and Zoning Official position**

In March 2009, MFT Enterprises of Winter Park, Inc. applied for a business certificate (occupational license) for motor vehicle sales from the property at 2190 W. Fairbanks Avenue. That application was denied because no existing business certificate was in effect for this property that could substantiate that any motor vehicle sales business had been conducted on this property that could qualify as being grandfathered-in for “nonconforming status”. Previously MFT Enterprises had been licensed for motor vehicle sales at 2190 W. Fairbanks Avenue but that license expired on Sept. 30, 2005. No business certificate (occupational license) from the City of Winter Park was requested or issued for the 2006, 2007, 2008 or 2009 business years.

On April 7, 2009 the City received correspondence from attorney Jason Merritt, representing MFT Enterprises (Matt and Karin Thilmony) providing information to assert that an active motor vehicle sales business had been in continuous operation from the property at 2190 W. Fairbanks. (please see attached materials) That information included the State of Florida Motor Vehicle motor vehicle dealer licenses at that 2190 W. Fairbanks Avenue address and sales tax records. From that information it appeared that since March 2007 (when the zoning code changed) motor vehicles were sold in two months of 2007 and in ten months of 2008.
At that point, the City was prepared to issue a business certificate for motor vehicle sales but only for the specific portion of the property that was grandfathered-in. That consisted of the 11x18 office at the rear of the building at 2190 W. Fairbanks Avenue and the parking lot area to the rear of that building.

MFT Enterprises however, has insisted upon the right to utilize the entire building at 2190 W. Fairbanks Avenue for motor vehicles sales and as well as the right to park and display motor vehicles for sale across the Fairbanks Avenue frontage of the property.

The City has outlined earlier that it cannot permit the expansion or enlargement of a nonconforming use. The City also cannot permit a nonconforming use to occupy a portion of a property that has been made conforming to the code.

Since March 2007, the City has issued business certificates (occupational licenses) for the building at 2190 W. Fairbanks Avenue to the American Combat Club (mixed martial arts studio) and to the Black Chapel Tattoo (art/photo gallery, photo studio and retail sales). These businesses have included use of the front parking lot area as the required parking for employees and customers. Otherwise they would not have been able to provide the required paved parking necessary to meet the parking requirements for those businesses. Thus, the building with the exception of the 11x18 office at the rear of the building has been used for permitted and conforming uses in the C-3 zoning.

As a result, the City cannot permit or issue a business certificate for motor vehicle sales for this entire property, as requested. To do so would be an enlargement or expansion of a nonconforming use because when use of the building and the front portions of the property have been used for permitted legal businesses, then the non-conforming uses (motor vehicle sales) cannot be re-established.

**Staff Recommendation is for Denial** based upon the factors outlined above.
June 5, 2009

VIA HAND DELIVERY

George J. Wiggins, CBO
Director of Building/Code Enforcement/
Legislative Affairs
City of Winter Park
401 South Park Avenue
Winter Park, FL 32789

Re: Business License Request for 2190 W. Fairbanks Avenue

Dear George:

This letter is intended to serve as formal notice of MFT Enterprises of Winter Park, Inc.’s decision to appeal to the Planning and Zoning Commission, pursuant to the provisions of Section 58-91 of the Land Development Code of the City of Winter Park, the interpretation of the zoning official that an occupational license will not be issued to the applicant for purposes of allowing motor vehicle sales on the above-referenced property without a condition prohibiting the parking of motor vehicles along Fairbanks Avenue. Reference is made to my correspondence to you of April 7, 2009 and the accompanying enclosures as well as the subsequent electronic mail correspondence which has occurred between us regarding this matter through May 6, 2009.

Based on these communications it is my client’s understanding that it is the City of Winter Park’s position that my client has the right to continue using the subject property for motor vehicles sales as an existing non-conforming use but that my client’s right to engage in this use does not include the right to park vehicles along Fairbanks Avenue. To my knowledge, no section of the City’s Land Development Code has been cited for support on this position. Additionally, since the date of our last communication, the lease agreement between my client and Samurai Speed, Inc. has been terminated. Therefore, as of the date of this appeal there is only one business operating on the subject property and the parking concerns which have previously been raised are moot.
In accordance with the requirements of Section 58-91 of the Land Development Code, enclosed herewith is a check in the amount of $500.00 representing the fee required for this appeal. I appreciate your attention to this matter and will look forward to hearing from you as to when this matter will be heard by the Planning and Zoning Commission. Additionally, at such time as you assemble the record for this matter I would request that you contact me so that I may have the opportunity to inspect and copy the same.

Very truly yours,

[Signature]
Jason E. Merritt

JEM/dm
Enclosures
xc: MFT Enterprises of Winter Park, Inc.
2180/2190 W. Fairbanks

1 in. = 250.2 feet
OCCUPATIONAL LICENSE APPLICATION
City of Winter Park

FILING THIS APPLICATION FOR A CITY LICENSE DOES NOT ALLOW APPLICANT TO OPERATE OR ENGAGE IN ANY TYPE OF BUSINESS UNTIL THE CITY OF WINTER PARK ISSUES AN OCCUPATIONAL LICENSE TO THE APPLICANT. ANY PERSON, FIRM OR CORPORATION WHO SHALL ENGAGE IN ANY OCCUPATION, BUSINESS OR PROFESSION WITHOUT AN OCCUPATIONAL LICENSE SHALL BE PUNISHED IN ACCORDANCE WITH CITY CODE.

TYPE OR PRINT CLEARLY, PLEASE:

1. Name of Business (DBA): MFT Enterprises of Winter Park, Inc.

2. Business Location: 2190 West Fairbanks Av

3. Business Mailing Address: 642 E Ridgewood St Orlando 32803

4. Phone #: 407-832-6868

5. Provide the following information when APPLICABLE:
   - # of Employees
   - # Real Estate Agents
   - Seating Capacity
   - # of Chairs
   - # of Rooms
   - # of Amusement/Vending Machines

6. Applicant Information: (Person filling out application)
   - Name: Matthew F. Thilmany
   - Phone #: 407-832-6868
   - Home Address: 642 E Ridgewood St Orlando 32803
   - Drivers License #: 14581916916409 DOB: 11-09-1956
   - Social Security #: OR Federal I.D. #: 59-3256610

7. Additional Requirements: IF APPLICABLE (also attach copy of forms)
   - State License #: 011028451 Expiration: 4-30-2010
   - Contractor’s License # Expiration:
   - State Restaurant # State Liquor License # Scooter

8. Explain Operation of Business at this location: Car RV Sales

* CORPORATIONS ARE REQUIRED TO COMPLETE CORP. INFORMATION FORM

I certify, to the best of my knowledge, that the foregoing statements are true and correct and I acknowledge receipt of the instruction sheet issued by the City of Winter park regarding this application. I further understand that acceptance of payment for an occupational license by the City of Winter Park does not constitute authority to do business prior to competition of all inspections and issuances of the license.

SUBSCRIBED AND SWORN TO BEFORE ME
THIS 15 day of Jan 2009

Matthew F. Thilmany
Signature of Applicant

Notary Public
My Commission expires: December 28, 2011
Personally Known or I.D. Presented
Mr. Matthew Thilmony,

You have requested permission to open (or re-open) a business at the above-referenced address, zoned C-3, General Commercial District under Winter Park’s Zoning Code. You state that the business is to conduct car, scooter and RV Sales. Based on our records of business licenses for this address there is no motor vehicle sales operation at this location nor do our records show that a past business license for motor vehicle sales has existed for over 3 years. The last record of an active license for vehicle sales for this location is in September, 2005. That business for new and used car sales would have been allowed to continue in the 2006 business license year beginning on 10/1/05 if you had renewed your license. However, since the business license expired and there have been no active (legal) motor vehicle sales activity conducted at this address for over 60 days, the previous business is no longer “grandfathered” in.

Our City Zoning Code no longer permits motor vehicle sales at this location 2190 West Fairbanks Avenue. Therefore, your license application cannot be approved.

If you have other information showing that you have legally conducted car sales activity at this location continuously since 9/30/05, please provide me with that information.

George J. Wiggins, CBO
Director of Bldg/Code Enforcement/
Legislative Affairs
City of Winter Park
401 South Park Avenue
Winter Park, FL 32789
407-599-3426 (Office)
VIA HAND DELIVERY

George J. Wiggins, CBO
Director of Building/Code Enforcement/
Legislative Affairs
City of Winter Park
401 South Park Avenue
Winter Park, FL 32789

Re: Business License Request for 2190 W. Fairbanks Avenue

Dear George:

As you are aware, this firm represents MFT Enterprises of Winter Park, Inc., in connection with the renewal of the business license for the operation of a motor vehicle sales business at the above referenced address. I am in receipt of your electronic mail correspondence of Wednesday, March 25, 2009, directed to Mr. Matthew Thilmony wherein you deny the above-referenced application. The purpose of this letter is to respond to your request for information regarding the car sales activity which has occurred at this location since September 30, 2005 and to respectfully request the reconsideration of your decision based upon the additional information which is being transmitted with this letter.

From my review of your correspondence denying the subject application, it is clear that the basis for your decision was the fact that business licenses for the business were not timely renewed for the 2006, 2007, 2008 and 2009 business license years. Your correspondence admits that had the business license been timely renewed for the 2006 business license year, and presumably thereafter, the requested motor vehicle sales use would be permitted to continue when you state:

"That business for new and used car sales would have been allowed to continue in the 2006 business license year beginning on 10/1/05 if you had renewed your license. However, since the business license expired and there have been no active (legal) motor vehicle sales activity conducted at this address for over 60 days, the previous business is no longer "grandfathered in."

The facts in this case, as admitted in your correspondence, are undisputed that at the time that the business license lapsed in 2005, the use of the property for motor vehicle sales was permissible. Therefore, the question at issue in this
instance is whether the applicant’s failure to timely pay a tax (in the form of obtaining the required annual business license) for the years 2006, 2007, 2008 and 2009 is sufficient evidence to reflect the abandonment of the right to engage in the nonconforming use of motor vehicle sales which has existed on this property.

In analyzing similar situations, Florida’s courts have required that the abandonment of a nonconforming use requires intentional and voluntary actions on the part of user of the property. See Lewis v. City of Atlantic Beach, 467 So.2d 751 (Fla. 1st DCA 1985) (Revocation of liquor license held by tenant and subsequent closing of business operated on property used for lounge purposes as a nonconforming use did not prevent reopening and resumption of property as nonconforming use by owner or property with liquor license in his name); and Hobbs v. Department of Transportation, 831 So.2d 745 (Fla. 5th DCA 2002) (Voluntary cancellation by lessee of nonconforming billboard of DOT sign permit and non-use of sign in excess of 12 months did not prevent issuance of a new DOT sign permit to owner of property where billboard was located). See also Estes Express Lines v. Metropolitan Dade County Environmental Quality Control Board, 716 So.2d 352 (Fla. 3rd DCA 1998) (Truck maintenance facility operator entitled to permit notwithstanding lengthy break in use arising from predecessor’s financial difficulty and bankruptcy) and Sarasota County v. Bow Point on the Gulf Condominium Developers, LLC, 974 So.2d 431 (Fla. 2d DCA 2007) (Sixteen month cessation of nonconforming use for necessary repairs and renovations did not constitute an abandonment of the nonconforming use).

In this present instance, there has been, in fact, no cessation or discontinuance of the actual use of the property for motor vehicle sales, only the failure to pay a tax arising from the business activity occurring on the property. Submitted with its Occupational License Application, MFT Enterprises of Winter Park, Inc. furnished copies of dealer licenses issued by the Florida Department of Highway Safety and Motor Vehicles for the operation of a motor vehicle dealership on the subject property. These licenses cover the period of time during which the City asserts that the nonconforming use was abandoned. I have included copies of these licenses with this letter. Additionally, I include the following information in support of the applicant’s position that it has not abandoned its motor vehicle operations on the property, to-wit:

1. Certificates of Liability Insurance and Liability Insurance Declarations from November 2005 to the present establishing Applicant’s maintenance of liability insurance covering Garage Liability on the property in connection with its operations;

2. Resale Certificates for Sales Tax for the years 2005 through 2009 issued by the Department of Revenue for the Applicant’s operations on the subject property;

3. Surety Bonds in favor of the Department of Motor Vehicles covering Applicant’s operations as a motor vehicle dealer on the subject property;
4. Monthly sales tax electronic filing confirmations for sales tax returns made by the Applicant to the Department of Revenue for motor vehicle sales on the property for the years 2006 through 2009; (Note: Applicant can produce receipts for 2005 sales tax returns and is in the process of copying such receipts)

5. Affidavit of Matthew Thilmony.

As you can see, the expenditures and efforts necessary to remain in compliance with the numerous licensing and reporting requirements applicable to motor vehicles dealers are significant based upon the materials submitted herewith. The fact that the Applicant performed all the necessary steps to keep its State of Florida motor vehicle dealer license in full force and effect at the subject property’s location directly speaks to the issue at hand, namely, has there been an intentional and voluntary abandonment of the property as a motor vehicle sales site. I would submit that the applicant’s fastidious performance of the necessary state licensing requirements as well as the actual sales activity and reporting of such sales activity to the Department of Revenue can lead only to the conclusion that there has been no abandonment of the use when viewed from the standard required by Florida courts.

In this instance it seems clear that what is fundamentally an issue relating to taxation has been impermissibly intertwined with a zoning issue. Without question, MFT Enterprises of Winter Park, Inc. has engaged in business within the City of Winter Park during the business license years of 2006 through 2009 and owes the business license tax for those years. Accordingly, enclosed with this letter is the Applicant’s check in the amount of $1,180.00 representing the outstanding taxes owing for license years 2006, 2007, 2008 and 2009.

In light of the evidence presented by the applicant that it has continuously used the subject property to engage in the non-conforming use and the applicant’s willingness to bring all unpaid business license taxes current, there appears no legal basis to deny the applicant’s requested business license renewal. Notwithstanding the position taken in your letter, it is clear that the applicant has not lost its right to be “grandfathered in”. Accordingly, on behalf of the applicant, MFT Enterprises of Winter Park, Inc., I would respectfully request reconsideration of your March 25, 2009 determination. I appreciate your reconsideration of this matter and should you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,

[Signature]

Jason E. Merritt

JEM/dm
Enclosures
xc: MFT Enterprises of Winter Park, Inc.
AFFIDAVIT

Before me personally appeared MATTHEW F. THILMONY ("Affiant") who, after being duly sworn, deposes and says:

1. Affiant is the President of MFT Enterprises of Winter Park, Inc., is over the age of eighteen and has personal knowledge of the facts contained herein.

2. MFT Enterprises of Winter Park, Inc. is the licensee under License Number VI/1002845/1 issued by the Florida Department of Highway Safety and Motor Vehicles authorizing MFT Enterprises of Winter Park, Inc. to operate as an Independent Dealer in motor vehicles at 2190 W. Fairbanks Avenue, Winter Park, Florida 32789.

3. MFT Enterprises of Winter Park, Inc. has continuously possessed the above-referenced license since at least May 1, 2005 to the present date and has engaged in the business of selling motor vehicles at the subject address continuously during such period.

4. At no point during the period of September 30, 2005 to the present has MFT Enterprises of Winter Park, Inc. intentionally and voluntarily ceased to use the property located at 2190 W. Fairbanks Avenue, Winter Park, Florida 32789 for motor vehicle sales purposes.

Further Affiant sayeth not.

MATTHEW F. THILMONY

STATE OF FLORIDA
COUNTY OF ORANGE

Sworn to, subscribed and acknowledged before me this 8th day of April, 2009, by MATTHEW F. THILMONY.

Debra M. Morton
Name of Notary Public

(Typed, Printed or stamped)

Personally Known To OR Produced Identification
Type of Identification Produced: Florida Driver's License