## AGENDA ESCAMBIA COUNTY BOARD OF ADJUSTMENT SPECIAL MEETING November 13, 2017–8:30 a.m. Escambia County Central Office Complex 3363 West Park Place, Room 104

- 1. Call to Order.
- 2. Swearing in of Staff and acceptance of staff as expert witness
- 3. Acceptance of the BOA Meeting Package with the Development Services Staff Findings-of-Fact, into evidence.
- 4. Proof of Publication and waive the reading of the legal advertisement.

## 5. **Consideration of the following cases:**

 A. CASE NO.: AP-2016-01 ADDRESS: 1999 Massachusetts Avenue
 REQUESTED APPEAL: Appeal of the Development Review Committee denial of project # PSP160400044, Sean's Outpost
 REQUESTED BY: William J. Dunaway, Agent for Sean's Outpost, Inc.

## 6. Announcement.

The next Board of Adjustment Meeting is scheduled for Wednesday, November 15, 2017 at 8:30 a.m., at the Escambia County Central Office Complex, Room 104, 3363 West Park Place.

7. Adjournment.



## DEVELOPMENT SERVICES ADMINISTRATIVE APPEAL WORKSHEET

5. A.

Board of Adjustment Special Meetin Meeting Date: 11/13/2017	ng
I. SUBMISSION DATA:	
APPLICANT:	William J. Dunaway, Agent for Se Inc.
DATE OF ADMINISTRATIVE DECISION:	10/12/2016
DATE OF APPEAL APPLICATION:	10/27/2016
PROJECT ADDRESS:	1999 Massachusetts Avenue
	-

ean's Outpost, PROPERTY REFERENCE NO .: 12-2S-30-7002-000-000 ZONING DISTRICT: HC/LI, Heavy Commercial and Light Industrial district FUTURE LAND USE: MU-U, Mixed-Use Urban

## III. REQUESTED APPEAL::

The Applicant is requesting an appeal of the Development Review Committee's (DRC) denial of project # PSP160400044, Sean's Outpost.

**III. RELEVANT APPEAL AUTHORITY:** 

## Land Development Code of Escambia County, Florida (Ordinance 96-3 as amended), Section: 2-6.10(b)(3)

Section 2-6-10, Appeal of Administrative Decisions of the Escambia County Land Development Code (Ordinance No. 96-3 as amended), provide the relevant authority for the BOA's review of administrative decisions.

(b) Appeal process. Conditions that may justify modification of administrative decisions are evaluated through guasi-judicial public hearing review by the Board of Adjustment (BOA).

(3) Compliance review. The BOA shall conduct the quasi-judicial public hearing to consider the appeal of an administrative decision. The applicant has the burden of presenting competent substantial evidence to the board that establishes each of the following conditions with regard to the decision being appealed:

**a. Arbitrary or capricious.** The decision of the administrative official was neither required nor supported by the Comprehensive Plan or the LDC and was therefore arbitrary or capricious.

**b. LDC noncompliance.** The specific LDC provisions identified in the appeal application are appropriate to the decision and the decision was not in compliance with those provisions.

**c.** Adverse impact. The applicant's property will suffer an adverse impact as a result of the decision if it is not modified.

**d. Protected interest.** The adverse impact is to a specific interest protected or furthered by the LDC or Comprehensive Plan.

**e. Greater impact.** The adverse impact adversely affects the applicant in a greater degree than any adverse impact shared by the community at large; and, if the applicant is a third party to the decision, the adverse impact peculiar to the applicant differs in kind (as opposed to degree) to any suffered by the community as a whole.

## IV. BACKGROUND INFORMATION

The project in question was submitted to the county DRC for the purpose of obtaining Development Order (DO) approval. As with all projects submitted to the DRC, the assigned reviewers then reviewed the plan for LDC compliance.

Following the reviews it was determined that this submittal did not meet all of the conditions for approval and the project was denied at the October 12, 2016 DRC meeting.

The Applicant met with staff to discuss the option of appeal and the case was submitted on October 27, 2016, meeting the required time frame set forth in LDC 2-6.10(b)(1).

Staff then scheduled the BOA hearing for Dec. 7, 2016, also meeting the time time frame of LDC 2-6.10(b)(1).

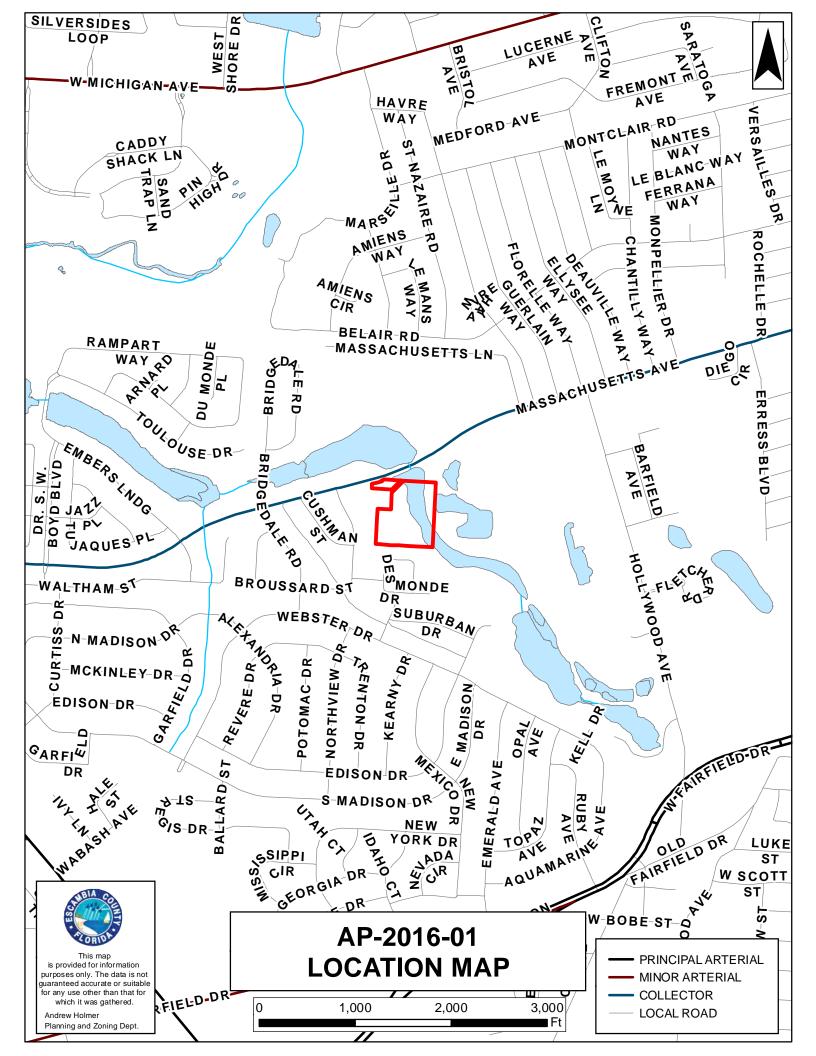
## V. BOARD DECISION

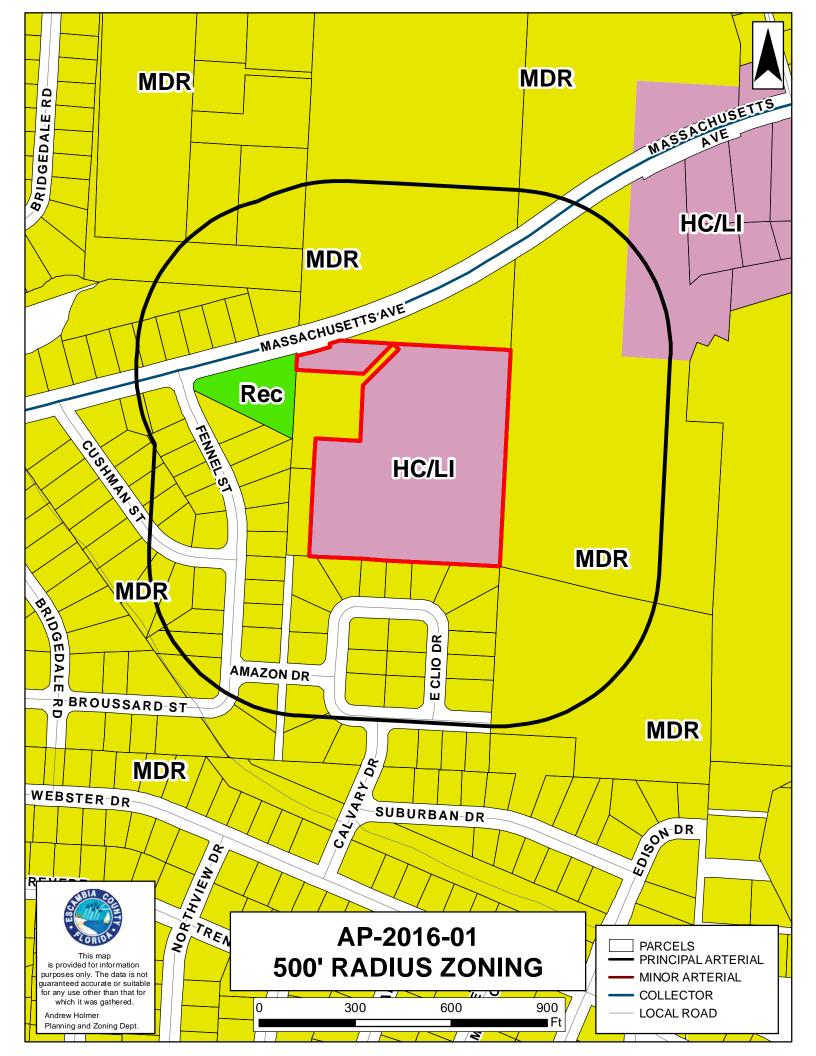
A motion was made and seconded to accept the recommendation of staff's denial and to uphold the DRC denial of the Sean's Outpost development order. That motion resulted in a 3-3 tied vote. The appeal failed to receive an affirmative majority vote and was denied.

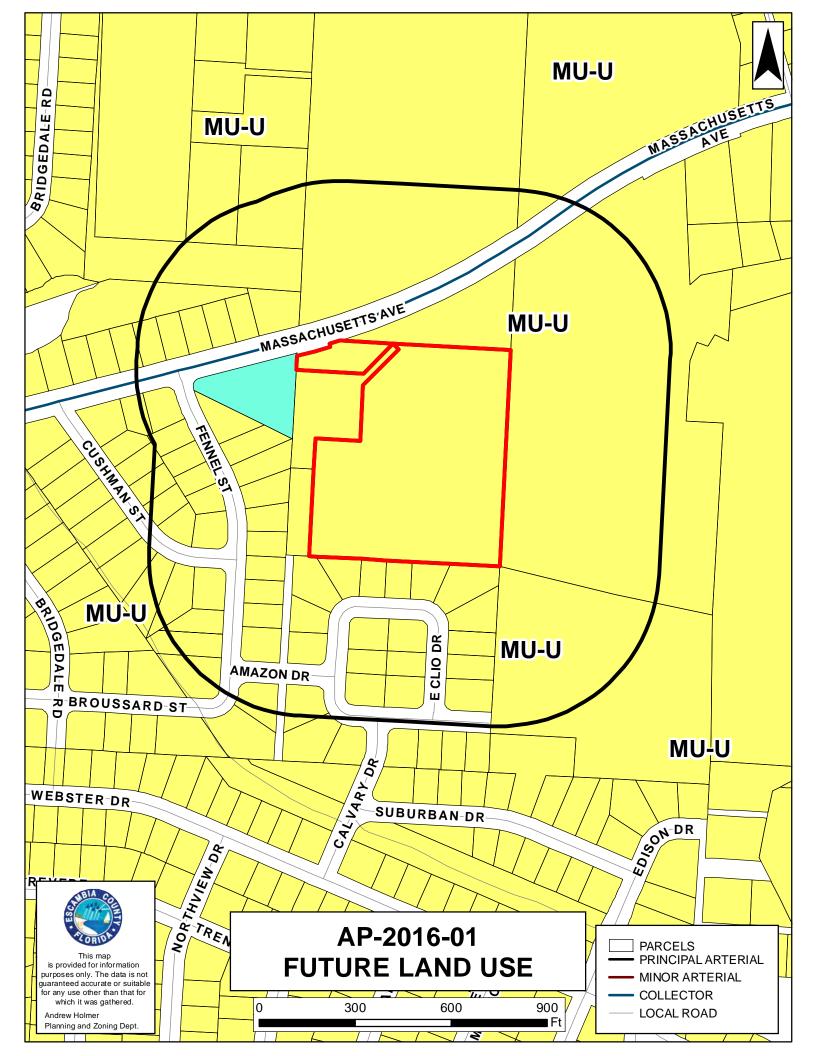
In January 2017, the Applicant filed an appeal of the Board's decision with the Circuit Court. In September of 2017, the case was remanded back to the Board of Adjustment.

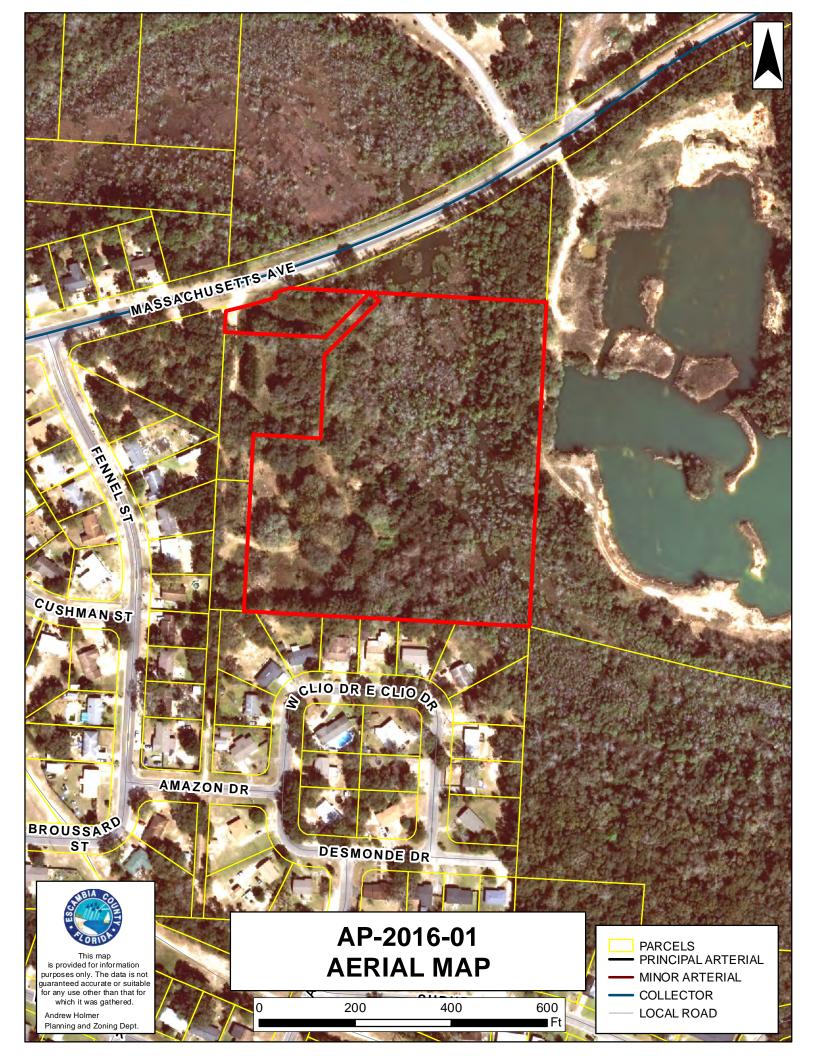
<u>AP-2016-01</u> <u>Final Order</u> <u>Petition for Writ of Certiorari with Appendix</u> <u>Transcripts from December 7, 2016</u>

# **AP-2016-01**

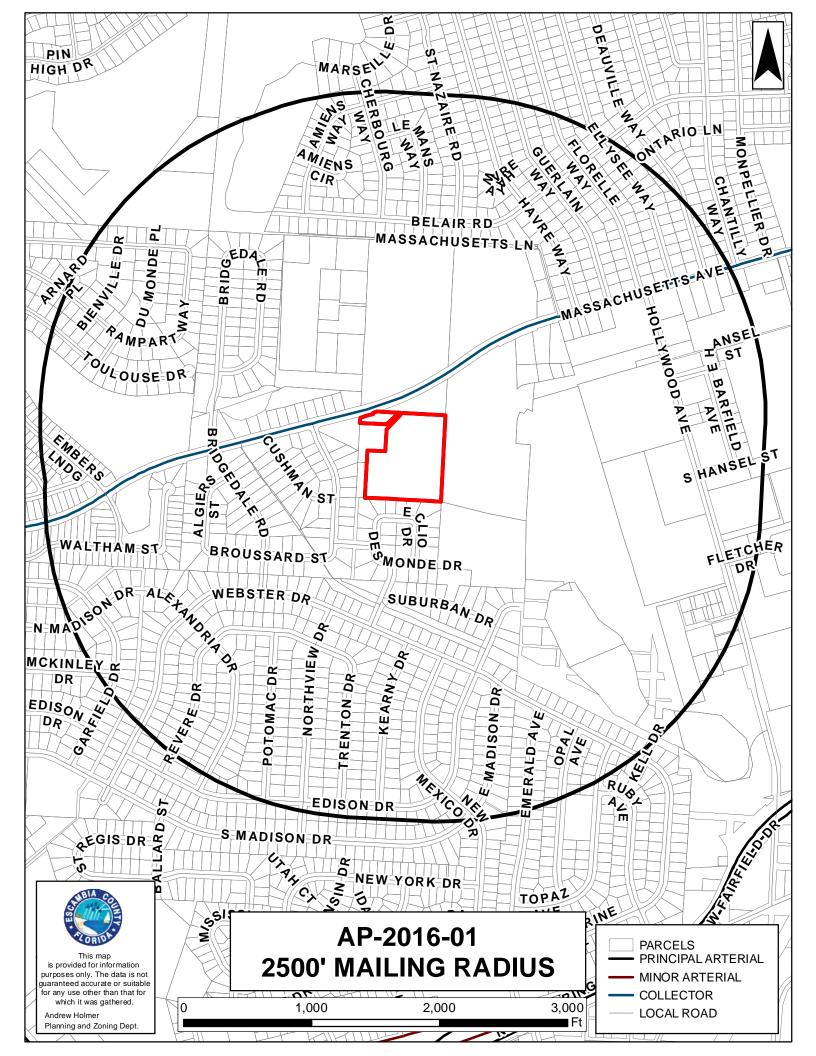














William J. Dunaway Direct (850) 208-7020 wdunaway@clarkpartington.com Licensed to Practice in Florida and Mississippi

October 27, 2016

## Via Hand Delivery

Escambia County Board of Adjustment c/o Escambia County Planning and Zoning Development Services Department 3363 West Park Place Pensacola, FL 32505

## Re: Appeal of Development Review Committee Final Determination (Project # PSP160400044) Sean's Outpost – Satoshi Forest

Dear Board Members:

I represent Sean's Outpost, Inc. ("Sean's Outpost") in their ongoing efforts to improve the lives of Escambia County's less fortunate citizens by providing them with a safe place to exist. Specifically, Sean's Outpost has been for the past three years allowing individuals and families to live in tents on their Heavy Commercial – Light Industry (HC/LI) zoned 8.82-acre parcel located at 1999 Massachusetts Ave., Pensacola FL, 32505. There are no permanent structures on the site and known are proposed in the application.

In 2014, the County issued a code violation citation to Sean's Outpost because of the use of tents (temporary structures) on the property. After challenging the validity of the citation, a Special Magistrate found that there was no violation and dismissed the citation. Following several years of relative peace, the County again issued a code violation citation in January 2016. After several meetings with County officials, including the County Administrator, Sean's Outpost submitted a minor development site plan application to the Development Review Committee (DRC) on April 5, 2016. Following multiple meetings and discussions with the County staff about their comments and concerns regarding the site plan approval for the proposed project, on October 12, 2016, the proposal went before the DRC for a final review.

At the DRC, the issue was narrowed to the County claiming that the Design Standard Manual (DSM) Section 2.2 required the construction of an all-weather access road from Massachusetts Avenue all the way to the rear of the property in order to service the portable toilets. Even though Sean's Outpost did not believe that was a proper interpretation of the DSM, they nevertheless acquiesced to the requirement and asked the DRC to issue the permit with the all-weather road as a condition. Mr. Jones stated that because the all-weather road was not listed on the site plan, then the DRC should deny the permit. DRC denied the permit.



Escambia County Board of Adjustment October 27, 2016 Page 2

Sean's Outpost now appeals the final decision of the DRC to the Board of Adjustment (BOA) under the provisions of Section 2-1.4 and Section 2-6.10 of the Escambia County Land Development Code. The appeal is based on the fact that the underlying record clearly shows that the all-weather road was not desired to be built (and therefore was not part of the site plan), but when it was clear at the DRC that the all-weather road was the ONLY impediment to the issuance of the permit, Sean's Outpost clearly indicated on the record that it requested the DRC issue the permit with the all-weather road as a condition.

Permits are issued every day in Escambia County with conditions. For Mr. Jones to recommend and DRC to deny this application solely on the basis of the fact that the condition was NOT already shown on the site plan was wrong. Recall that Sean's Outpost was not requesting authorization to develop anything – they simply filed the application so the County would approve their use of the property in a manner that had been occurring peaceably and compatibly for years. Site plans for similar actions are routinely hand drawn by applicants, but Sean's Outpost went to the trouble and expenses to have a professional engineer complete a full professional site plan because the County staff kept insisting that such a site plan was necessary. If the only requirement for the issuance of the permit was that the all-weather road be shown on the site plan, the DRC should have allowed Sean's Outpost the opportunity to draw it on the site plan.

Sean's Outpost request this Board overturn the denial by the DRC and issue the permit preferably without the all-weather road as a condition, but if necessary with the all-weather road as a condition.

Thank you for your time and attention to this matter. We will provide your Board with a more detailed briefing and analysis of these issues at the appropriate stage of this appeal. In the meantime, please do not hesitate to contact me should you or your Board have any questions.

Sincerely,

William/J. Dunaway

WJD/sep Enclosures cc: Horace Jones (Via email) Meredith Crawford (Via email) Michael Kimberl (Via email)

## FLORIDA DEPARTMENT OF STATE DIVISION OF CORPORATIONS

## **Detail by Entity Name**

## Florida Not For Profit Corporation

SEAN'S OUTPOST, INC

## **Filing Information**

<b>Document Number</b>	N1300006546
FEI/EIN Number	46-3699172
Date Filed	07/22/2013
State	FL
Status	ACTIVE
Last Event	REINSTATEMENT
<b>Event Date Filed</b>	11/15/2014

## Principal Address

1999 MASSACHSETTS AVE PENSACOLA, FL 32514

## Mailing Address

1999 MASSACHSETTS AVE PENSACOLA, FL 32505

## Registered Agent Name & Address

MCKENZIE, ALISTAIR 905 E HATTON ST PENSACOLA, FL 32503

#### Officer/Director Detail

Name & Address

Title DIR

KING, JASON 2430 HENCYE DR PENSACOLA, FL 32514

Title DIR

KIMBREL, MICHAEL 2430 HENCYE DR PENSACOLA, FL 32514

Title DIR

4/5/2018

KING, LESLIE 2430 HENCYE DR PENSACOLA, FL 32514

## **Annual Reports**

Report Year	Filed Date
2014	11/15/2014
2015	04/30/2015

## **Document Images**

04/30/2015 -- ANNUAL REPORTVlew image in PDF format11/15/2014 -- REINSTATEMENTVlew image in PDF format07/22/2013 -- Domestic Non-ProfitView image in PDF format

Copyright © and Privacy Policies State of Florida, Department of State

FEi Number:	46-3699172		Certificate of Status Desired	No
Name and A	ddress of Current Registered Agent:			
MCKENZIE, ALI 805 E HATTON PENSACOLA, F	ST			
The above named	entity submits this statement for the purpose of changing its	registered office or regist	lered agent, or both, in the State of Florida.	
SIGNATURE		_	• • •	
	Electronic Signature of Registered Agent			Date
Officer/Direc	tor Detail :			
Title	DIR	Title	DIR	
Name	KING, JASON	Neme	KIMBREL, MICHAEL	
Address	2430 HENCYE DR	Address	2430 HENCYE DR	
City-State-Zip:	PENSACOLA FL 32514	Clty-State-Zip:	PENSACOLA FL 32514	
Tille	DIR			
Name	KING, LESLIE			
Address	2430 HENCYE DR			
City-State-Zip:	PENSACOLA FL 32514			
·				

## t hereby certify that the information indicated on this report or supplemental report is true and accurate and that my electronic signature shall have the same legal effect as if made under esth; that I am an officer or director of the corporation or the raceivar or trustoe empowered to execute this report as required by Chapter 617, Florida Statutes; end that my name appeara above, or on an attachment with all other like empowered.

DIRECTOR

SIGNATURE: JASON KING

Electronic Signature of Signing Officer/Director Detail

04/30/2015

Date

#### . ` 2015 FLORIDA NOT FOR PROFIT CORPORATION ANNUAL REPORT

## DOCUMENT# N13000006546

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Entity Name: SEAN'S OUTPOST, INC

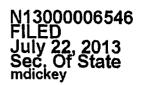
**Current Principal Place of Business:** 

1999 MASSACHSETTS AVE PENSACOLA, FL 32514

## **Current Mailing Address:**

**1999 MASSACHSETTS AVE** PENSACOLA, FL 32505

Electronic Articles of Incorporation For



SEAN'S OUTPOST, INC

**.** ·

The undersigned incorporator, for the purpose of forming a Florida not-forprofit corporation, hereby adopts the following Articles of Incorporation:

## Article I

The name of the corporation is: SEAN'S OUTPOST, INC

## Article II

The principal place of business address: 1999 MASSACHSETTS AVE PENSACOLA, FL. 32514

The mailing address of the corporation is: 1999 MASSACHSETTS AVE PENSACOLA, FL. 32505

## **Article III**

The specific purpose for which this corporation is organized is: TO CREATE LASTING SOLUTIONS TO HOMELESSNESS, HUNGER, POVERTY, AND SOCIAL INJUSTICE

## **Article IV**

The manner in which directors are elected or appointed is: AS PROVIDED FOR IN THE BYLAWS.

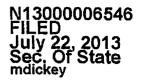
## Article V

The name and Florida street address of the registered agent is:

ALISTAIR MCKENZIE 905 E HATTON ST PENSACOLA, FL. 32503

I certify that I am familiar with and accept the responsibilities of registered agent.

Registered Agent Signature: ALISTAIR MCKENZIE



## Article VI

The name and address of the incorporator is:

JASON KING 2430 HENCYE DR

. . . .

PENSACOLA, FL 32514

Electronic Signature of Incorporator: JASON KING

I am the incorporator submitting these Articles of Incorporation and affirm that the facts stated herein are true. I am awarc that false information submitted in a document to the Department of State constitutes a third degree felony as provided for in s.817.155, F.S. I understand the requirement to file an annual report between January 1st and May 1st in the calendar year following formation of this corporation and every year thereafter to maintain "active" status.

## Article VII

The initial officer(s) and/or director(s) of the corporation is/are:

Title: DIR JASON KING 2430 HENCYE DR PENSACOLA, FL. 32514

Title: DIR MICHAEL KIMBREL 2430 HENCYE DR PENSACOLA, FL. 32514

Title: DIR LESLIE KING 2430 HENCYE DR PENSACOLA, FL. 32514 Recorded in Public Records 07/29/2013 at 02:40 PM OR Book 7052 Page 593, Instrument #2013055870, Pam Childers Clerk of the Circuit Court Escambia County, FL Recording \$27.00 Deed Stamps \$623.00

Prepared by:

Wilson, Harrell, Farrington, Ford, et.al., P.A. 307 South Palafox Street Pensacola, Florida 32502

File Number: 1-48088

#### **General Warranty Deed**

Made this July 25, 2013 A.D. By Robert Dale, a married man, whose address is: P.O. Box 11850, Pensacola, FL 32534, hereinafter called the grantor, to Sean's Outpost, Inc., a Florida corporation, whose post office address is: 1999 Massachusetts Avenue, Pensacola, Florida 32505, hereinafter called the grantee:

(Whenever used herein the term "granter" and "grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations)

Witnesseth, that the grantor, for and in consideration of the sum of Ten Dollars, (\$10.00) and other valuable considerations, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the grantee, all that certain land situate in Escambia County, Florida, viz:

A PARCEL OF LAND LYING IN A PORTION OF SECTION 12, TOWNSHIP 2 SOUTH, RANGE 30 WEST, ESCAMBIA COUNTY, FLORIDA, DESCRIBED AS FOLLOWS: THE SOUTH 1/2 OF THE WEST 1/2 OF GOVERNMENT LOT 7, LESS THE WEST 210 FEET OF THE SOUTH 210 FEET OF THE NORTH 310 FEET; AND LESS THE 4TH ADDITION TO MAYFAIR SUBDIVISION; AND LESS AND EXCEPT THAT PORTION CONVEYED TO FLORIDA UTILITY COMPANY BY DEED IN OR BOOK 151, PAGE 715, OF THE PUBLIC RECORDS OF ESCAMBIA COUNTY, FLORIDA; AND LESS AND EXCEPT THAT PORTION CONVEYED TO THE STATE OF FLORIDA BY DEED RECORDED IN OR BOOK 730, PAGE 157, OF THE PUBLIC RECORDS OF ESCAMBIA COUNTY, FLORIDA.

TOGETHER WITH THAT CERTAIN EASEMENT DESCRIBED AS FOLLOWS: A PERMANENT ACCESS EASEMENT, 25 FEET IN WIDTH, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF THE 4TH ADDITION TO MAYFAIR SUBDIVISION AS RECORDED IN PLAT BOOK 6, PAGE 5, OF THE PUBLIC RECORDS OF ESCAMBIA COUNTY, FLORIDA; THENCE NORTH 00°29' WEST ALONG A PROJECTION OF THE WEST BOUNDARY OF SAID SUBDIVISION A DISTANCE OF 580.5 FEET; THENCE NORTH 89°31' EAST A DISTANCE OF 211.00 FEET TO THE POINT OF BEGINNING; THENCE NORTH 44°35' EAST A DISTANCE OF 125.00 FEET; THENCE SOUTH 45°25' EAST A DISTANCE OF 25.0 FEET; THENCE SOUTH 44°35' WEST A DISTANCE OF 150 FEET; THENCE NORTH 00°29' WEST A DISTANCE OF 35.35 FEET TO THE POINT OF BEGINNING, LYING IN SECTION 12, TOWNSHIP 2 SOUTH, RANGE 30 WEST, ESCAMBIA COUNTY, FLORIDA.

## THE ABOVE DESCRIBED PROPERTY IS NOT THE CONSTITUTIONAL HOMESTEAD OF THE GRANTOR.

Parcel ID Number: 12-2S-30-7002-000-000

Together with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

To Have and to Hold, the same in fee simple forever.

And the grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land; that the grantor hereby fully warrants the title to said land and will defend the same against the lawful elaims of all persons whomsoever; and that said land is free of all encumbrances except taxes accruing subsequent to December 31, 2012.

In Witness Whereof, the said grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in our presence:

Atin

Robert Dale

Address: P.O. Box 11850, Pensacola, FL 32534

Witness Printed Name DONNA SCHIJMACHER

**DEED Individual Warranty Dood - Legal on Face** 

Prepared by:

Wilson, Harrell, Farrington, Ford, et.al., P.A. 307 South Palafox Street Pensacola, Florida 32502

File Number: 1-48088

State of Florida County of Escambia

Notar hilie Tracy Rotin Print Name:

4/1-14

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My Commission Expires:\_\_\_\_\_

THACT MAIZIN TY COMMISSION # DD 955992 EXPIRES: April 11, 2014 Banded Thra Budget Haury Services

DEED Individual Warranty Deed - Legal on Face

## RESIDENTIAL SALES ABUTTING ROADWAY MAINTENANCE DISCLOSURE

ATTENTION: Pursuant to Escambia County Code of Ordinances Chapter 1-29.2, Article V, sellers of residential lots are required to disclose to buyers whether abutting roadways will be maintained by Escambia County. The disclosure must additionally provide that Escambia County does not accept roads for maintenance that have not been built or improved to meet county standards. Escambia County Code of Ordinances, Chapter 1-29.2, Article V, requires that this disclosure be attached, along with other attachments to the deed or other method of conveyance required to be made part of the public records of Escambia County, Florida. NOTE: Acceptance for filing by County employees of this disclosure shall in no way be construed as an acknowledgement by the county of the veracity of any disclosure statement.

NAME OF ROADWAY: 1999 Massachusetts Avenue

LEGAL ADDRESS OF PROPERTY: 1999 Massachusetts Avenue, Pensacola, Florida 32505

13020 Sorrento Road Pensacola, FL 32507

The County (X) has accepted ( ) has not accepted the abutting roadway for maintenance.

This form completed by:

AS TO SEFLER(S):

Robert Dale

AS TO BUYER(S):

Sear's Outpost, Inc., a Florida corporation by: Jason King, Director

This form approved by the Escambia County Board of County Commissioners Effective: 4/15/95 WITNESSES TO SELLER(S):

Wilson, Harrell, Farrington, Ford, Wilson, Spain & Parsons P.A.

Trach Retin ited Name:

DONNA SCHUMACHER Printed Name:

WITNESSES TO BUYER(S):

inted Name: Trach Rotin

Printed Name:

DONNA SCHI MACHER

## <u>Compatibility and Location Criteria Analysis</u> 1999 Massachusetts Avenue

This is an 8.5 acre heavily wooded site located in the west Pensacola area at 1999 Massachusetts Avenue. Major existing land uses surrounding the property include a cemetery to the north, an abandoned barrow pit on the east, single family homes to the south a county park and vacant lots adjacent and west of the site.

The site is zoned Heavy Commercial- Light Industry HC/LI and has future land use classification of Mixed Use – Urban MU-U. Uses allowed under the HC/LI include the following:

## LDC Sec. 3-2.11(b)(5)b Recreation and entertainment.

,

**b.** Commercial recreation facilities, passive or active, including those for walking, hiking, bicycling, camping, recreational vehicles, swimming, skateboarding, bowling, court games, field sports, and golf, but excluding off-highway vehicle uses and outdoor shooting ranges. Campgrounds and recreational vehicle parks require a minimum lot area of five acres.

The site has been used over the past several years as a campground facility which is contained in the allowed uses cited above.

With regard to location and compatibility matters, the Land Development Code contains the following:

## LDC Sec. 3-2.11(e)(3)

(e) Location criteria. All new non-residential uses proposed within the HC/LI district that are not part of a planned unit development or not identified as exempt by district regulations shall be on parcels that satisfy at least one of the following location criteria:

(3) Documented compatibility. A compatibility analysis prepared by the applicant provides competent substantial evidence of unique circumstances regarding the parcel or use that were not anticipated by the alternative criteria, and the proposed use will be able to achieve long-term compatibility with existing and potential uses. Additionally, the following conditions exist: **a.** The parcel has not been rezoned by the landowner from the mixed-use, commercial, or industrial zoning assigned by the county.

**RESPONSE:** The landowner has not requested any change to the existing zoning.

**b.** If the parcel is within a county redevelopment district, the use will be consistent with the district's adopted redevelopment plan, as reviewed and recommended by the Community Redevelopment Agency (CRA).

**RESPONSE:** According to the county list of redevelopment areas, this site and area are not identified as being within a designated redevelopment district.

As discussed earlier, the site is zoned HC/LI with a MU-U land use designation. By way of comparison, the Tall Oaks Campground near Pine Forest Road and Nine Mile Road intersection has a similar zoning and land use classification and has been in existence for over thirty-one years. The rear of the site touches a subdivision to the west with a MU-U land use which is the same as the land use classification for properties surrounding the Massachusetts Avenue site. Both sites have the same zoning and land use classifications with a campground as the existing use. Tall Oaks has demonstrated then, that a campground can coexist next to a residential subdivision.

With regard to the Massachusetts Avenue site, compatibility will be achieved with the application of vegetative buffering on the westerly and southern property lines. The scale and intensity of use as shown on the site plan will be small for the 8 acre site so as not to generate unreasonable noise, traffic or other nuisances to contiguous properties. The site plan identifies some 20 campsites located on approximately 4 acres of the developable portions of the site. Regarding intensity of use, the zoning category will permit up to 25 dwelling units per acre, conceivably permitting some 100 units on the property. The proposed 20 campsites would suggest less intensity and thus greater compatibility with surrounding properties.

Another metric concerning impacts is the amount of potential traffic to be generated by a project onto the street network. This is accomplished by using the FDOT Trip Generation spreadsheet by the Institute of Traffic Engineers (ITE) that identifies trips produced based upon the land use and its size. In this case, a campground carries a ITE 416 use code showing a four acre campground site generating some 4 trips per day (see attached spreadsheets). For comparison, Fennel Street located west of the site, has some 25 residential units (ITE code 210) along its length and produces some 239 trips per day. By comparison, then, any campground traffic impact on the area will be deminimis.

Finally, vegetative buffering will be utilized as shown on the proposed site plan along the southern and westerly property lines as defined in the Land Development Code:

**Buffer.** A designated area with natural or manmade features functioning to minimize or eliminate adverse impacts on adjoining land uses, including environmentally sensitive lands.

This buffer will consist primarily of the existing trees and understory on the property to provide a natural and man-made buffered area.

Compatibility then, will be achieved by a small, low intense development producing little traffic or unreasonable dust, noise or other objectionable odors or hazards on a site that will provide buffered separation from neighboring properties.

## Spack

#### ITE Trip Generation Rates - 8th Edition Pass-by rates from ITE Trip Generation Handbook - 2nd Edition

Instructions: Enter Expec

Description/ITE Code FDOT	Units		eak hour	eneration Rat	Expected Units	Total Generated Trips							
		Weekday	AM		Pass-By AM In					Daily	AM Hour		AM I
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/aterport/Marine Terminal 010 ommercial Airport 021	Berths	171.52	NA 0.82	NA	NA 55%	NA 45%	NA 54%	NA 46%		0		NA	NA
	Employees	13.40	5 40	0.80	54%	45%	45%	46%		0		0	0
ommercial Airport 021	Avg Flights/Day Com, Flights/Day	122.21	6.43	6.88	55%	45%	54%	46%		0		0	0
eneral Aviation Airport 022	Employees	14.24	0.69	1.03	83%	17%	45%	55%		0		0	0
eneral Aviation Airport 022	Avg. Flights Day	1.97	0.24	5.30	NA	NA	NA	NA		0		0	NA
eneral Aviation Airport 022	Based Aircraft	5.00	0.24	0.37	83%	17%	45%	55%		0		0	0
uck Terminal 030	Acres	B1.90	7.28	6.55	41%	59%	43%	57%		0		0	0
ruck Terminal 030	Employees	8.99	0.66	0.55	40%	60%	47%	53%		0		0	0
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ght Rail Station w/ Park. 093	Parking Space Occ. Spaces	3.91	1.14	1 83	80%	20%	58%	42%		0		0	0
	KSF <sup>2</sup>		Taxaban San Pro-										
eneral Light Industrial 110		6.97	0.92	0.97	88%	12%	12%	88%		0		0	0
eneral Light Industrial 110	Acres	51.80	7.51	7.26	83%	17%	22%	78%		0		0	0
eneral Light Industrial 110	Employees	3.02	0.44	0.42	83%	17%	2156	79%		0		0	0
eneral Heavy Industrial 120	KSF <sup>*</sup>	1.50	0.51	0.19	NA	NA	NA	NA	1.	0	-	0	NA
eneral Heavy Industrial 120	Acres	6 75	1.98	2.16	NA	NA	NA	NA		0	0	0	NA
eneral Heavy Industrial 120	Employees	0.82	D.51	0.88	NA	NA	NA	NA	1	0	0	0	N/
dustrial Park 130	KSF	6.96	0.84	0.86	82%	18%	21%	75%	1 Contraction	0	0	Ó	0
dustrial Park 130	Acres	63.11	8.55	8.84	83%	17%	21%	79%	1	0		0	0
dustrial Park 130	Employees	3.34	D.47	0.48	86%	14%	20%	80%		0		0	0
anufacturing 140	KSF <sup>2</sup>	3.82	0.73	073	78%	22%	36%	64%		0	-	0	0
tanufacturing 140	Acres	38.88	7.44	8.35	93%	7%	53%	47%		0		0	0
lanufacturing 140	Employees	2.13	0.40	0.35	73%	27%	44%	56%		0		0	0
Varehousing 150	KSP <sup>2</sup>	3,56	0.30	0.32	79%	21%	25%	75%			-		
Varehousing 150			the second s	and the second se	the second se					0		0	0
	Acres	67.23	10.03	8.69	72%	28%	35%	65%		0		0	0
Varehousing 150	Employees	3.89	0.51	0.59	72%	28%	35%	65%		0		0	0
lini Warehouse 151	KSF <sup>2</sup>	2,50	0.15	0.26	59%	41%	51%	49%		0	0	0	0
lini Warehouse 151	Storage Units	0.25	0.02	0.02	67%	33%	NA	NA		0	0	0	0
ini Warehouse 151	Acres	35.43	2.62	3.45	NA	NA	52%	48%		0		0	N/
ini Warehouse 151	Employees	61,90	5.26	6.04	67%	33%	52%	48%	100	0	0	0	0
igh-Cube Warehouse 152	K5F <sup>2</sup>	1.44	0.09	0 10	65%	35%	33%	67%		0	0	O	0
tilities 170	KSF <sup>2</sup>	NA	0.80	0.76	NA	NA	45%	55%		0	0	0	NA
tilities 170	Employees	NA	0.76	0.76	90%	10%	15%	85%		0		0	0
bindes 110	Employees	110	010	0,10	2014	10%	1576	00%		0	0	0	0
ingle Family Homes 210	DU	9.57	0.75	1.01	25%	75%	63%	37%	25.0	239	19	25	5
ingle Family Homes 210	Acres	26.04	2.06	2.74	31%	69%	66%	34%		0	0	0	0
ingle Family Homes 210	Persons	2.55	0.21	0.28	31%	69%	66%	34%	(T	0	0	0	0
ingle Family Homes 210	Vehicles	6.02	0.51	0.67	31%	60%	66%	34%		0	0	0	0
partment 220	DU	6.65	0.51	0.62	20%	80%	65%	35%		0	0	0	0
partment 220	Persons	3.31	0.28	0.40	NA	NA	NA	NA		0		0	NA
partment 220	Vehicles	5.10	0.46	0.60	NA	NA	NA	NA	-	0		0	NA
ow Rise Apartment 221	Occ. DU	6.59	0.46	0.58	21%	79%	65%	35%	110000000				
ligh Rise Apartment 222	DU	4.20	0.30	0.35	21%	75%	61%	39%		0		0	0
Id-Rise Apartment 223	DU	NA NA	0.30	0.39	31%	69%	58%	42%		0		0	0
ilontise Apartment 225	00		0.30	0.39	31%	09.%	.50%	42%		0	0	0	0
ental Townhouse 224	DU	NA	0.70	0.72	33%	67%	51%	49%		0	0	0	0
esd Condo/Townhouse 230	DU	5.81	0.44	0.52	17%	83%	67%	The second second					-
esd. Condo/Townhouse 230	Persons	2.49	0.44	0.02	15%	83%	67%	33%		0		0	0
esd. Condo/Townhouse 230	Vehicles	3.34	0.24	0.24	16%	84%	68%	33%		0		0	0
ow Rise Resd. Condo 231	DU	NA	0.24				58%	42%		0		0	0
ligh Rise Resd. Condo 232	DU	4.18	0.34	0.38	19%		62%	38%		0		0	0
uxury Condo/Townhouse 233	Doc. DU	NA	0.56	0.55	23%		63%		1000	0		0	0
				0.00		- Cr.a	00/3	51.10		0			- 0
obile Home Park 240	Occ. DU	4.99	0.44	0.59	20%	80%	62%	38%		0	0	0	0
Iobile Home Park 240	Persons	2.48	0.20	0.26	18%	82%	63%	37%	X	0		0	0
obile Home Park 240	Acres	39.61	3.20	4.45	18%	82%	63%	37%	1-	0		0	0
Iobile Home Park 240	Venicles	3.38	0.27	0,35	16%	84%	63%	37%	5	0		0	0
The second s	1										1		
enior Adult Housing-Detached 251	DU	3.71	0.22	0.27	35%	65%	61%	39%		0	0	0	0
enior Adult Housing- Altached 252	Oce DU	3.48	0.13	0.15	36%	64%	60%	40%	diamont in the	0	0	0	0
ongregate Care Facility 253	Occ.DU	2 15	0.08	0.17	61%		56%	44%	1100000	0		0	0
ongregate Care Facility 253	DU	2.02	.0.03	0.17	59%		55%		1000	0		0	0
ssisted Living 254	Occ Beds	2.74	8.17	0.29	73%	27%	.52%	48%			-		
ssisted Living 254	Beds	2.66	0 14	0.22	65%	35%	44%			0		0	0
ssisted Living 254	Employees	3.93	NA	0.55	NA NA		44%			0		0	0
atirement Community 255	Oce Units	2.81	0.18	0.29	64%	36%	48%	52%	1	0		0	N/
entre sector sec	othe origin	201	0.10	0.48	04%	30%	10.78	0278	1	0	0	0	0
ecreational Homes 260	DU	3.10	0.16	0.26	67%	33%	41%	59%	11	0	0	0	0
ecreational Homes 260	Acres	1.33	0.07	0.11	67%		41%	59%	100	0		0	0
meshare 265	DU	10.03	0.48	0.76	NA	_				-			
			the second s	and the second second	And and a second se		NA	NA		0		-	N/
esidential PUD 270	DU	7.50	0.51	0.62	22%		65%	35%		0		0	0
esidential PUD 270	Acres	46 78	2.86	4.05	NA	NA	NA	NA		0	0	0	N/
otel 310	Occ. Room	8 92	0.67	0.70	58%	42%	49%	51%		0	0	ō	
atel 310	Rooms	8.17	0.67	0.59	61%		49%	47%					0
otel 310	Employees	34 34	0.56	0.89	60%	40%	53%	46%		0		0	0
Il Suites Hotel 311	Occ.Room	6 24	0.48	0.85	67%		42%	46%		0		0	0
Al Suites Hotel 311	Rooms	4.90	0.48				42%			0	0	0	0

Distance Hatel Dig	Occ. Room	1.27	0.58	0.52	59%	4156	60%	40%		0	D	0	i.
Business Hotel 312 Business Hotel 312	Employees	72.87	7,17	7.60	59%	41%	60%	40%		o	0	0	t
Motel 320	Oce Room	9.11	0.64	0.58	36%	54%	53%	47%	-	0	0	0	
Motel 320 Motel 320	Rooms	5.63	0.45	0.47	36%	64%	54%	46%		0	0	0	Ŀ
Motel 320 Resort Hotel 330	Employees Occ. Room	12.81	0.91	0.73	72%	46%	43%	57%		0	0	0	t
Resort Hotel 330	Rooms	NA	0.31	0.42	72%	28%	43%	57%		0	D	0	E
Resort Hotel 330	Employees	13.58	0.15	0.25	69%	31%	40%	60%		0	0	0	1
City Park 411	Acres	1.59	NA	NA	NA	NA	NA	NA		0	NA	NA	Ł
City Park 411 County Park 412	Picinic Sites Acres	5.87	NA 0.01	NA 0.0B	NA 80%	NA 20%	NA 41%	NA 59%		0	NA 0	NA 0	ł
State Park 413	Acres	0.65	NA	NA	NA	NA	NA	NA		0	NA	NA	t
State Park 413	Picnic Sites	9.95	NA	0.55	NA	NA	43%	57%		0	NA	0	L
State Park 413 Water Slide Park 414	Employees Parking Space	42.55	0.08	4.67	NA 70%	NA 30%	43%	57% 79%		0	NA 0	0	┝
Beach Park 415	Acres	29.81	0.48	1.30	59%	41%	29%	71%		0	0	0	t
Campground/RV Park 416	Acres	NA	0.48	0.98	42%	58%	69%	31%	4.0	0	2	4	F
Regional Park 417 Regional Park 417	Acres Picnic Sites	4 57	0.15	0.20	57%	43%	45%	55% 59%		0	0	0	ł
Regional Park 417	Employees	79.77	4 50	10.26	65%	35%	45%	55%		0	0	0	t
National Monument 418	Acres	5 37	0.22	0.42	NA	NA	NA	NA		0	0	0	E
National Monument 418	Employees	31.05	3.05	5.58	NA	NA	NA	NA		0	0	0	Ł
Marina 420 Marina 420	Berths	2.96	0.08 NA	0 19 NA	33% NA	67%	60% NA	40%		0	0 NA	0 NA	+
Golf Course 430	Acres	5.04	0.21	0.30	74%	26%	34%	66%		0	0	0	1
Golf Course 430	Employees	20.52	101	1.48	68%	32%	48%	52%		0	0	0	T
Golf Course 430	Holes	35.74	2.23	2.78	79%	21%	45%	55%		0	0	0	F
Miniature Golf Course 431 Golf Driving Range 432	Holes Tees	NA 13.65	0.40	0.33	NA 61%	NA 39%	33%	67% 55%		0	NA O	0	+
Batting Cages 433	Cages	NA	NA	2.22	NA	NA	55%	45%		0	V	0	1
Multipurpose Rec. Facility 435	Acres	90 38	.1.92	5.17	NA	NA	NA	NA		D	0	0	F
Bowling Alley 437	KSF <sup>2</sup>	33.33	3.13	3.54	60%	.40%	35%	65%		0	0	Q	1
Live Theater 441	Seats	NA	NA	0.02	NA	NA	50%	50%		0	NA	D	
Movie Theater w/o matinee 443	K5F <sup>2</sup>	78.06	0.22	6.15	NA	NA	94%	6%		0	0	0	
Movie Theater w/o matinee 443 Movie Theater w/o matinee 443	Movie Screens Seats	220.00	0.01	24:00	NA NA	NA	41% 75%	59% 25%		0	NA	0	L
Movie Theater w/o matinee 443	Employees	53.12	0.01	4.20	NA	NA	7.270 NA	NA		0	0	0	ł
Movie Theater w/ matinee 444	K5F <sup>2</sup>	99.28	NA	3.80	NA	NA	64%	36%		0	NA	0	t
Movie Theater w/ matinee 444	Movie Screens	546.86	NA	20.22	NA	NA	40%	60%		0	NA	0	t
Movie Theater w/ matinee 444 Multiplex Movie Theater 445	Seats KSF <sup>2</sup>	2.24	NA	0.07	NA	NA	39%	61%		0	NA	0	F
Multiplex Movie Theater 445 Multiplex Movie Theater 445	Movie Screens	NA	NA NA	4.91	NA NA	NA	62% 45%	38%		0	NA	0	┝
Multiplex Movie Theater 445	Seats	NA	NA		NA	NA	36%	64%		0	NA	0	t
Horse Track 452	Acres	43.00	NA	NA	NA	NA	NA	NA		0	NA	NA	T
Horse Track 452 Dog Track 454	Employees	2.60	NA	NA	NA	NA	NA	NA		0	NA	NA	F
Arena 460	Attendees Acres	NA 33.33	NA NA	0.15 NA	NA NA	NA	8% NA	92%		0	NA	0 NA	╋
Arena 460	Employees	10.00	NA	NA	NA	NA	NA	NA		0	NA	NA	t
Ice Rink 465	Seats KSF <sup>2</sup>	1.26	NA	0.12	NA	NA	NA	NA		0	NA	0	F
Casino/Lottery Establishment 473 Amusement Park 480	-	NA 75.78	NA 0.21	13.43	NA	NA	58%	44%		0	NA	0	1
Amusement Park 480	Acres Employees	8.33	0.03	0.50	88%	12%	61% 61%	39%		0	0	0	t
Zoo 481	Acres	114.88	NA	NA	NA	NA	NA	NA		0	NA	NA	T
Zoo 481 Soccer Complex 488	Employees Fields	23.93	NA	NA	NA	NA	NA	NA		0	NA	NA	F
Tennis Courts 490	Acres	16.26	1.40		50% NA	50% NA	69% NA	31% NA		0	0	0	╀
Tennis Courts 490	Courts	01.04	1.67	3.88	NA	NA	NA	NA		0		0	t
Tonnis Courts 490	Employees	66.67	3 33	5.67	NA	NA	NA	NA		0		0	T
Racquet Club 491 Racquet/Tennis Club 491	Courts KSF <sup>2</sup>	38.70	131	3.35	NA NA	NA	NA	NA		0		0	+
Racquet/Tennis Club 491	Employees	45.71	0 84 1 86	4 95	NA	NA	NA	NA		0	0	0	+
Health/Fitness Club 492	KSF <sup>2</sup>	32.93	1.38	3.53	45%	55%	57%	43%		0	0	0	t
Athletic Club 493	KSF <sup>2</sup>	43.00	2.97	5.98	61%	39%	62%	38%		0	Q	0	t
Recreational Com. Center 495	KSF	22.88	1.62	1,45	61%	39%	37%	63%		Q	0	0	1
Recreational Com. Center 495	Employees	27.25	2.60	2,44	72%	28%	27%	73%		0	0	0	1
Military Base 501	Employees	1.78	0.39		NA	NA	NA	NA		0	0	0	1
Elementary School 520	Students	1,29	0.45	0.15	55%	45%	49%	51%		0	D	D	1
Elementary School 520	KSF <sup>2</sup>	15.43	5.20		56%	44%	45%	55%		0	0	0	1
Elementary School 520 Middle/ JR. High School 522	Employees Students	15.71	5 37 D 64		54% 55%	46%	49% 49%	51% 51%		0	0	0	+
Middle/ JR. High School 522	KGF <sup>2</sup>	13.78	4.35	1.19	55%	45%	52%	48%		0	0	0	t
High School 630	Students	1.71	0.42	0.13	68%	32%	47%	53%		0	0	0	1
High School 530	KSF <sup>2</sup>	12.89	3.08	0.97	71%	29%	54%	46%		0	0	0	F
High School 530	Employees	19.74	4.68		70%	30%	54%	46%		0		0	T
Private School (K-8) 534 Private School (K-12) 536	Students Students	2.48	0.90	0.50	55%	45%	47%	53% 57%		0	0	0	£
Junior/ Comm. College 540	Students	1.20	0.12	0.12	82%	18%	43% 64%	36%		0		0	+
Juniar/ Comm. College 540	KSF <sup>2</sup>	27 49	2.09	2.54	74%	26%	58%	42%		0	0	0	T
Junior/ Comm College 540	Employees	15.55	1.64		74%	26%	58%	42%		0	0	0	L
University/College 550 University/College 550	Students Employees	2.38	0.21		80%	20% 18%	30%	70%		0		0	+
Church 560	KSF <sup>2</sup>	9.11	0.56	the second s	62%	38%	48%	52%		0	0	0	t
Synagogue 561	KSF <sup>7</sup>	10.64	D-14		NA	NA	40%	53%		0	0	0	+
Daycare Center 565	KSF <sup>2</sup>	1	12.26		53%		1000001						t
Daycare Center 565	Students	79.26	0.80	A DESCRIPTION OF TAXABLE AND A DESCRIPTION OF	53%	47%	47%	53% 53%		0	0	0	+
Daycare Center 565	Employees	28.13	4.91		53%	47%	47%	53%	-	0		0	+
	Acres	4.73	0.17		70%	30%	33%	67%					17



## Development Services Department Building Inspections Division

3363 West Park Place Pensacola, Florida, 32505 (850) 595-3550 Molino Office - (850) 587-5770

## RECEIPT

Receipt No. : 677951

Application No. : PBA161000015

Project Name : AP-2016-01

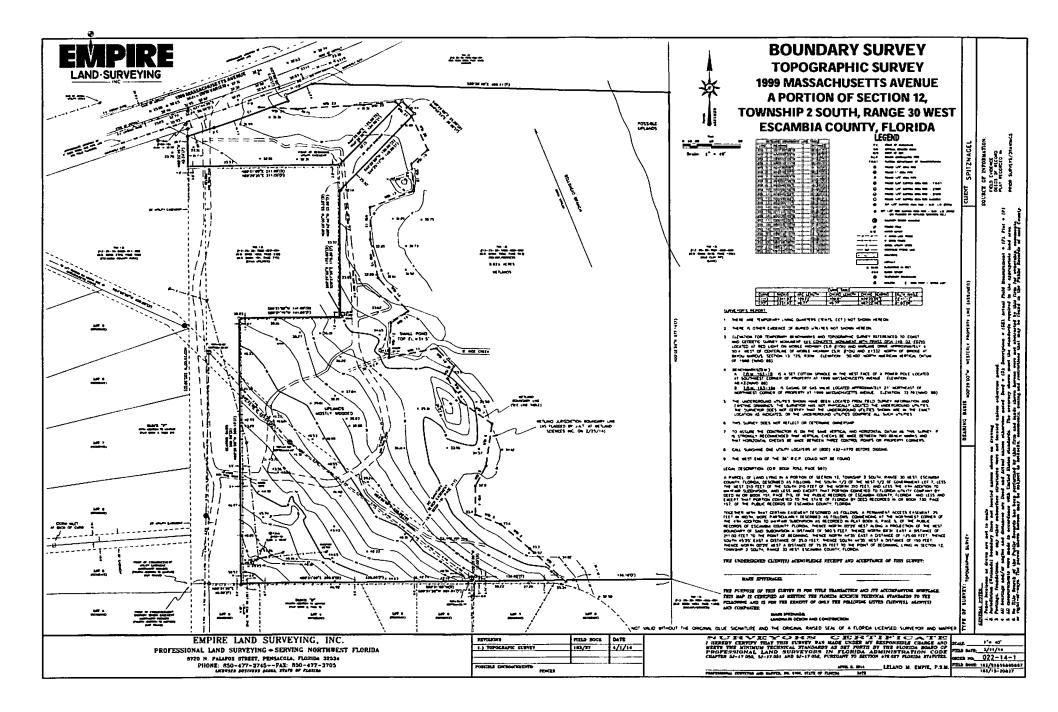
Address : 125 WEST ROMANA ST, SUITE 800 Pensacola, FL, 32502 Date Issued. : 10/27/2016 Cashier ID : JMCOSTIN

		PAYMENT I	NFO
Method of Payment	Reference Document	Amount Paid	Comment
Check			
	1037	\$682.60	App ID : PBA161000015
		\$682.60	Total Check

Received From : SEANS OUTPOST INC Total Receipt Amount : **\$682.60** 

Change Due : \$0.00

		AP	PPLICATION INFO
Application #	Invoice #	Invoice Amt	Balance Job Address
PBA161000015	771246	682.60	\$0.00 1999 MASSACHUSETTS AVE, PENSACOLA, FL, 32505
Total Amount :		682.60	\$0.00 Balance Due on this/these Application(s) as of 10/27/2016



# Sean's Outpost - Satoshi Forest

## 1999 Massachusetts Ave - Pensacola, FL

## PROPERTY OWNER

Sean's Outpost 1999 Massachusetts Ave. Pensacola, FL 32505

## ENGINEER OF RECORD

LandMark Engineering 7604 W. Fairfield Dr. Pensacola, FL 32506 (850) 470-9722

## PROPERTY REFERENCE NUMBER

12-28-30-7002-000-000

## PROPERTY LEGAL DESCRIPTION (O.R. BOOK 7052 PAGE 593)

A PARCEL OF LAND LYING IN A PORTION OF SECTION 12, TOWNSHIP 2 SOUTH, RANGE 30 WEST, ESCAMBIA COUNTY, FLORIDA, DESCRIBED AS FOLLOWS: THE SOUTH 1/2 OF THE WEST 1/2 OF GOVERNMENT LOT 7, LESS THE WEST 210 FEET OF THE SOUTH 210 FEET OF THE NORTH 310 FEET; AND LESS THE 4TH ADDITION TO MAYFAIR SUBDIVISION; AND LESS AND EXCEPT THAT PORTION CONVEYED TO FLORIDA UTILITY COMPANY BY DEED IN OR BOOK 151, PAGE 715, OF THE PUBLIC RECORDS OF ESCAMBIA COUNTY, FLORIDA; AND LESS AND EXCEPT THAT PORTION CONVEYED TO THE STATE OF FLORIDA BY DEED RECORDED IN OR BOOK 730, PAGE 157, OF THE PUBLIC RECORDS OF ESCAMBIA COUNTY, FLORIDA.

TOGETHER WITH THAT CERTAIN EASEMENT DESCRIBED AS FOLLOWS: A PERMANENT ACCESS EASEMENT, 25 FEET IN WIDTH, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF THE 4TH ADDITION TO MAYFAIR SUBDIVISION AS RECORDED IN PLAT BOOK 6, PAGE 5. OF THE PUBLIC RECORDS OF ESCAMBIA COUNTY, FLORIDA; THENCE NORTH 00°29' WEST ALONG A PROJECTION OF THE WEST BOUNDARY OF SAID SUBDIVISION A DISTANCE OF 580.5 FEET; THENCE NORTH 89°31' EAST A DISTANCE OF 211.00 FEET TO THE POINT OF BEGINNING; THENCE NORTH 44°35' EAST A DISTANCE OF 125.00 FEET; THENCE SOUTH 45°25' EAST A DISTANCE OF 25.0 FEET; THENCE SOUTH 44°35' WEST A DISTANCE OF 150 FEET; THENCE NORTH 00°29' WEST A DISTANCE OF 35.35 FEET TO THE POINT OF BEGINNING, LYING IN SECTION 12, TOWNSHIP 2 SOUTH, RANGE 30 WEST, ESCAMBIA COUNTY, FLORIDA.

## PROJECT SCOPE

The proposed project is located at 1999 Massachusetts Ave in Escambia County, Florida. The property owner desires to use this property for a, no fee camp site, for guests at the owners discretion. The guests will utilize temporary structures during their stay.

## NOTICE

Any deviation from these plans without the written approval by the Engineer of Record is not authorized unless obtained in writing with the signature and raised seal of the Engineer of Record. If any unauthorized modifications occur, the Engineer of Record shall not be responsible for damages or costs resulting from the modification. If site conditions are found to differ from those set forth in these plans or if any discrepancies are discovered, notify the Engineer of Record immediately. The Engineer of Record shall not be responsible for work that continues despite known discrepancies.



1 OF 1

PROJECT AREA COVERAGE		
Existing:		
Impervious (buildings):	0 sq. ft.	
Impervious (pavement):	0 sq. ft.	
Gravel:	0 sq. ft.	
Pervious:	0 sq. ft.	
Proposed:		
Impervious (buildings):	0 sq. ft.	
Impervious (pavement):	0 sq. ft.	
Semi-Impervious:	0 sq. ft.	
Gravel:	0 sq. ft.	
Pervious:	0 sq. ft.	
Pond:	0 sq. ft.	

	ractors Notes
1.	No deviations or revisions from these plans by the contractor shall be allowed without prior approval from both the design engineer and Escambia County. Any deviations may result in delays in obtaining a certificate of occupancy.
2.	Prior to starting construction, the contractor(s) shall be responsible to verify that all required permits and approvals have been obtained. No construction shall begin until the contractor has received all plans and documentation from all of the permitting and regulatory authorities. Failure of the contractor to follow procedure shall cause the contractor to assume full responsibility for any subsequent modification of the work mandated by any regulatory authority.
3.	Contractor shall be required to have studied the documents, including the drawings and project mauals, to have visited the site, and to have familiarize himself regarding all existing conditions and new work under which he will be obligated to perform.
4.	All work shall be performed in a workmanlike manner to the entire satisfaction of the owner and engineer and shall comply with all applicable state and local codes.
5.	Notify Sunshine Utilities 48 hours in advance prior to digging within the the right-of-way or project boundaries - (850) 432-4770.
6.	It shall be the contractor's responsibility to verify the locations of all the utilities within the limits of the project area prior to the start of the site work. All the damages made to the existing utilities by the contractor shall be the sole responsibility of the contractor.
7.	The contractor shall keep the premises free from accumulation of waste materials or rubbish caused by his operations. At the completion of the work the contractor shall perform a final clean-up, clean all surfaces and leave the project area clean.
8.	The contractor shall maintain access to all drives and parking areas during construction.
9.	All roads damaged by construction operations are to be patched or reconstructed as directed by the county engineer or designee.
10.	Any damage to existing roads during construction will be repaired by the developer prior to final "as-built" sign off from the county.
11.	Vegetation in the right-of-way and easements shall be restored to original condition unless otherwise noted on the plan sheets.
12.	The contractor shall follow Maintenance of Traffic as per FDOT Index 611, 612 and 613.
13.	No lane closures between 6:00 AM and 8:00 PM. No lane closures on holidays, including the proceeding and following day .
14.	The project engineer (engineer of record) shall provide to Escambia County "As-Built" record drawings for verification and approval by Escambia County one week prior to requesting a final inspection and certificate of occupancy, or provide "As-Built" certification that the project construction adheres to the permitted plans and specifications. The "As-Built" certification or the "As-Built" record drawings must be signed, sealed and dated by a registered Florida Professional Engineer
15.	All aspects of the stormwater/drainage components and/or transportation components shall be completed prior to issuance of a final certificate of occupancy.
16.	No deviations or revisions from these plans by the contractor shall be allowed without prior approval from both the design engineer and the Escambia County. Any deviations may result in delays in obtaining a certificate of occupancy.
17.	The contractor shall install prior to the start of construction and maintain during construction all sediment control measures as required to retain all sediments on the site. Improper sediment control measures may result in Code Enforcement Violation.
18.	Retention/detention areas shall be substantially complete prior to any construction activities that may increase stormwater runoff rates. The contractor shall control stormwater during all phases of construction and take adequate measures to prevent the excavated pond from blinding due to sediments.
19.	All disturbed areas which are not paved shall be stabilized with seeding, fertilizer and mulch, hydroseed and/or sod.
20.	All new building roof drains, down spouts, or gutters shall be routed to carry all stormwater to retention/detention areas.
21.	Developer/Contractor shall reshape per plan specifications, clean out accumulated silt, and stabilize retention/detention pond(s) at the end of construction when all disturbed areas have been stabilized and prior to request for inspection.
22.	Contractor shall maintain record drawings during construction which show "as-built" conditions of all work including piping, drainage structures, topo of pond(s), outlet structures, dimensions, elevations, grading etc. Record drawings shall be provided to the Engineer of Record prior to requesting final inspection.
23.	The owner or his agent shall arrange/schedule with the County a final inspection of the development upon completion and any intermediate inspections at (850) 595-3472. As-built certification is required prior to request for final inspection/approval.
24.	Prior to construction a separate Building Inspection Department permit(s) shall be obtained for all Retaining wall(s) higher than 2 feet.
25.	Notify Sunshine utilities 48 hours in advance prior to digging within R/W; 1-800-432-4770.
26.	Any damage to existing roads during construction will be repaired by the developer prior to final "asbuilt" sign off from the county.
27.	The contractor shall notify FDOT 48 hours in advance prior to initiating any work in the state rights-ofway.

28. In the event that survey monumentation or reference points are missing or have been destroyed, please contact:

RICK COLOCADO, PLS COUNTY SURVEYOR FOR THE PUBLIC WORKS BUREAU, 3363 W. Park Place PENSACOLA, FLORIDA 32505

PHONE: (850) 595-3434

29. Utility owners shall be notified at least 48 hours in advance prior to any construction so the utility owner can spot verify and/or expose their utilities. Known utility owners include:

BellSouth Communications Engineering Dept. 605 W. Gatden St. Pensacola, FL 32501

Energy Services of Pensacola Mr. Glen Bailey 1625 Atwood Dr Pensacola, FL 32514

MCI Worldcom Dept. 42864 Location 107 2400 N. Glenville Richardson, TX 75082

AT&T Florida Mr. Stan Wright 605 W. Garden St, 2nd Floor Pensacola, FL 32501 Cox Communications Mr. Troy Young 3405 McLemore Dr. Pensacola, FL 32514

Sprint Engineering Dept 3065 Cumberland Cir. SE Cmberland Center I Atlanta, GA 30339-3166

Mediacom, Inc Mr. Eddie Arnold 4349 Avalon Blvd Milton, FL 32583

> Emerald Coast Utilities Authority Mr. Kevin Ayers 9300 Sturdevant St Pensacola, FL 32514

Koch Gateway Pipeline Co P.O. Drawer 16143 Mobile, AL 36616

Gulf Power Company Engineering Dept PO Box 1151 Pensacola, FL 32520-0041

Level 3 Communications Engineering Dept 7891 Sears Blvd Pensacola, FL 32514

30. The owner or his agent shall arrange / schedule with the County a final inspection of the development upon completion and any intermediate inspections at (850) 595-3472. As-built certification is required prior to request for final inspection / approval.

31. The contractor shall maintain record drawings during construction which show "as-built" conditions of all work including piping, drainage structures, topo of pond(s), outlet structures, dimensions, elevations, grading, etc. Record drawings shall be provided to the Engineer of Record prior to requesting final inspection. The Project Engineer shall verify and approve the as-built conditions with notification to the County prior to the final inspection.

32. The project engineer (engineer of record) shall provide to Escambia County "as-built" record drawings for verification and approval by Escambia County one week prior to requesting a final inspection and certificate of occupancy, or provide "as-built" certification that the project construction adheres to the permitted plans and specifications. The "as-built" certification or the "as-built" record drawings must be signed, sealed, and dated by a registered Florida Professional Engineer.

Tree Protection (ref: Escambia County LDC §7.01.04):

No un-permitted grading or clearing by heavy equipment should happen under the dripline of protected trees to remain on the site. Storage of heavy equipment shall not occur under the dripline of protected trees on site. Tree protection barricades should be placed around the dripline of all protected trees marked for preservation prior to any land disturbance consistent with the development order.

No protected trees will be removed.

#### Water & Waste Disposal

Three portable toilets and hand washing stations are available on site.

#### Fire Saftey

There is a fire Hydrant located at Fennel Street and Massachusetts Avenue that is within 500 feet of the front entrance and can provide water to this location along with a secondary hydrant located at the corner of Fennel Street and Cushman Street that will provide fire safety to the back of the camp.

## Stormwater Routing & Drainage

Stormwater from the site currently runs east across the property towards wetlands on the property. No change in the stormwater flow is impacted by this project. Due to the topography of the site, flow from this site has no impact on adjacent properties.

## Flood Zone

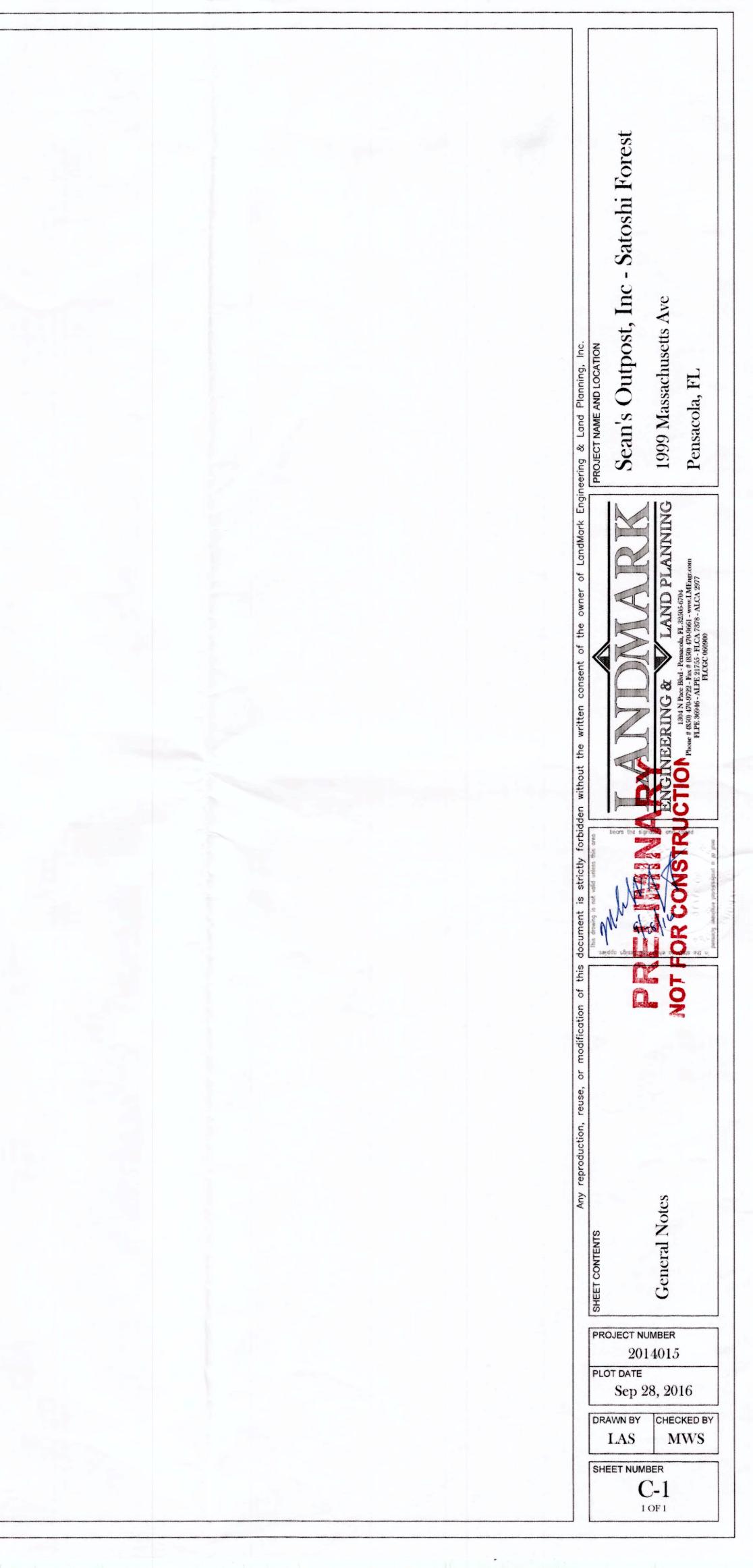
The subject property as shown hereon is located in flood zone A, (Areas subject to inundation by the 1-percent-annual-chance flood event. Because detailed hydraulic analyses have not been performed, no Base Flood Elevations (BFEs) or flood depths are shown), and flood zone X, as determined from the Federal Emergency Management Agency Flood Insurance Rate Map of Escambia

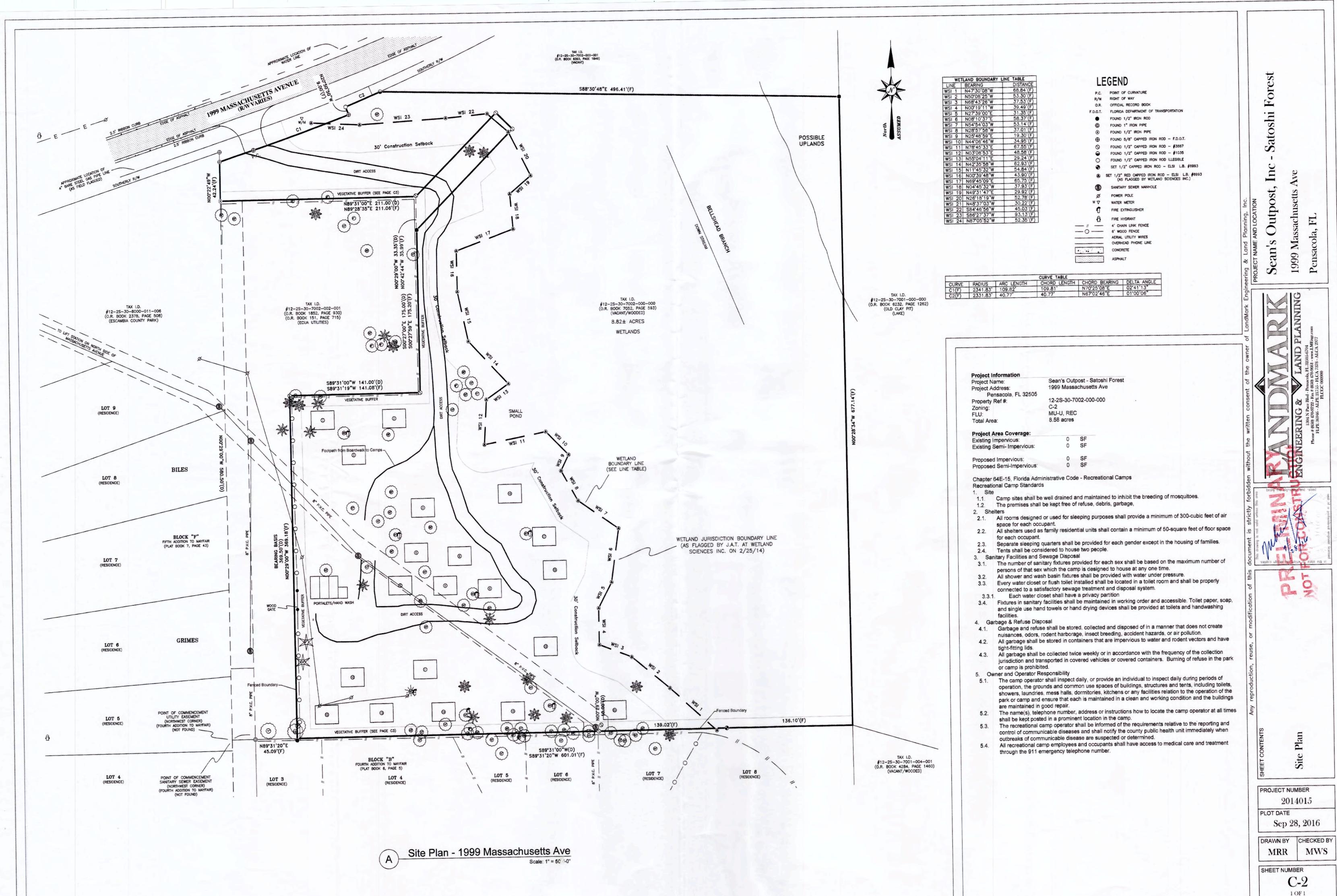
## Contour & Benchmark

Contours and benchmarks based off of site survey conducted March 2014.

#### Vegetative Buffer

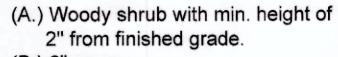
The buffer strip shall be a minimum of ten feet in width and shall be landscaped for every 100 linear feet with plant coverage following Standard A-2.



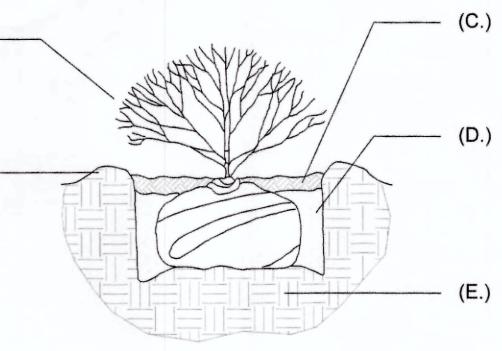


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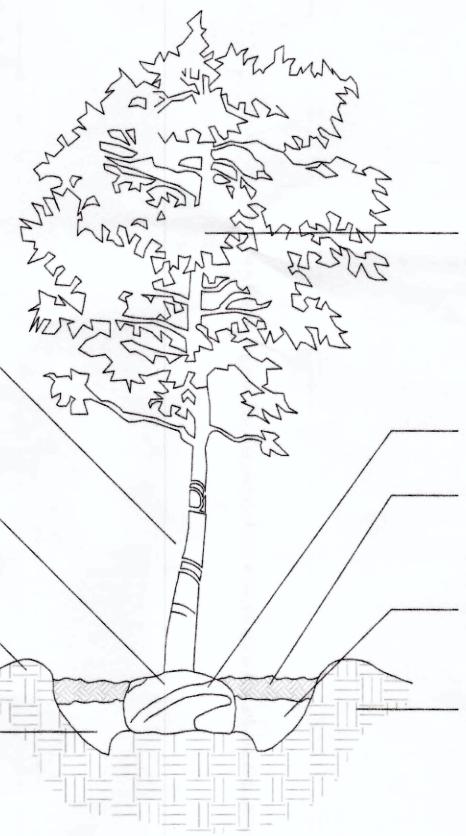
12" ribbon curb transition between pavement and dirt drive. **Driveway Connection Notes** . A new paved right in/right out driveway shall be installed at a minimum distance of 245-ft from existing driveway to the north. Proposed "stop sign" and "no " 2. Driveway shall be a minimum 24-ft wide with 50-ft radius. left turn" sign to be installed. 3. Driveway connection shall extend from edge of travel lane to property line. 4. Saw cut and remove existing shoulder perpendicular to GAS ----- GAS ----- GAS GAS \_\_\_\_\_ travel lane. 5. Two (2) 6" yellow thermoplastic stripes separated by 4" and a 24" wide white thermoplastic stop bar to be striped onto pavement. Stop bar to be a minimum 12-ft from travel lane. Contractor shall follow DOT Indexes when working in state right-of-way. List of DOT Indexes is available on C-1. Edge of Travel Lane / 21" Ribbon Curb Stop bar and thermoplas striping . 4 . 7 (B. MASSACHUSETTS AVENUE Driveway Connection - Plan View Α Scale: 1/16" = 1'-0" - Asphalt Driveway - Install a 2" hot mix asphalt base course follow by a 1" - 1.5" surface course. Paved Driveway Notes: Contractor shall not lay down more than 2" of compacted asphalt hot mix in a single lift. Contractor shall install paved driveway from the edge of the travel lane to the property right of way. Contractor is to construct driveway so as not to impede existing roadway drainage. - Sub Base - Sub base should be free of all organic material and topsoil, especially The pavement should have a slope from crown to edge. Minimum slope - 1/4"; 12" clay. Install 6" - 8" of properly compacted crushed granular base aggregate on top • A new 18" RCP culvert should be installed below the driveway in alignment with the existing swale. of the subgrade. The sub base shall be spread and compacted to a uniform Engineer Recommendation - Engineer recommends the use of Limerock as a sub base for the paved thickness. driveway - Geotextile Membrane Asphalt pavement section shall be 12" Type B stabilization (98% max. density as determined by FMT-180, Method D with minimum LBR 40); one of Optional Base Group 6 materials. See FDOT - Sub Grade - The sub grade should be smooth and Trunk clear of lateral firm. The contractor should remove soft areas and Index 514; 2" of SP 12.5 branches from finished repair with compacted crushed aggregate. grade to 5' above finished م ای ما در می داند. بر ای کر مارید مواد این کم که مربوع ای ک grade. the state of the s Set crown of root ball 1" above surrounding finished grade before mulching. Paved Driveway Cross - Section (B) 6" saucer ----Scale: 3/4" = 1'-0" Pit shall be 2 times the root ball diameter - Surface Stone - Install 2" of compacted crushed aggregate varying in size from 3/4" to 1-1/2" (#57 stone). Driveway Notes:
 The access road is an all-weather driving surface designed to support the imposed loads (min. 40 tons) of fire apparatus. - Sub Base - Sub base should be free of all organic material and topsoil, especially Contractor shall install gravel driveway connecting Pensacola Blvd and N Palafox clay. Install 4" of properly compacted ballast or gravel aggregate (1" - 3") on top of St. All parking areas (Except Handicap) shall be gravel with wheel stops installed. the subgrade. The sub base shall be spread and compacted to a uniform thickness. paved driveway from the edge of the travel lane to the property right of way. The driveway should have a slope from crown to edge. Minimum slope - 1/4": 12". An 18-inch fall is recommended for every 100-ft of driveway. / Sub Grade - The sub grade should be smooth and firm. The contractor should remove soft areas and repair with compacted crushed aggregate. D I AN 1 - F NAXI AND IN **Gravel Driveway Cross - Section** (c) Scale: 3/4" = 1'-0"



- (B.) 6" saucer
- (C.) 3" mulch layer
- (D.) Prepared loam planting soil. Construction backfill is not acceptable. No particle over 1" in diameter shall be found within the soil mixture.
- (E.) Existing Soil



Shrub - Shrubs shall be a minimum of one foot in height above grade when measured immediately after planting.



All trees to be Florida One or Florida Pretty according to "Grades and Standards for Nursery Plants" by the Florida Department of Agriculture and Consumer Services.

Loosen burlap or cut wire basket.

3" mulch layer

Prepared loam planting soil. Construction backfill is not acceptable. No particle over 1" in diameter shall be found within the soil mixture.

Existing soil

Tree - Any living, self supporting, woody perennial plant which has a trunk diameter of no less than three inches measured at a height of four and one-half (4 1/2) feet above grade at the time of planting, and which normally grows to an overall height of no less than fifteen (15) feet in Northwest Florida.

Scale: NTS

Landscaping Installation



Sep 28, 2016

DRAWN BY CHECKED BY

**C-**3

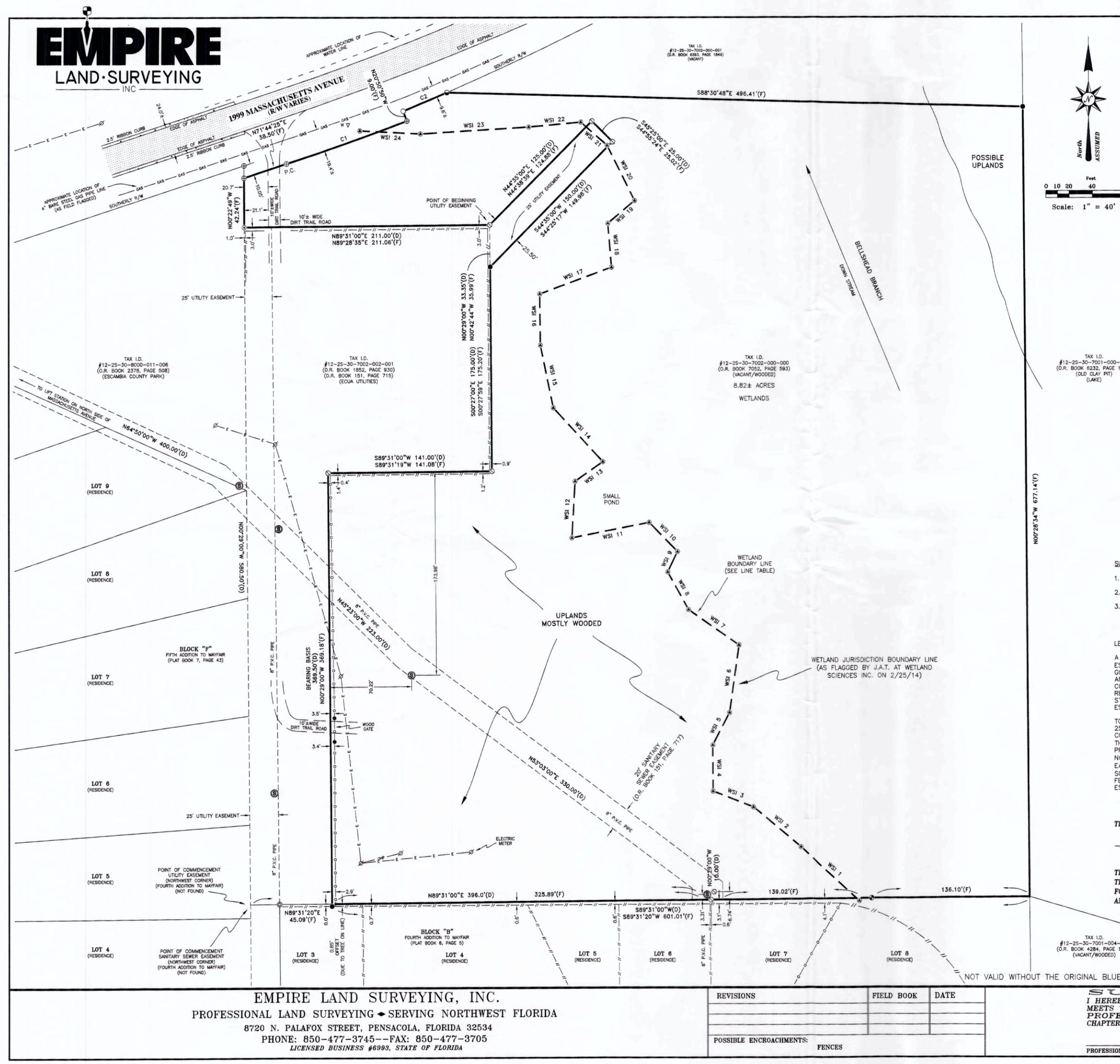
1 OF 1

MWS

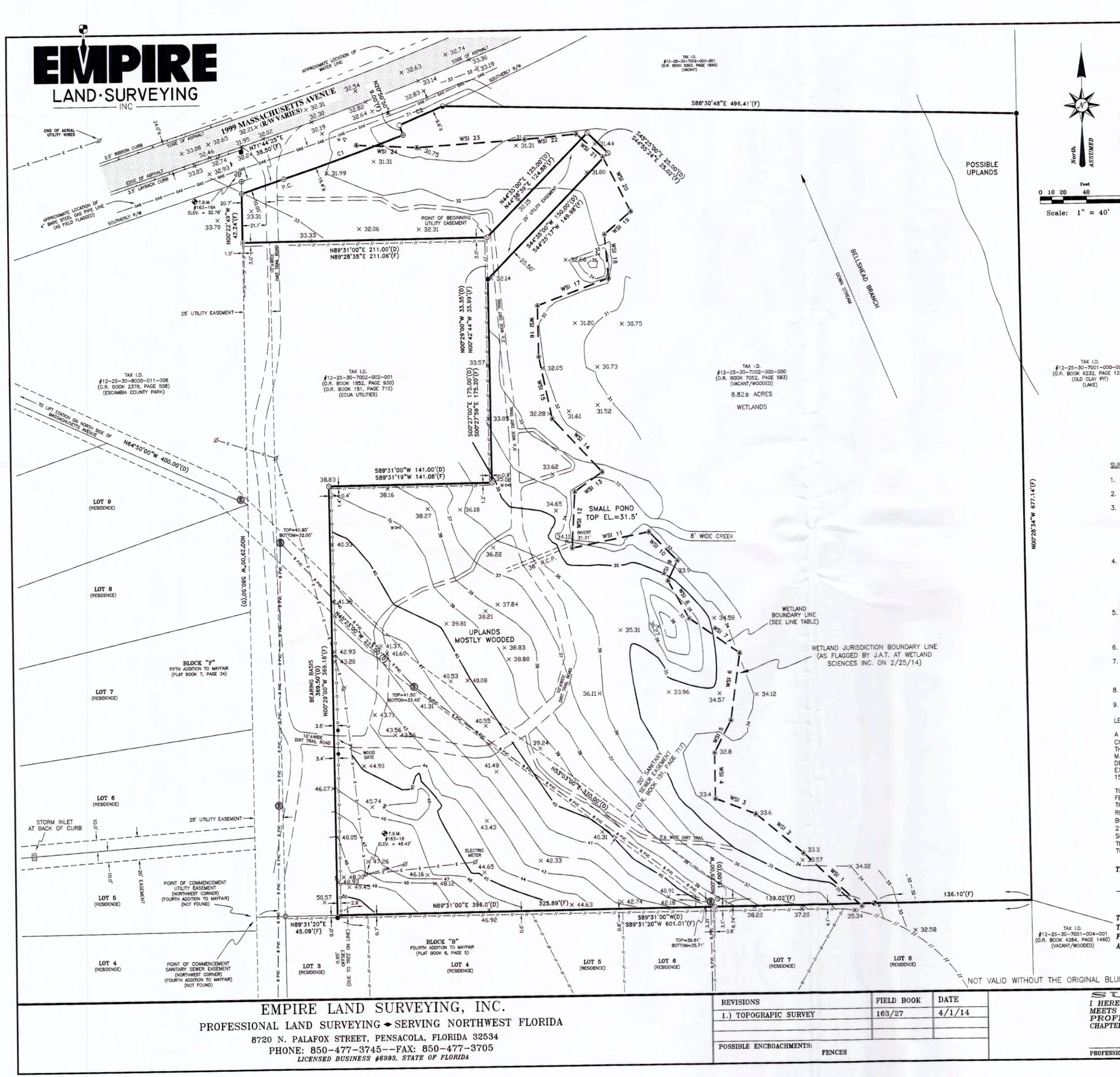
MRR

SHEET NUMBER

For



BOUNDARY SURVEY WETLAND & UTILITY LOCATION 1999 MASSACHUSETTS AVENUE A PORTION OF SECTION 12, TOWNSHIP 2 SOUTH, RANGE 30 WEST ESCAMBIA COUNTY, FLORIDA	CLIENT SPITZNAGEL	SOURCE OF INFORMATION: FIELD EVIDENCE DEEDS OF RECORD PLAT RECORDED IN: PRIOR SURVEYS/DRAWINGS
UNIT DATAGONO	BEARING BASIS NO0"29'00"W WESTERLY PROPERTY LINE (ASSUMED)	wn on drawing. ere not located unless otherwise noted. I unless otherwise noted: $Deed = (D)$ ; $Description = (DE)$ ; $Actual Field Measurement = (F); Plat = (P)$ es standards. The accuracy shown meet the standards required in the appropriate land area. r this firm and lands shown hereon were not abstracted by this firm for ownership, easements, setbacks, easements, zoning, and restrictions that may be found in the Public Records of said County.
RECORDS OF ESCAMBIA COUNTY, FLORIDA; AND LESS AND EXCEPT THAT PORTION CONVEYED TO THE STATE OF FLORIDA BY DEED RECORDED IN OR BOOK 730, PAGE 157, OF THE PUBLIC RECORDS OF ESCAMBIA COUNTY, FLORIDA. TOGETHER WITH THAT CERTAIN EASEMENT DESCRIBED AS FOLLOWS: A PERMANENT ACCESS EASEMENT. 25 FEET IN WIDTH, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF THE 4TH ADDITION TO MAYFAIR SUBDIVISION AS RECORDED IN PLAT BOOK 6, PAGE 5, OF THE PUBLIC RECORDS OF ESCAMBIA COUNTY, FLORIDA; THENCE NORTH 00'29' WEST ALONG A PROJECTION OF THE WEST BOUNDARY OF SAID SUBDIVISION A DISTANCE OF 580.5 FEET; THENCE NORTH 89'31' EAST A DISTANCE OF 121.00 FEET; THENCE SOUTH 40'25' WEST A DISTANCE OF 150.00 FEET; THENCE SOUTH 44'35' WEST A DISTANCE OF 150 FEET; THENCE NORTH 00'29' WEST A DISTANCE OF 55.35 FEET TO THE POINT OF BEGINNING, LYING IN SECTION 12, TOWNSHIP 2 SOUTH, RANGE 30 WEST, ESCAMBIA COUNTY, FLORIDA. THE UNDERSIGNED CLIENT(S) ACKNOWLEDGE RECEIPT AND ACCEPTANCE OF THIS SURVEY: MARK SPITZNAGEL THE PURPOSE OF THIS SURVEY IS FOR TITLE TRANSACTION AND ITS ACCOMPANYING MORTGAGE. THIS MAP IS CERTIFIED AS MEETING THE FLORIDA MINIMUM TECHNICAL STANDARDS TO THE FOLLOWING AND IS FOR THE BENEFIT OF ONLY THE FOLLOWING LISTED CLIENT(S), AGENT(S) AND COMPANIES: MARK SPITZNAGEL LANDMARK DESIGN AND CONSTRUCTION JE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER	TYPE OF SURVEY: BOUNDARY WITH WETLANDS & UTILITY LOCATION	GENERAL NOTES: 1. Fence locations as drawn are not to scale. 2. Jurisdiction (Wetlands) boundary lines not located unless shown c 3. Footings, foundations, or any other subsurface structures were l 4. All bearings and/or angles and distances are Deed and Actual un 5. All measurements were made in accordance with United States st 6. No Title Search of the Public Records has been performed by thi or right-of-ways. The parcel shown hereon may be subject to setba
R 5J-17.050, 5J-17.051 AND 5J-17.052, PURSUANT TO SECTION 472.027 FLORIDA STATUTES.	D DAT	000 11



TOPOGRAPHIC SURVEY 1999 MASSACHUSETTS AVENUE A PORTION OF SECTION 12,		
<b>TOWNSHIP 2 SOUTH, RANGE 30 WEST</b>		
ESCAMBIA COUNTY, FLORIDA		
LEGEND		:NO
LINE BEARING DISTANCE P.C. POINT OF CORVICE WSI 1 N47*30'08"W 68.84'(F) O.R. OFFICIAL RECORD BOOK WSI 2 NEOTOR'2E"W 53'30'(F) R/W RIGHT OF WAY	SPITZNAGEL	INFORMATION: EVIDENCE OF RECORD ECORDED IN:
WSI 2         NSU 08 25 W         SS.55 (F)         R.C.P.         ROUND CORRUGATED PIPE           WSI 3         N68'43'26''W         37.53'(F)         F.D.O.T.         FLORIDA DEPARTMENT OF TRANSPORTATION           WSI 4         N00'19'11''W         39.49'(F)         F.D.O.T.         FLORIDA DEPARTMENT OF TRANSPORTATION           WSI 5         N27'39'00''E         31.35'(F)         FOUND 1/2" IRON ROD	TZN	INFORMA' VIDENCE DF RECORD CORDED IN
WSI         6         N08*10'37"E         58.37'(F)         ©         FOUND 1" IRON PIPE           WSI         7         N54'54'03"W         53.14'(F)         ©         FOUND 1/2" IRON PIPE	SPI	E . C
WSI         9         N25'48'59"E         19.30'(F)           WSI         10         N44'06'46"W         34.95'(F)         Ø         FOUND 1/2" CAPPED IRON ROD - #3887	CLIENT	SOURCE 01 FIELD DEEDS PLAT
WSI         11         N/3 49 35 E         0.100 (F)           WSI         12         N03'08'53"E         48.58'(F)         0         FOUND 1/2" CAPPED IRON ROD ILLEGIBLE           WSI         13         N55'04'11"E         29.24'(F)         0         SET 1/2" CAPPED IRON ROD - ELSI         L.B. #6993	CLI	
WSI         14         N42'35'58''W         62.93'(F)           WSI         15         N11'45'32''W         54.84'(F)         SET 1/2" RED CAPPED IRON ROD - ELSI L.B. #6993 (AS FLAGGED BY WETLAND SCIENCES INC.)           WSI         16         N00'39'48''W         43.90'(F)         (AS FLAGGED BY WETLAND SCIENCES INC.)           WSI         16         N00'39'48''W         43.90'(F)         (S)         SANITARY SEWER MANHOLE		= (P)
WSI         17         N05         45         03         03         04         0		; Plat
WSI 20         N26'18'19''W         52.78 (F)         -// - // -         4' CHAIN LINK FENCE           WSI 21         N48'37'03''W         30.22'(F)         -// - // -         6' WOOD FENCE           WSI 22         \$84'46'56''W         45.03'(F)         -// - // -         6' WOOD FENCE		= (F);
WSI 23         S86'27'37"W         93.13'(F)         E         AERIAL UTUTI WRES           0         WSI 24         N87'05'52"W         52.35'(F)         OHP         OVERHEAD PHONE LINE           32)         CONCRETE         CONCRETE         CONCRETE		1
× 35.00 ELEVATIONS IN FEET		Measurement
W MATER SPIGOT TEMPORARY BENCHMARK MAILBOX I SIGN POST - SPEED LIMIT	6	Meas
CURVE TABLE CURVE RADIUS ARC LENGTH CHORD LENGTH CHORD BEARING DELTA ANGLE	(ASSUMED)	Field A
C1(F)         2341.83'         109.82'         109.81'         N70*25'08"E         02*41'13"           C2(F)         2331.83'         40.77'         40.77'         N67*02'46"E         01*00'06"		); Actual
THERE ARE TEMPORARY LIVING QUARTERS (TENTS, ECT.) NOT SHOWN HEREON.	LINE	3); Ac
THERE IS OTHER EVIDENCE OF BURIED UTILITIES NOT SHOWN HEREON.	PROPERTY	tion = $(DE);$
ELEVATION FOR TEMPORARY BENCHMARKS AND TOPOGRAPHIC SURVEY REFERENCED TO COAST AND GEODETIC SURVEY MONUMENT <u>4X4</u> CONCRETE MONUMENT WITH BRASS DISK (48-02-F07V), LOCATED AT RED LIGHT ON MOBILE HIGHWAY (S.R #10A) AND MARLANE DRIVE APPROXIMATELY ± 50.4' WEST OF CENTERLINE OF MOBILE HIGHWAY (S.R. #10A) AND ±1332' NORTH OF BRIDGE AT BAYOU MARCUS. SECTION 13, T2S, R30W. ELEVATION: 50.400' NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD 88).	WESTERLY PR	Description
BENCHMARKS(B.M.): A. <u>T.B.M. 163-18</u> IS A SET COTTON SPINDLE IN THE WEST FACE OF A POWER POLE LOCATED AT SOUTHWEST CORNER OF PROPERTY AT 1999 MASSACHUSETTS AVENUE. ELEVATION: 48.43'(NAVD 88) B. <u>T.B.M. 163-16A</u> IS CASING OF GAS VALVE LOCATED APPROXIMATELY 21' NORTHEAST OF B. <u>T.B.M. 163-16A</u> IS CASING OF GAS VALVE LOCATED APPROXIMATELY 21' NORTHEAST OF	W00°29'00'W	ise noted d = (D);
NORTHWEST CORNER OF PROPERTY AT 1999 MASSACHUSETTS AVENUE. ELEVATION: 32.76'(NAVD '88) THE UNDERGROUND UTILITIES SHOWN HAVE BEEN LOCATED FROM FIELD SURVEY INFORMATION AND EXISTING DRAWINGS. THE SURVEYOR HAS NOT PHYSICALLY LOCATED THE UNDERGROUND UTILITIES. THE SURVEYOR DOES NOT CERTIFY THAT THE UNDERGROUND UTILITIES SHOWN ARE IN THE EXACT LOCATION AS INDICATED, OR THE UNDERGROUND UTILITIES COMPRISE ALL SUCH UTILITIES.	BASIS	less oth noted:
THIS SURVEY DOES NOT REFLECT OR DETERMINE OWNERSHIP. TO ASSURE THE CONTRACTOR IS ON THE SAME VERTICAL AND HORIZONTAL DATUM AS THIS SURVEY, IT	BEARING	1 7
TO ASSURE THE CONTRACTOR IS ON THE SAME VERTICAL AND HORIZONTAL DATUM AS THIS SOLVET, IT IS STRONGLY RECOMMENDED THAT VERTICAL CHECKS BE MADE BETWEEN TWO BENCH MARKS AND THAT HORIZONTAL CHECKS BE MADE BETWEEN THREE CONTROL POINTS OR PROPERTY CORNERS.	BE.	dr t le
CALL SUNSHINE ONE UTILITY LOCATERS AT (800) 432-4770 BEFORE DIGGING.		rn on rre no
THE WEST END OF THE 36" R.C.P. COULD NOT BE FOUND. GAL DESCRIPTION: (O.R. BOOK 7052, PAGE 593)		s shown es were Actual
PARCEL OF LAND LYING IN A PORTION OF SECTION 12, TOWNSHIP 2 SOUTH, RANGE 30 WEST, ESCAMBIA DUNTY, FLORIDA, DESCRIBED AS FOLLOWS: THE SOUTH 1/2 OF THE WEST 1/2 OF GOVERNMENT LOT 7, LESS IE WEST 210 FEET OF THE SOUTH 210 FEET OF THE NORTH 310 FEET; AND LESS THE 4TH ADDITION TO AYFAIR SUBDIVISION; AND LESS AND EXCEPT THAT PORTION CONVEYED TO FLORIDA UTILITY COMPANY BY TED IN OR BOOK 151, PAGE 715, OF THE PUBLIC RECORDS OF ESCAMBIA COUNTY, FLORIDA; AND LESS AND ICCEPT THAT PORTION CONVEYED TO THE STATE OF FLORIDA BY DEED RECORDED IN OR BOOK 730, PAGE 7, OF THE PUBLIC RECORDS OF ESCAMBIA COUNTY, FLORIDA.		located unless rface structur rre Deed and
DETHER WITH THAT CERTAIN EASEMENT DESCRIBED AS FOLLOWS: A PERMANENT ACCESS EASEMENT, 25 DET IN WIDTH, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF HE 4TH ADDITION TO MAYFAIR SUBDIVISION AS RECORDED IN PLAT BOOK 6, PAGE 5, OF THE PUBLIC ECORDS OF ESCAMBIA COUNTY, FLORIDA; THENCE NORTH 00'29' WEST ALONG A PROJECTION OF THE WEST DUNDARY OF SAID SUBDIVISION A DISTANCE OF 580.5 FEET; THENCE NORTH 89'31' EAST A DISTANCE OF 1.00 FEET TO THE POINT OF BEGINNING; THENCE NORTH 44'35' EAST A DISTANCE OF 125.00 FEET; THENCE DUTH 45'25' EAST A DISTANCE OF 25.0 FEET; THENCE SOUTH 44'35' WEST A DISTANCE OF 150 FEET; HENCE NORTH 00'29' WEST A DISTANCE OF 35.35 FEET TO THE POINT OF BEGINNING, LYING IN SECTION 12, DWNSHIP 2 SOUTH, RANGE 30 WEST, ESCAMBIA COUNTY, FLORIDA.	c survey	wn are not to scale. boundary lines not or any other subsu
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MARK SPITZNAGEL	TOPOG	ions (We bund
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	ER O	GENERAL 1. Fen 2. Jur 3. Foo
MARK SPITZNAGEL LANDMARK DESIGN AND CONSTRUCTION		

	ractors Notes
1.	No deviations or revisions from these plans by the contractor shall be allowed without prior approval from both the design engineer and Escambia County. Any deviations may result in delays in obtaining a certificate of occupancy.
2.	Prior to starting construction, the contractor(s) shall be responsible to verify that all required permits and approvals have been obtained. No construction shall begin until the contractor has received all plans and documentation from all of the permitting and regulatory authorities. Failure of the contractor to follow procedure shall cause the contractor to assume full responsibility for any subsequent modification of the work mandated by any regulatory authority.
3.	Contractor shall be required to have studied the documents, including the drawings and project mauals, to have visited the site, and to have familiarize himself regarding all existing conditions and new work under which he will be obligated to perform.
4.	All work shall be performed in a workmanlike manner to the entire satisfaction of the owner and engineer and shall comply with all applicable state and local codes.
5.	Notify Sunshine Utilities 48 hours in advance prior to digging within the the right-of-way or project boundaries - (850) 432-4770.
6.	It shall be the contractor's responsibility to verify the locations of all the utilities within the limits of the project area prior to the start of the site work. All the damages made to the existing utilities by the contractor shall be the sole responsibility of the contractor.
7.	The contractor shall keep the premises free from accumulation of waste materials or rubbish caused by his operations. At the completion of the work the contractor shall perform a final clean-up, clean all surfaces and leave the project area clean.
8.	The contractor shall maintain access to all drives and parking areas during construction.
9.	All roads damaged by construction operations are to be patched or reconstructed as directed by the county engineer or designee.
10.	Any damage to existing roads during construction will be repaired by the developer prior to final "as-built" sign off from the county.
11.	Vegetation in the right-of-way and easements shall be restored to original condition unless otherwise noted on the plan sheets.
12.	The contractor shall follow Maintenance of Traffic as per FDOT Index 611, 612 and 613.
13.	No lane closures between 6:00 AM and 8:00 PM. No lane closures on holidays, including the proceeding and following day .
14.	The project engineer (engineer of record) shall provide to Escambia County "As-Built" record drawings for verification and approval by Escambia County one week prior to requesting a final inspection and certificate of occupancy, or provide "As-Built" certification that the project construction adheres to the permitted plans and specifications. The "As-Built" certification or the "As-Built" record drawings must be signed, sealed and dated by a registered Florida Professional Engineer
15.	All aspects of the stormwater/drainage components and/or transportation components shall be completed prior to issuance of a final certificate of occupancy.
16.	No deviations or revisions from these plans by the contractor shall be allowed without prior approval from both the design engineer and the Escambia County. Any deviations may result in delays in obtaining a certificate of occupancy.
17.	The contractor shall install prior to the start of construction and maintain during construction all sediment control measures as required to retain all sediments on the site. Improper sediment control measures may result in Code Enforcement Violation.
18.	Retention/detention areas shall be substantially complete prior to any construction activities that may increase stormwater runoff rates. The contractor shall control stormwater during all phases of construction and take adequate measures to prevent the excavated pond from blinding due to sediments.
19.	All disturbed areas which are not paved shall be stabilized with seeding, fertilizer and mulch, hydroseed and/or sod.
20.	All new building roof drains, down spouts, or gutters shall be routed to carry all stormwater to retention/detention areas.
21.	Developer/Contractor shall reshape per plan specifications, clean out accumulated silt, and stabilize retention/detention pond(s) at the end of construction when all disturbed areas have been stabilized and prior to request for inspection.
22.	Contractor shall maintain record drawings during construction which show "as-built" conditions of all work including piping, drainage structures, topo of pond(s), outlet structures, dimensions, elevations, grading etc. Record drawings shall be provided to the Engineer of Record prior to requesting final inspection.
23.	The owner or his agent shall arrange/schedule with the County a final inspection of the development upon completion and any intermediate inspections at (850) 595-3472. As-built certification is required prior to request for final inspection/approval.
24.	Prior to construction a separate Building Inspection Department permit(s) shall be obtained for all Retaining wall(s) higher than 2 feet.
25.	Notify Sunshine utilities 48 hours in advance prior to digging within R/W; 1-800-432-4770.
26.	Any damage to existing roads during construction will be repaired by the developer prior to final "asbuilt" sign off from the county.
27.	The contractor shall notify FDOT 48 hours in advance prior to initiating any work in the state rights-ofway.

28. In the event that survey monumentation or reference points are missing or have been destroyed, please contact:

RICK COLOCADO, PLS COUNTY SURVEYOR FOR THE PUBLIC WORKS BUREAU, 3363 W. Park Place PENSACOLA, FLORIDA 32505

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MCI Worldcom Dept. 42864 Location 107 2400 N. Glenville Richardson, TX 75082

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30. The owner or his agent shall arrange / schedule with the County a final inspection of the development upon completion and any intermediate inspections at (850) 595-3472. As-built certification is required prior to request for final inspection / approval.

31. The contractor shall maintain record drawings during construction which show "as-built" conditions of all work including piping, drainage structures, topo of pond(s), outlet structures, dimensions, elevations, grading, etc. Record drawings shall be provided to the Engineer of Record prior to requesting final inspection. The Project Engineer shall verify and approve the as-built conditions with notification to the County prior to the final inspection.

32. The project engineer (engineer of record) shall provide to Escambia County "as-built" record drawings for verification and approval by Escambia County one week prior to requesting a final inspection and certificate of occupancy, or provide "as-built" certification that the project construction adheres to the permitted plans and specifications. The "as-built" certification or the "as-built" record drawings must be signed, sealed, and dated by a registered Florida Professional Engineer.

Tree Protection (ref: Escambia County LDC §7.01.04):

No un-permitted grading or clearing by heavy equipment should happen under the dripline of protected trees to remain on the site. Storage of heavy equipment shall not occur under the dripline of protected trees on site. Tree protection barricades should be placed around the dripline of all protected trees marked for preservation prior to any land disturbance consistent with the development order.

No protected trees will be removed.

#### Water & Waste Disposal

Three portable toilets and hand washing stations are available on site.

#### Fire Saftey

There is a fire Hydrant located at Fennel Street and Massachusetts Avenue that is within 500 feet of the front entrance and can provide water to this location along with a secondary hydrant located at the corner of Fennel Street and Cushman Street that will provide fire safety to the back of the camp.

## Stormwater Routing & Drainage

Stormwater from the site currently runs east across the property towards wetlands on the property. No change in the stormwater flow is impacted by this project. Due to the topography of the site, flow from this site has no impact on adjacent properties.

## Flood Zone

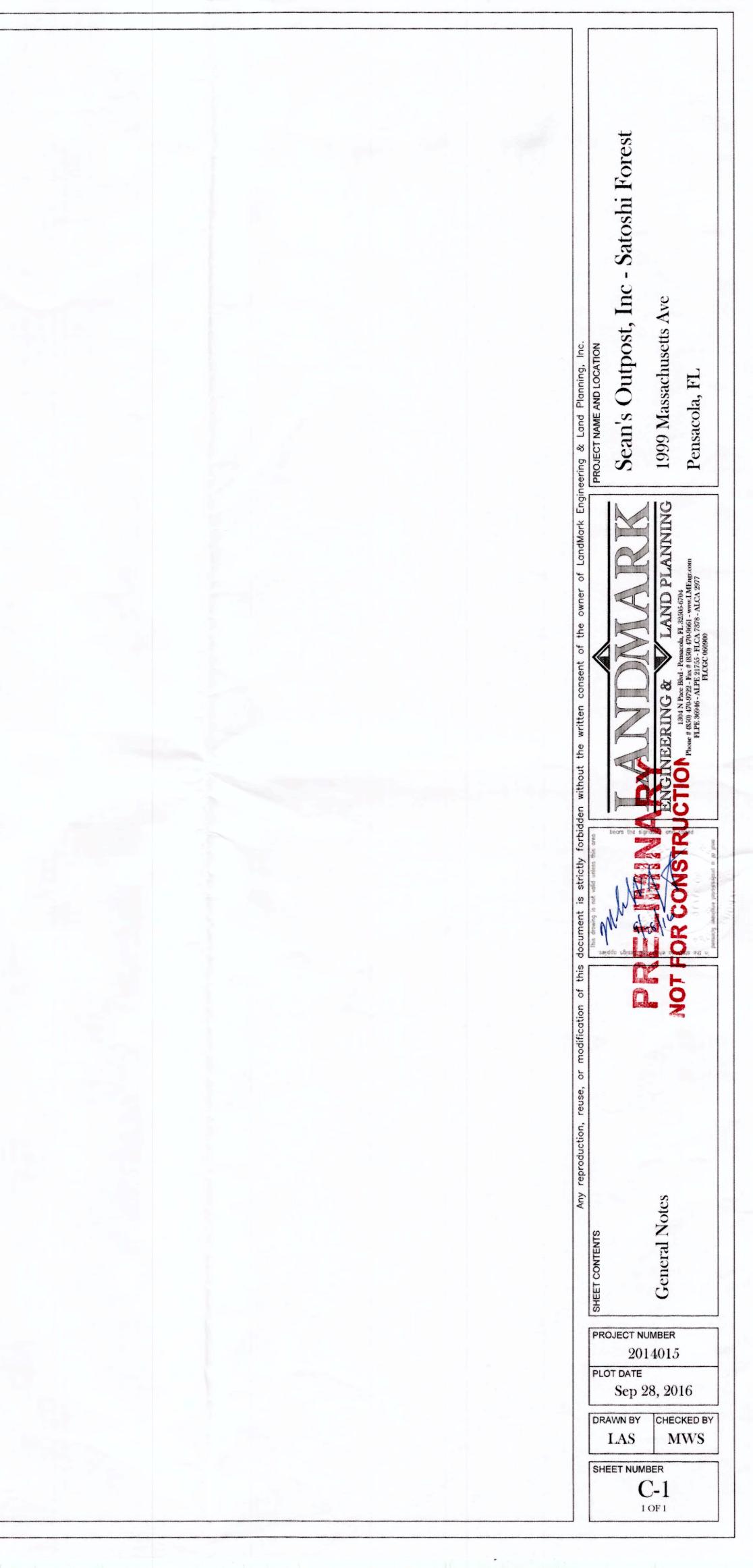
The subject property as shown hereon is located in flood zone A, (Areas subject to inundation by the 1-percent-annual-chance flood event. Because detailed hydraulic analyses have not been performed, no Base Flood Elevations (BFEs) or flood depths are shown), and flood zone X, as determined from the Federal Emergency Management Agency Flood Insurance Rate Map of Escambia

## Contour & Benchmark

Contours and benchmarks based off of site survey conducted March 2014.

#### Vegetative Buffer

The buffer strip shall be a minimum of ten feet in width and shall be landscaped for every 100 linear feet with plant coverage following Standard A-2.



#### IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA

SEAN'S OUTPOST Petitioner,

v.

CASE NO.: 2017CA000026 DIVISION: C

ESCAMBIA COUNTY, acting by and through its BOARD OF ADJUSTMENT

Respondent,

FINAL ORDER

1

THIS CAUSE came before the Court upon the Petitioner's Petition for Writ of Certiorari. The Court having reviewed the pleadings and the record, heard arguments of counsel, reviewed applicable case law, and being otherwise fully advised finds as follows:

## **HISTORY**

On April 5, 2016, Petitioner applied for a development order to continue operation of a homeless shelter known as Sean's Outpost. The use is essentially a campground that has been considered by Escambia County (County) to constitute a "semi-primitive campground site" for purposes of the land development code. The property is zoned heavy commercial/light industrial (HC/LI).

The parties agree that the proposed use is an allowed use under the applicable land use regulations. The only dispute is whether the conditions for site plan approval have been met. According to the record the development site consists of 8.82 acres and is heavily wooded. County staff initiated a review of the application to determine compliance with the land development code. (LDC). After apparently lengthy discussions, meetings, and interchange the development order was finally denied by county staff on October 12, 2016. The denial was issued via a one page document entitled "Development Review Committee (DRC) Final Determination".

It was clarified by the County that the land development code (LDC) does not formally provide for a "Development Review Committee". The DRC is a vestige of a prior version of the LDC. The DRC is not a formal committee but simply consists of standard county planning staff that meets to discuss and give input into relevant LDC requirements for development orders. The actual compliance determination is made by the head planning official. The denial was executed by Mr. Horace Jones who is The Director of Development.

The denial form provided in part, "The development plan is denied for the reasons noted below".

However, no reasons for the denial were specified on the form.

As provided in Section 2-1.4 (c) (3) of the LDC: *"For each application denied by the reviewing authority, the county shall inform the applicant in writing of the basis for the denial."* 

The parties agree that numerous issues were ad hoc discussed during the lengthy development review process, but no specific findings were reduced to writing or specified in the denial. This lack of written clarity has led to strong disagreement between the parties as to the actual LDC requirements that were at issue in the development order denial, appeal to the Escambia Board of Adjustment (BOA), and this appeal. Petitioner filed an appeal to the BOA of the planning official's denial on October 27, 2016. Based upon the lengthy interchange with county staff, Petitioner contended in the appeal document that the single basis for staff denial was the failure to include an all weather access road to service portable toilets located at the rear of the parcel.

The appeal was heard by the BOA on December 7, 2016. The appeal was presented by Counsel William Dunaway.

The site contains a dirt road that successfully serves portable toilets located near the rear of the parcel. Trucks have serviced the portable toilets without incident. Staff apparently, at a late stage of site plan review, asserted that an all weather road would be required to access the portable toilets. The Petitioner had agreed to construct an improved driveway apron to allow access to the parcel from the county road without causing damage to the county road. Although the Petitioner disputed that an additional all weather road to the portable toilets was required, Petitioner agreed to condition the development order upon the construction of such road.

Petitioner represented that "conditional" approvals were common if not typical practices for Escambia development reviews. Section 2-1.4 (c) (1) of the LDC provides for the identification of "site-specific conditions" in approvals.

There was much confusion at the BOA hearing regarding the reasons for the site plan denial. The comments of Board member Ms. Rigby highlight this confusion on pages 124-26 of the transcript where she expresses her frustration regarding her ability to understand the deficiencies at issue:

MS. RIGBY: But the denial said "see below," and there was nothing below. That concerns me, that if you can't tell me why I was denied, then I can't tell you how to fix it.

MS. RIGBY: I guess -- I guess my concern as a board member is, we are here today to say whether or not the denial was arbitrary or capricious. I can't tell you because I don't have the facts as to what, in fact, or why, in fact, it was denied. And that's what I can't wrap my hands around. I don't have --- I don't have punch lists. I don't have the, you know, the review of the DRC to say, "Okay. This was required. You didn't do this."

I mean, we talked about roads, sort of. We talked about the four corners, sort of, but I don't have any -- something concrete that says, you know, the denial was based on A, B, C and D, and Mr. Applicant will not do A, B, C and D. And obviously, then, yes, I can understand it was denied. And the applicant doesn't want to do it. Do you see what I'm saying?

#### THE CHAIRPERSON: I agree 100 percent.

Further Board member confusion was demonstrated in pages 184-187 of the

transcript:

MS. RIGBY: Okay. But what I'm seeing, you're asking me -- asking us was the denial arbitrary and capricious? But all we know is that it was denied because it didn't meet some standards. What are those standards?

MR. HOLMER: I went through that. I discussed those, which we talked about. Yes, we talked about the roadway and what that could trip. I discussed the buffering requirements that weren't met. I discussed the labeling.

MS. RIGBY: But you said there was other things. If we had a list of -- and -- and I guess that's what I'm looking for .I'm used to seeing it, is that we denied you -- we denied you, Mr. Applicant, because of this list.

MR. DUNAWAY: "See below."

. . . . . . . . . .

MS. RIGBY: And the applicant can say, "Yeah, I better do that." Then, yes, you denied it and it was a fair denial because the applicant is not going to do it. They meet the standards A through G but they don't meet standard S, Q, L and M. I can -- I can -- I can - I can say, "Yes, your denial was correct." **But not knowing specifics, in general that is arbitrary**. After much testimony and discussion the BOA eventually took a vote. The motion was to deny the appeal of the Petitioner and uphold the denial by the planning department. The motion failed on a 3-3 vote. One member of the seven member BOA had recused himself, thus leaving an even number board to take action. The BOA and staff concluded that the Petitioner's appeal failed because it did not obtain an affirmative majority vote.

On October 27, 2016, Petitioner filed a timely Petition for Writ of Certiorari appealing the denial by the BOA. In its application Petitioner asserted that: 1) The Petitioner was denied due process because the BOA failed to take "official action" on its appeal by not reaching a majority vote, and 2) the denial was not supported by competent substantial evidence. The Petitioner asserts that the only LDC criteria at issue were the staff's assertion that an "all weather road" was required by the LDC and was not provided for in the site plan. Petitioner asserted that no such road was required by the LDC but even if it was, they were willing to construct such a road.

#### **ALL WEATHER ROAD**

County staff asserted that the LDC required that Petitioner construct an all weather road to access portable toilets placed at the rear of the property. The county asserted that this requirement was based on the specifications contained in the design standards manual (DSM) which is approved annual by the Board of County Commissioners and adopted by reference in section 2-8.2 of the LDC.

The Petitioner argued that the record established that the portable toilets access did not require an all weather road, either by regulation or practical necessity. A letter from the company accessing the portable toilets had been submitted concluding that the current dirt access road was adequate.

The Court would note that portable toilets by their very name imply portability, and therefore do not necessarily have a fixed location.

In an effort to identify requirements for all weather roads the Court has reviewed the LDC.

Section 5-5.4 of the LDC provides for site access standards...

Internal site access such as for the portable toilets is addressed in 5-5.4 (f) which provides:

"Internal access. Proposed development along arterial or collector streets shall provide access routes within the development for all uses such that a return to the arterial or collector street is not necessary to access another use within the development."

Access to and from the parcel to the adjacent county road was properly provided for by Petitioner by the proposed improved driveway connection, as required in 5-5.4 (e).

Another possible relevant LDC provision is section 5-6.4 which provides:

Sec. 5-6.4 - Stall and aisle design.

General. The design and arrangement of parking stalls and drive aisles shall comply with the standards provided in the DSM, except that parking for single-family and two-family dwellings need only comply with the minimum stall dimensions. In addition, criteria and guidelines regarding turnarounds, encroachment, delineation, traffic control, pedestrian entrances, surface materials, and drive-through stacking will be provided in the DSM. The Court would then look to DSM Article 2 Transportation to find areas of

required all weather roads.

Section 2.2 of the DSM specifies

#### 2-2 Access Management

Vehicular access to public roadways shall be accomplished by means of an improved access facility (i.e., driveway, private road, etc.) Unimproved and/or unrestricted access will not be permitted. All driveways and streets shall be designed and constructed pursuant to the design standards in the most recent edition of the "A Policy on Geometric Design of Highways and Streets" by the American Association of State Highway Transportation Officials" and/or "The Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways," and FDOT.

The DSM refers to all weather roads in one subsection. In 3-1.1(i) parking and

loading, stall and aisle design which provides in part:

"Except as allowed for excess parking or limited uses, the stalls, drive aisles and accesses of all parking required by this article shall be finished with an all weather surface..."

This section appears to apply only to required parking improvements and is not

applicable to access needed to service portable toilets. The Court could not identify

another relevant requirement for all weather roads.

## **STORMWATER**

County staff also testified that if an improved all weather road was required, then evaluation of the storm water impacts of such road would be necessary. As the Court can find no requirement for the required all weather road, such storm water analysis is not required.

## **LANDSCAPING**

The absence of required landscape buffering was the remaining issue raised as

a basis for non-compliance. From the record it is difficult to determine what specific

buffering requirement was at issue but there was a cursory reference to this

requirement in the hearing by Mr. Homer (TR-P-80). Therefore the Court must look to

the available record and LDC provisions to determine if applicable landscape buffering

was complied with. The relevant portion of the DSM provides as follows:

2-2.3 Buffers. Based on broad land use categories, where a proposed new use or expanding existing use is likely to adversely impact an adjoining use, a landscape buffer is required to minimize or eliminate those impacts. The buffer shall protect the lower intensity use from the higher intensity use and provide an aesthetically attractive barrier between the uses. It shall function to reduce or eliminate incompatibility between uses such that the long-term continuation of either use is not threatened by impacts from the other. Buffers shall be provided according to the following standards:

(a) Required by use. The character of adjoining land uses primarily determines the type of buffering required.

1. Residential and non-residential. All residential uses shall be buffered from all non-residential uses, other than passive recreation, conservation, or agricultural uses, according to the buffer types established in this section and following non-residential categories:

a. Heavy commercial and industrial. Heavy commercial and industrial uses consistent with the Heavy Commercial and Light Industrial (HC/LI) an Industrial (Ind) zoning districts shall provide a Type-C buffer supplemented with an opaque fence or wall.

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5. No existing use. For the purposes of buffering, where no use exists on adjoining land and none is proposed by a valid development application to the county, the use of the adjoining land will be assumed to be the most intensive use allowed by the existing zoning.

#### (c) Composition.

1. **Types.** Where buffering is required, the following buffer types define the minimum width and plants required per 100 linear feet of buffer:

Buffer Type	Buffer width	Canopy trees	Understory trees	Shrubs
Α	12 feet	2.0	1.0	10
В	16 feet	2.5	2.0	20
С	20 feet	3.0	3.0	30

2. Plants. The prescribed buffer plants may be existing natural vegetation, existing vegetation supplemented with additional plantings, or entirely new plantings. The suitability of existing vegetation to provide adequate buffering will be evaluated based on the minimum plants required. For effective buffering year-round, at least 50 percent of buffer trees shall be evergreen species. The selection and installation of buffer plants, and buffer maintenance, shall be according to the provisions of this article.

As detailed, in HC/LI districts landscaping is required adjacent to residential

uses.

The adjacent districts on the south and west of the subject parcel are zoned MDR, medium density residential. Therefore it appears that the required buffering along those boundaries is as specified in buffer type C as noted above. The record is unclear as to the nature of existing vegetation and/or planned landscaping. The site plan appears to show 10 feet of planned landscaping. Therefore the evidence in the record does not establish that this standard has been met.

#### **ANALYSIS**

#### **DUE PROCESS/MAJORITY VOTE**

Petitioner asserts it was denied due process because the BOA failed to reach a majority decision, thus arguably failed to take "official action". In support of its argument Petitioner submitted a Walton County Circuit case in which it was held that in a similar

matter of a County Commission tie vote on a subdivision plat approval, that the matter must be remanded for the Board to break the tie.

The Court disagrees with the Walton decision. The issue in this case deals with the appeal of an administrative decision by the planning department to the BOA. The Petitioner had the burden of obtaining an affirmative majority vote in order to prevail in the appeal. The failure to obtain a majority vote, whether because of a tie vote or a losing majority vote accomplishes the same result.

More importantly, basic principles of separation of powers between the judiciary and legislative branches obviously prohibit a Judge from directing a specific legislative or Board member to change their vote on a matter. The Court's authority in the review of a development order (or plat approval) is limited to an examination of the record to determine if the quasi-judicial decision is supported by competent substantial evidence. If a quasi-judicial body fails to approve a **plat or development order**, whether by tie vote or failing majority, the remedy does not change. The Court's review addresses the issue of the failure to approve, not the specific vote of an individual Board member.

#### COMPETENT SUBSTANTIAL EVIDENCE TO DENY DEVELOPMENT ORDER

Zoning laws are in derogation of the common law and, as a general rule, are subject to strict construction in favor of the right of a property owner to the unrestricted use of his property. *City of Miami Beach v. 100 Lincoln Rd., Inc.,* 214 So.2d 39 (Fla.3d DCA 1968); *Stroemel v .Columbia County,* 930 So.2d 742 (*Fla 1<sup>st</sup> DCA 2006*).

The parties have cited *Irvine v. Duval County Planning Commission*, 495 So. 2d 167 (Fla. 1986), *which adopted* Judge Zehmer's dissent in *Irvine v. Duval* 

County Planning Commission, 466 So. 2d 352 (Fla. 1st DCA 1985). The Court

held:

On the facts and circumstances of the case, we agree with Judge Zehmer (dissenting) that once the petitioner met the initial burden of showing that his application met the statutory criteria for granting such exceptions, "the burden was upon the Planning Commission to demonstrate, by competent substantial evidence presented at the hearing and made a part of the record, that the [special] exception requested by petitioner did not meet such standards and was, in fact, adverse to the public interest." *Irvine*, 466 So. 2d at 364.

The distinction of course is that In Irvine, the Court was addressing a request for a **special exception** to the zoning regulations. The relevant zoning regulations in Irvine specifically required that the special exception must not be "adverse to the public interest".

In this case, the development order applied for is for an **allowed use** for which the Petitioner has a right to operate without any showing that it is not contrary to the public interest. The fact that the use is "allowed" by the LDC establishes that the County has determined said use is not adverse.

As stated in Park of Commerce v. City of Delray606 So.2d 633(FI 4<sup>th</sup> DCA

1992),

"The administrative procedure for site plan approval is quasi-judicial in nature, and conducted to factually determine if a proposed site plan submitted by the property owner conforms to the specific requirements set out in the administrative regulations governing the erection of improvements on the property. Property owners are entitled to notice of the conditions they must meet in order to improve their property in accord with the existing zoning and other development regulations of the government. Those conditions should be set out in clearly stated regulations. Compliance with those regulations should be capable of objective determination in an administrative proceeding. While the burden may be on the property owner to

# demonstrate compliance, no legislative discretion is involved in resolving the issue of compliance".

The Court's task is not to determine if the proposed use is an optimal use, but simply whether the competent substantial evidence established that the Petitioner met the objective conditions specified in the LDC.

In this context the issue comes down to a simple proposition as properly summarized by County planning staff member Andrew Holmer,

# "Black and white. Did it meet the code? Yes or no. Was the county decision to deny correct or not?" TR P-82

A review of the Board of Adjustment's decision is limited to a three-part test: (1) whether procedural due process was afforded to the Petitioner; (2) whether the essential requirements of the law have been observed, and (3) whether the decision is supported by competent substantial evidence. If the Petitioner made a prima facie showing of entitlement to the conditional use, then the burden was upon the parties opposing the conditional use to demonstrate that the criteria set forth in the applicable code were not met.

The Court finds there was no competent substantial evidence to support the Board's denial of the Petitioner's Land Use Application based upon the requirement of an all weather road to service the portable toilets. The Court finds that neither the LDC or DSM contain any such requirement.

The record is inconclusive regarding the Petitioner's compliance with applicable buffering because the evidence presented by both parties simply does not address with clarity how the site plan does or does not comply with this straight forward requirement.

It is possible that existing vegetation satisfies this requirement in whole or in part, but the record does not provide any assistance in this regard. Therefore it is **ORDERED** that the decision of the Escambia County Board of Adjustment decision denying the appeal of the staff denial of the development order is hereby **QUASHED**. This cause is remanded to the Board for further proceedings consistent herewith to address with specificity the compliance or lack thereof with LDC buffering standards. It is the Court's strong recommendation that if the application is denied due to buffering, that any denial issued comply with Section 2-1.4(c)(3) of the LDC and state with specificity the basis for such denial.

DONE AND ORDERED at Pensacola, Escambia County, Florida.

CIRCUIT COURT JUDGE THOMAS DANNHEISSER on 09/28/2017 13:29:33 aNOhnxD0

# IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT IN AND FOR ESCAMBIA COUNTY, FLORIDA

SEAN'S OUTPOST, INC., a Florida Corporation,

Petitioner,

Petition for Writ of Certiorari (Fla. R. App. P. 9.100(c)(2)) Case No.: 2017-CA-\_\_\_\_\_ Division: \_\_\_\_\_\_

v.

ESCAMBIA COUNTY, acting by and through its BOARD OF ADJUSTMENTS,

**Respondent.** 

# **PETITION FOR WRIT OF CERTIORARI**

Petitioner, SEAN'S OUTPOST, INC., a Florida Corporation, ("Sean's

Outpost"), by and through its undersigned counsel, files this Petition for Writ of

Certiorari pursuant to Fla. R. App. P. 9.100(c)(2).

# I. <u>Introduction</u>

# A. Background

Sean's Outpost, in an effort to comply with the Escambia County Comprehensive Plan and Land Development Code (LDC), as well as, to ensure the safety of the persons living peacefully on its property, submitted an application on April 5, 2016, to the Director of Development Services, Horace L. Jones ("Mr. Jones"), to have the County recognize and permit the continued use of Sean's Outpost's commercially zoned property for use by persons sheltering on the property. The application was accompanied by an explanation of the request and a detailed site plan required by the County staff. The submission of the permit application and payment of the \$847.00 application fee followed years of discussions with the County staff to get to a point where the County would authorize the continued use of the property for residential use.

The process was unnecessarily complicated because a single vocal neighbor adjacent to the property continually opposed Sean's Outpost in this multi-year permitting process. It appears from the record that the neighbor's opposition is rooted in prejudice against the use of Sean's Outpost's private property to provide a safe and secure location for homeless persons to shelter. County staff denies that their opposition to the application is based on the fact that the use is a "homeless" encampment. They insisted they have no problem with the requested use, they just want Sean's Outpost to comply with the development review process. However, as is evident by the fact that the Development Order Application submitted by Sean's Outpost met the objective criteria for approval and did not propose any development, it is difficult to square staff's position with the fact that the staff denied the application instead of issuing it with a condition. The only requested action was to continue use of the property as a place where persons can shelter peacefully as they have for years – essentially a continuation of the residential use

that had occurred on the property in prior years (although that residential use was in a trailer, not a tent).

Despite the Development Order Application that sought no development, the County staff, acting as the Development Review Committee (DRC), made a final determination to "Deny" Sean's Outpost's request to continue to use the property for residential use to shelter persons living in tents. The Written Final Determination of October 12, 2016, gave no reasons for the denial. From the testimony at the DRC it was assumed that the denial was because staff determined that an all-weather road was required from the County's public road (Massachusetts Avenue) back to the rear of Sean's Outpost's property. At the DRC hearing held on October 12, 2016, the issue was narrowed to the County claiming that the Design Standard Manual (DSM) Section 2.2 required the construction of an allweather access road from Massachusetts Avenue all the way to the rear of the property in order to service the portable toilets. Even though Sean's Outpost's own Engineer of Record and the company servicing the portable toilets indicated in writing that the existing dirt road was sufficient to service the portable toilets, the County nevertheless insisted the all-weather road was required.

Although Sean's Outpost disagreed with staff's interpretation of the DSM standard they acquiesced to County staff and asked the DRC to approve the application with the all-weather road as a condition. Unexpectedly, Mr. Jones told

the DRC that because the all-weather road was not listed on the applicant's site plan (because it was never desired), then the DRC should deny the permit. The DRC denied the permit. Sean's Outpost paid the \$682.60 fee and timely appealed that denial to the Board of Adjustments (BOA).

At the BOA hearing on December 7, 2016, the newest member, Mark Robinson, recused himself without explanation. That left six BOA members present for the quasi-judicial hearing. Following a four hour hearing, Jesse Casey made a motion to uphold the DRC's denial. The motion was seconded by Judy Gund. One other BOA member, Frederick Gant, voted for the motion. Three BOA members, Chairman, Auby Smith; Vice Chairman, Bill Stromquist; and Jennifer Rigby voted against the motion. The vote was 3-3 (tie). Despite an attempt to clarify from the undersigned counsel, the hearing adjourned and on December 9, 2016, Andrew Holmer, the Division Manager of Development Services, issued a written notification of BOA action stating: "The appeal failed to receive an affirmative majority vote and is denied."

As argued below, because Sean's Outpost was denied due process and because its application otherwise met all requirements for approval, the County was required to show by competent substantial evidence that the permit, did not, in fact, meet the requirements of the LDC and that the approval of the permit would be adverse to the public. Due process was denied because, the BOA, in its vote of 3-3, failed to take official action because the LDC is clear that a majority of those BOA members present and voting is required to take official action. Since there was no majority vote, then no official action was taken. The County failed to present competent substantial evidence at the hearing that the permit did not, in fact, meet the requirements of the LDC and they likewise failed to produce evidence that the approval of the permit would be adverse to the public.

Therefore, the Court should quash the Final Order and remand back to the BOA with clear findings of fact leading to an approval of the application.

## **B.** Appendix

The Petition includes an Appendix containing Exhibits 1-10. Exhibit 1 contains Sean's Outpost's initial application dated April 5, 2016. Exhibit 2 is the final site plan and operating manual submitted prior to the DRC meeting on October 12, 2016. Exhibit 3 is the DRC's Written Final Determination dated October 12, 2016. Exhibit 4 is the October 27, 2016 appeal of the DRC action submitted with the requested compatibility analysis. Exhibit 5 contains the written notification of the BOA's action dated December 9, 2016. Exhibit 6 contains a series of correspondence between the undersigned counsel and the BOA's attorney seeking clarification on Exhibit 5 including a provision from the former LDC. The BOA's authority and duty is described in §1-4.5 of the LDC. *Exh. 7; 314-316.* Section 2-1.4(d)(2) describes appeal procedures and requirements. *Exh. 7; 319.*  Section 2-6.10(b) describes the LDC appeal process. *Exh. 7; 320-322.* Section 1-1.11 outlines the rules for understanding LDC provisions. *Exh. 7; 323-325.* Section 3-2.11 outlines zoning criteria in a Heavy Commercial/Light Industrial district (HC/LI). *Exh. 7; 326-331.* DSM Section 2.2 describes access management. *Exh. 7; 326-331.* DSM Section 2.2 describes access management. *Exh. 7; 332.* Fla. R. App. P. 9.100(c)(2) relates to petitions for review of quasi-judicial action of agencies, boards and commissions of local government. *Exh. 7; 334.* Fla. R. App. P. 9.020(i) defines the "Rendition of an Order". *Exh. 7; 336.* Exhibit 8 is the Special Magistrate's Amended Order. Exhibit 9 is a letter from Mr. Jones dated September 13, 2016 setting the date for the October 12, 2016 DRC meeting. Exhibit 10 is the Minutes from the BOA hearing held on December 7, 2016.

#### II. Basis for Jurisdiction

This Court's jurisdiction is invoked pursuant to: Article V, §5, Florida Constitution; §26.012, Fla. Stat.; Fla. R. App. P. 9.030(c); Fla. R. App. P. 9.100(c)(2); and LDC §2-1.4(d)(2). Although submitted as a petition for writ of certiorari, this is an appeal as a matter of right. *Haines City Community Development v. Heggs*, 658 So. 2d, 523, 530 (Fla. 1995). See, e.g., *Broward*  *County v. G.B.V. Int'l, Ltd.*, 787 So. 2d 838 (Fla. 2001) ("first-tier certiorari review is not discretionary but rather is a matter of right.")<sup>1</sup>

# III. Parties and Standing

The real parties in interest are Sean's Outpost and Escambia County.

Section 2-1.4(d)(2), LDC, permits an appeal of the decision of the BOA to the Circuit Court in accordance with Florida law. *Exh. 7; 319.* Fla. R. App. P 9.100(c)(2) permits an appeal to be filed within 30 days of the rendition of the order to be reviewed. *Exh. 7; 334.* Fla. R. App. P. 9.020(i) defines "Rendition of an Order" to be when a signed, written order is filed with the clerk of the lower tribunal. *Exh. 7; 336.* Although it can be fairly argued that the rendition date of the BOA's decision was December 9, 2016, when Exhibit 5 was signed (although it is not clear that this Final Order was ever filed with the BOA's Clerk), this petition is filed within 30 days of the BOA hearing held on December 7, 2016. Under either date, the petition is timely filed.

# IV. Statement of the Record

# A. The Requested Action

The property at issue is owned by Sean's Outpost, Inc., an entity organized under the laws of the State of Florida. Sean's Outpost provides meals and other

<sup>&</sup>lt;sup>1</sup> Because the appeal is a matter of right, the Court should issue the required Order to Show Cause so that this matter can be resolved in a timely manner without additional harm to Sean's Outpost.

services to persons in need. The Future Land Use Designation for the property is Mixed Use Urban and it is in the Heavy Commercial/Light Industrial (HC/LI) zoning district.

Sean's Outpost's property is approximately 8.82 acres of which approximately the easternmost five acres are jurisdictional wetlands. The area is vacant and heavily wooded. The northern boundary of the property abuts Massachusetts Avenue. The Mayfair residential neighborhood is to the south and west of the property and to the east is a swamp. For the past several years, Sean's Outpost has allowed persons who otherwise have no permanent residence to remain onsite. Those guests have, from time to time, constructed temporary shelters utilizing tents and tarps. Except for a properly permitted privacy fence along the western boundary, no permanent development or other development activity has occurred on the site. The County was provided and the property is governed according to a detailed Operating Manual that provides rules of conduct for a guest on site. (Transcript 26: 8-14 and Exh. 2; 246-269). The County claims the use is "development" and so required Sean's Outpost to obtain a campground permit or to submit a development order application in order to continue to use its property.

After two years of negotiations with both the County and the State Department of Health<sup>2</sup>, Sean's Outpost received final action on its application for a campground on March 22, 2016. In that action, Sean's Outpost learned that in its present use, the property does not require a license or permit for camping from the State Department of Health and, therefore, it is operating in full compliance with State health and sanitation provisions. *Exh. 1; 216-217*. The Health Department has periodically inspected the facility and has documented full compliance. Two weeks after the State's action, Sean's Outpost filed the development order application at issue in this appeal. In the application dated April 5, 2015 (Exhibit 1), Sean's Outpost proposed to maintain the status quo residential camping use of the property.

As indicated on the Preliminary Site Plan (*Exh. 1; 207*), Sean's Outpost proposes no development and seeks nothing more than to continue its residential camping use. That is, it does not intend to construct, develop, or otherwise change the nature of the use which has for the past two years coexisted peacefully with the surrounding neighborhood and which prior to Sean's Outpost ownership was a residential use.

The site is serviced by ECUA potable water and garbage service and the sanitary facilities are provided by Containers, Inc. in the form of three portalets

<sup>&</sup>lt;sup>2</sup> The State Department of Health and not the County has permitting authority over campgrounds and RV parks.

(portable toilets) and one hand washing station. These sanitary facilities are clearly shown on the site plan. While the site plan shows specific locations for tent sites, in actual practice, the tents are more spread out on the available uplands. As stated earlier, the State Health Department inspectors have continued to provide inspection services and have documented compliance in their Inspection Reports. *Exh. 1; 218-240.* 

#### **B.** The Denial by DRC

The DRC process in Escambia County is normally one of back and forth between applicant and staff. Traditionally, a pre-application meeting occurs followed by the applicant submitting a written application along with a detailed site plan of the requested improvements. Staff reviews the application and they offer written comments. Some of the comments are pro forma and others are substantive. An applicant reviews the comments, complies as appropriate and proceeds to DRC when the objective criteria of the LDC have been met.

Here the process was not traditional both because the application for the development order was requesting no development and because the process was under the strict time frames set by the Code Enforcement Special Magistrate. The Code Enforcement Special Magistrate was involved because the County issued a Notice of Violation (NOV) to Sean's Outpost on June 20, 2016, citing them for violation of the LDC for not having completed the development review process.

Obviously, the remedy for the NOV was completion of the DRC process which Sean's Outpost initiated by submission of its application on April 5, 2016 (Exhibit 1). Even though Sean's Outpost was working cooperatively with the County to complete the development review process, the County felt the need to issue its NOV<sup>3</sup>.

In the written Amended Order issued by the Special Magistrate (Exhibit 8), Sean's Outpost was "permitted to maintain the current use of the property for a period of up to no more than (90) ninety dates from the date the DRC returns its final comments to the current application." The Order further stated "that the County will timely review the application in its amended form and provide comments and conditions for approval or deny the application...The Respondent [Sean's Outpost] shall have ninety (90) days from the issuance of the County response to either accept the conditions and request the issuance of the development order or pursue its appellate remedies. Compliance with this Order may be achieved by either (1) issuance of a development order; (2) the filing of a timely appeal by the Respondent of an unacceptable condition or denial of the development application (in such case the time does not commence until the

<sup>&</sup>lt;sup>3</sup> This was the second NOV issued to Sean's Outpost. The first was issued in 2014 and Sean's Outpost successfully challenged the NOV and it was dismissed and the dismissal upheld on appeal to the Circuit Court. Thereafter, the County amended the LDC and changed the provisions on temporary structures.

resolution of the appeal), or (3) removal of all non-conforming temporary structures from the property." *Exh. 8; 334*.

By letter of September 13, 2016 (Exhibit 9), the County informed Sean's Outpost that it had filed with the Special Magistrate comments on the application and set the date for the DRC on October 12, 2016 "for the purpose of determining site plan compliance with the [LDC] for issuance or denial of the development order" and required that all of staff's comments be addressed no later than September 28, 2016. On September 28, 2016, Sean's Outpost submitted a revised site plan addressing comments of staff along with a detailed Operating Manual (Exhibit 2). Staff reviewed and seemed to hold to their position that an all-weather road to service the portable toilets would have to be a condition of permit approval.

On October 12, 2016, the DRC meeting opened with only one member present. Mr. Jones presented for the County. Sean's Outpost questioned the DSM 2.2 "requirement" for an all-weather access road to service portable toilets given the fact that both the engineer of record and the company that actually services the portable toilets stated such a road was not required and, in fact, that the existing access road was sufficient. Furthermore, it was pointed out that DSM 2.2 does not state the length of the road, only that an all-weather access exist where it meets the public road. The purpose being to protect the public road and provide a single point of access to the public road from the property.

Notwithstanding that position, Sean's Outpost clearly indicated that if the County believed the all-weather road all the way to the rear of the property was needed, then the DRC should approve the application with the all-weather road as a required condition. This was completely consistent with the Special Magistrate's Amended Order to "either accept the conditions and request issuance of the development order or pursue its appellate remedies." (Emphasis added). Exh. 8;334. Even though Sean's Outpost clearly indicated that it would accept as a condition of approval the condition of an all-weather access road, Mr. Jones told the sole DRC member (a subordinate of Mr. Jones) that because the all-weather access road did not appear on the site plan, then he recommended that the DRC deny the application. The DRC denied the application as shown by Exhibit 3. That document, on page 4 of 4, states that "[t]he development plan is denied for the reasons noted below." There are no reasons noted.

#### C. BOA Hearing

Although there were no reasons noted on the DRC denial, Sean's Outpost proceeded with its appeal to the BOA under the assumption that the issues had been narrowed to the County's claim that an all-weather access road was required. This was clearly stated in the appeal package submitted on October 27, 2016 (Exhibit 4). Staff never clarified or offered any contrary evidence before or at the BOA hearing.

# i. No competent substantial evidence presented by staff that Sean's Outpost did not meet the criteria for approval.

At the BOA hearing, which lasted over four hours, the six members of the BOA present and participating<sup>4</sup> heard the evidence presented and argument from the County and counsel for Sean's Outpost. The County submitted no evidence that an all-weather access road was required by DSM 2.2 to extend all the way from Massachusetts Avenue to the rear of the subject property. The County simply stated it was required and introduced a copy of DSM 2.2 to justify the requirement. Staff called no witness to testify on the matter and provided no other evidence. All DSM 2.2 requires is that "[v]ehicular access to public roadways shall be accomplished by means of an improved access facility (i.e., driveway, private road, etc.). Unimproved and/or unrestricted access will not be permitted." *Exh.* 7; 332. As is clearly shown on the site plan, an improved driveway onto Massachusetts Avenue from the property is provided. There was no evidence (much less competent substantial evidence) introduced by the staff at the BOA hearing that DSM 2.2 requires the contemplated access to the public roadway extend all the way to the rear of the property.

Assuming, however, for the sake of this appeal, that such evidence had been presented, it was clear from the evidence before the BOA that Sean's Outpost

<sup>&</sup>lt;sup>4</sup> As indicated in the BOA minutes, BOA member, Mark Robinson recused himself and left the hearing (Exhibit 9).

informed the staff and DRC that they could issue the permit conditioned on the allweather road being built. No other competent substantial evidence for denial of the application was submitted at the BOA hearing.

# ii. No competent substantial evidence was presented by staff that, if approved, the use would be adverse to the public.

The County staff presented no evidence that the requested use of the property would be adverse to the public. In fact, the staff took every opportunity to state that the proposed use was not at issue, only compliance with the LDC which, as stated above, was narrowed to the all-weather access road by both Sean's Outpost's appeal package and the staff's failure to produce sufficient evidence of any other deficiencies.

The only "evidence" of any opposition to the use of the property to shelter those without permanent homes was the testimony of Richard Pierce Grimes, III and Louis and Helen Jolly<sup>5</sup>, residents of the Mayfair neighborhood who told the BOA of their general objections to the application. Mr. Grimes acknowledged he was the main objector to the project and had been present at every hearing. He summed up his position on the issue thusly:

<sup>&</sup>lt;sup>5</sup> The BOA attorney cautioned the BOA on the appropriate weight to give the testimony of these lay witnesses and the undersigned objected to their testimony (Transcript at 138: 8-13).

GRIMES: We do not need this in the neighborhood. And yes, this will be the first homeless campground permitted anywhere in the United States. If this gets permitted here, y'all could wind up having them behind your house because you set a precedent at that point.

VOICE IN THE AUDIENCE: That's right.

(Transcript 131: 4-11)

# D. BOA Vote Results in No "Official Action"

As reported in the transcript, the minutes (Exhibit 9), and the notification of the BOA action (Exhibit 5) the vote of the BOA at the close of the hearing was 3-3. The undersigned counsel alerted the BOA's attorney to the fact that a 3-3 vote resulted in "no official action taken" and requested the BOA attorney set another BOA hearing, but the BOA attorney respectfully disagreed with my interpretation of the requirements of the LDC (Exhibit 6) and stated the matter would have to be resolved on appeal. Sean's Outpost was thus forced to pay \$405.00 filing fee and file this Writ of Certiorari.

# V. <u>Standards for Review</u>

# A. Standards for Certiorari Review by the Circuit Court.

Since Sean's Outpost is entitled as a matter of right to certiorari review of the BOA's decision, the circuit court must determine: (a) whether procedural due process was accorded; (b) whether the essential requirements of law were observed; and (c) whether the order in dispute was supported by competent substantial evidence. See, e.g., Broward County v. G.B.V. Int'l, Ltd., 787 So. 2d

838 (Fla. 2001); Haines City, 658 So. 2d at 530. Since the Court is essentially

acting in an appellate capacity, its "duty is simply to review the record to determine

whether the decision is supported by competent substantial evidence" City of

Jacksonville Beach v. Car Spa, Inc., 772 So. 2d 630, 631 (Fla. 1<sup>st</sup> DCA. 2000).

Competent substantial evidence was defined more than 50 years ago in

DeGroot v. Sheffield, 95 So. 2d 912, 916 (Fla. 1957), wherein the court said:

Substantial evidence has been described as such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred. We have stated it to be such relevant evidence as a reasonable mind would accept as adequate to support a conclusion. (Citations omitted.) In employing the adjective "competent" to modify the word "substantial," we are aware of the familiar rule that in administrative proceedings the formalities in the introduction of testimony common to the courts of justice are not strictly employed. (Citations omitted.) We are of the view, however, that the evidence relied upon to sustain the ultimate finding should be sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached. To this extent the "substantial" evidence should also be "competent."

The District Court of Appeal emphasized the importance of DeGroot in

Agner v. Smith, 167 So. 2d 86, 91 (Fla. 1st DCA 1964), cert. dismissed, 172 So. 2d

598 (Fla. 1965), by repeating the language of Mr. Justice Thornal in DeGroot.

# **B.** Legal Standard for Evaluation of a Denied Permit Application.

With respect to the standard of review to be applied during the quasi-judicial

hearing of an appeal of a denied permit application, the case most often cited is

Irvine v. Duval County Planning Commission, 495 So. 2d 167 (Fla. 1986),

approving and adopting Judge Zehmer's dissent in Irvine v. Duval County

Planning Commission, 466 So. 2d 352 (Fla. 1st DCA 1985). The Supreme Court

decision is short. Here is what the court said:

On the facts and circumstances of the case, we agree with Judge Zehmer (dissenting) that once the petitioner met the initial burden of showing that his application met the statutory criteria for granting such exceptions, "the burden was upon the Planning Commission to demonstrate, by competent substantial evidence presented at the hearing and made a part of the record, that the [special] exception requested by petitioner did not meet such standards and was, in fact, adverse to the public interest." *Irvine*, 466 So. 2d at 364.

Sean's Outpost satisfied its initial burden to show compliance with the

criteria set forth in the LDC as discussed in more detail below in VI.(C). The question then is what level of evidence was required for the BOA to justify denial? *Irvine* informs us the BOA was required to satisfy two burdens: (1) the evidence presented in support of the permit did NOT "in fact" meet the County criteria; and (2) the permit, if granted, would "in fact" be "adverse to the public interest." In addition, the evidence in opposition to the application must be both "competent" and "substantial." *DeGroot v. Sheffield, supra*.

# VI. <u>Argument</u>

# A. Sean's Outpost assertions of error and summary of argument as to why the Court should quash the Final Order.

In reviewing the Board's decision, the Court must examine:

- (a) Whether procedural due process was accorded,
- (b) Whether the essential requirements of law were observed, and
- (c) Whether the order in dispute was supported by competent substantial evidence.

The record shows that the County failed in all three areas. Firstly, Sean's Outpost was not afforded due process because the BOA took no official action with its 3-3 vote, however, the staff wrongly reported and affirmed that the BOA did take official action (i.e. denial of Sean's Outpost's appeal). Secondly, the consideration by the BOA of the permit denial did not follow the essential requirements of law because the BOA, acting on advice of its counsel, staff, and the LDC incorrectly applied the *Irvine* standard. Lastly, the County failed to present any competent substantial evidence that the permit did not in fact meet the County criteria or that if granted, the permit would "in fact" be adverse to the public.

#### **B.** Majority vote required for official action.

The BOA is created and granted its authority by the LDC. Acting as a quasi-judicial body, the BOA must follow the LDC and state law in the area of land use. Additionally, the BOA can only act in accordance with the authority granted it by the LDC and state law. As stated in Section 1-1.11(a) "[t]he LDC shall be interpreted and administered broadly...to achieve its declared purposes." Section 1-1.11(b) goes on to state that the "meaning of a provision in the LDC

must first be evaluated according to the plain language of the provision. If the meaning is clear, then the remaining administrative function is to enforce it according to its stated terms." Finally, Section 1-1.11(d) states "[a] particular intent expressed in the LDC has authority over a general one, such that when there is a more specific requirement it must be followed in place of a more general one, regardless of whether the general requirement is more lenient or in conflict with the specific one." *Exh. 7; 323-325.* 

Regarding the BOA, Section 1-4.5 established it and grants it powers and procedures. Regarding its quorum and vote, Section 1-4.5(c)(1) is clear when it states that "[a]t least four of the seven members must be present to hold a meeting, and a majority vote of those present is required for **any official action to be taken at the meeting**." (Emphasis added). Section 1-4.5(c)(3) states that "the BOA shall follow its adopted rules of procedure for quasi-judicial hearings consistent with the application review processes of the LDC and any other applicable county or state requirements."

LDC Section 2-6.10 provides the BOA guidance on the appeal of administrative decisions with Section 2-6.10(b)(4) stating that "[i]f the BOA finds from the record of the hearing that the applicant has presented competent substantial evidence providing the required conditions set out in the compliance review provisions of this section, the board shall find the appealed decision in error. The finding shall state with particularity how the decision of the administrative official was arbitrary or capricious. If the conditions are not proven the board shall affirm the decision."

However the BOA finds the evidence and applies the law, it must do so with an "official action." Since it is clear from the LDC that "a majority vote of those present (in this case four votes) is required for any official action to be taken" then a 3-3 vote (as occurred in this case) cannot result in official action. Therefore, an interpretation of this fact pattern to mean that because the applicant failed to get four votes means the denial of its appeal is wrong and is a violation of due process.

Although it is clear on its face that it takes a majority vote of those present before any official action can be taken, the point is further supported by previous language of the LDC regarding the BOA appeal process before it was amended to its present language. The previous authority for the BOA to act on an administrative appeal was found in LDC Section 2.04.01(C). *Exh. 6; 307-308.* There the specific provision stated: "The concurring vote of a majority of the members of the BOA present and voting shall be necessary" (not for "any action to be taken") but "to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to vote." Under the previous LDC provision, a 3-3 vote would result in official action in that it would not reverse the DRC denial or decide in favor of the applicant. Based on this, it is clear the Board of County Commissioners knows how to write a code provision that results in "official action" with a 3-3 vote but because it amended that specific provision with the new provision of Section 1-4.5(c)(1) it must have intended the plain language of the provision to apply – that it takes a majority vote of those present before "**any official action is taken**." (Emphasis added).

Since there was not a majority vote of those present, then no official action was taken and unless and until such official action is taken, Sean's Outpost is being denied due process of law.

### C. Sean's Outpost's initial burden.

The LDC Section 3-2.11 (*Exh. 7; 326-331*) established the objection criteria that must be met for approval of Sean's Outpost's application to continue to use its property to shelter homeless persons. Section 3-2.1(b) provides the permitted uses and includes in subsection:

(1) Residential uses if outside the Industrial future land use (as here);

(4)(g) homeless shelters; and

(5)(b) campgrounds.

However one classifies the use of the subject property it falls into one of these permitted uses. The only restriction on campgrounds is that it requires a minimum lot area of five acres; which is met here because the property is almost nine acres. Because the requested use of the property is a permitted use, Sean's Outpost met its initial burden and that burden, under *Irvine*, shifted to those opposing the project.

# D. The BOA's decision on December 7 violated the *Irvine* standard for quasi-judicial hearings.

Under the *Irvine* standard discussed above, in order for the BOA to have properly upheld DRC's denial of the permit application, those who opposed the application (staff and public) must have shown by competent substantial evidence that the application did not meet the published criteria and that granting the application was adverse to the public interest. See, e.g., *Florida Power & Light Co. v. City of Dania*, 761 So. 2d 1089, 1090 (Fla. 1980) ("In order for the agency to deny a permitted special exception application, the party opposing the application (i.e., either the agency itself or a third party) must show by competent substantial evidence that the proposed exception does not meet the published criteria," citing *Irvine*).

Staff submitted no such evidence that the approval would be adverse to the public and the only testimony that was in opposition to the project was not competent substantial testimony of adverse use but rather lay opinion speculating on general unfavorable impacts of the use. Lay witness speculation about potential problems with smoke or visual blight "and general impacts of a proposed land use are not...considered competent substantial evidence." *Katherine's Bay, LLC v. Fagan*, 52 So. 3d 19, 30 (Fla. 1st DCA 2010). General statements in opposition which are subjective and not supported by fact, do not constitute competent substantial evidence. *Metropolitan Dade County v. Blumenthal*, 675 So. 2d 598, 607.

#### VII. <u>Summary and Conclusion</u>

Sean's Outpost was denied due process of law because the BOA took no official action. Assuming for this Writ that the BOA took official action, it failed to comply with the essential requirements of law because it failed to apply the *Irvine* standard to its decision and because the record reflects, the Final Order is not supported by competent substantial evidence within the meaning of well-established Florida law. In failing to apply the *Irvine* standard, in expanding the legislated criterion so as to impose a more erroneous requirement on Sean's Outpost, the BOA departed from the essential requirements of law.

#### VIII. <u>Request for Relief</u>

The Petition for Writ of Certiorari should be GRANTED and the Court should quash the Final Order (Exhibit 5) and remand back to the BOA with clear findings of fact leading to an approval of Sean's Outpost's application. Respectfully submitted 6th day of January, 2017.

<u>/s/ William J. Dunaway</u> WILLIAM J. DUNAWAY Florida Bar No. 0021620 E-mail: wdunaway@clarkpartington.com E-mail: sprice@clarkpartington.com CLARK PARTINGTON 125 West Romana, Suite 800 Pensacola, FL 32591-3010 Phone: (850) 434-9200 Fax: (850) 432-7340 Counsel for Petitioner

### **CERTIFICATE OF COUNSEL**

The undersigned hereby certifies that this petition complies with the Times

New Roman 14-point font requirement set forth in Fla. R. App. P. 9.100(1)

<u>/s/ William J. Dunaway</u> WILLIAM J. DUNAWAY

#### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY in accordance with Escambia County LDC 2-

1.4(d)(2), that a true and correct copy of the foregoing Petition for Writ of

Certiorari was served via U.S. Mail on this 6th day of January, 2017, to the

following:

#### Debbie F. Lockhart

3363 West Park Place Pensacola, FL 32505 Escambia County Board of Adjustment Clerk

# Kristin D. Hual

Assistant County Attorney 221 Palafox Place, Suite 430 Pensacola, FL 32502 Counsel for Escambia County Board of Adjustment

<u>/s/ William J. Dunaway</u> WILLIAM J. DUNAWAY

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# Appendix A. – Transcript, Order and Evidence

# Transcript - (12/7/16 BOA Hearing)

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7	LDC Section §1-4.5 LDC Section §2-1.4(d)(2) LDC Section §2-6.10(b) LDC Section §1-1.11 LDC Section §3-2.11 DSM Section 2.2 Fla. R. App. P. 9.100(c)(2) Fla. R. App. P. 9.020(i)	310
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# TRANSCRIPT

#### ESCAMBIA COUNTY BOARD OF ADJUSTMENT

#### SPECIAL MEETING

- - -

CASE NO.: AP-2016-01

ADDRESS: 1999 Massachusetts Avenue

REQUESTED APPEAL: Appeal of the Development Review Committee denial of project #PSP160400044, Sean's Outpost

REQUESTED BY: William J. Dunaway, Agent for Sean's Outpost, Inc.

Proceedings held in the above-styled cause before the Escambia County Board of Adjustment on the 7th day of December 2016, commencing at 8:30 a.m., at Escambia County Central Office Complex, 3363 West Park Place, Room 104, Pensacola, Florida, reported by David A. Deik, CP, CPE, Professional Reporter.

	Page 2	2
1	APPEARANCES	
2	BOARD OF ADJUSTMENT MEMBERS:	
3	BOARD OF ADJUSIMENT MEMBERS.	
_	AUBY SMITH, Chairman	
4	KRISTEN HUAL, ESQ., County Attorney	
5		
6	JESSE CASEY	
0	FREDERICK GANT	
7		
8	JUDY GUND	
	MARK ROBINSON	
9	BILL STROMQUIST	
10		
11	JENNIFER RIGBY	
12	BOARD STAFF PRESENT:	
13	Horace Jones, Department Director Andrew D. Holmer, Development Services Manager	
14	marew D. normer, Deveropment bervices manager	
	Debbie Lockhart, Administrative Assistant	
15	Development Services, Planning Division	
16		
17	FOR APPELLANT SEAN'S OUTPOST:	
± /	CLARK PARTINGTON	
18	BY: WILLIAM J. DUNAWAY, ESQUIRE	
	125 West Romana Street	
19	Pensacola, Florida 32502	
20		
21		
22 23		
23 24		
24		

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Page 4 PROCEEDINGS 1 2 (Board staff members were duly sworn.) 3 THE CHAIRPERSON: Members of the Board, copies of staff resumes have previously been 4 provided and remain on file for reference. 5 The Board has previously recognized staff 6 7 as expert witnesses. Does anyone have any 8 questions regarding their qualifications and 9 abilities to offer expert testimony? 10 (No response.) 11 THE CHAIRPERSON: Seeing none, the Board 12 of Adjustment meeting package for December 7, 2016, with development service staff findings of 13 fact has previously been provided to the board 14 members. 15 16 The Chair will entertain a motion to 17 accept the BOA meeting package into evidence. Do we have a motion? 18 19 MR. STROMQUIST: So moved. 20 THE CHAIRPERSON: We have a motion by Bill. 21 22 MS. GUND: Second. 23 THE CHAIRPERSON: We have a second by 24 Judy. 25 Those in favor, signify by raising your

Page 5 right hand? 1 2 (All board members raised their hand, 3 Mr. Gant not present.) 4 THE CHAIRPERSON: Passing unanimously. 5 Do we have proof of publication? MS. LOCKHART: Yes, sir, we do. 6 7 THE CHAIRPERSON: Did the publication meet 8 all legal requirements? 9 MS. LOCKHART: Yes, it did. THE CHAIRPERSON: The Chair will now 10 11 entertain a motion to waive the reading of the 12 legal advertisement. Do we have a motion? 13 MR. STROMQUIST: So moved. 14 THE CHAIRPERSON: Motion by Bill. MS. GUND: Second. 15 16 THE CHAIRPERSON: Second by Judy. 17 Those in favor, signify by raising your 18 right hand. 19 (All board members raised their hand, 20 Mr. Gant not present.) 21 THE CHAIRPERSON: Passes unanimously. 22 MS. GUND: The Board of Adjustment, the 23 BOA, hears administrative appeals, variances and 24 conditional use requests. These hearings are 25 quasi-judicial in nature. Quasi-judicial

Page 6 hearings are like evidentiary hearings in a 1 court of law but less formal. 2 All public testimony will be taken under 3 oath, and anyone testifying before the BOA may 4 be subject to cross-examination. 5 All documents and exhibits that the BOA 6 7 considers are entered into evidence and made 8 part of the record. 9 (Mr. Gant entered the hearing room.) MS. GUND: The giving of opinion testimony 10 11 will be limited to experts, and closing arguments will be limited to the evidence in the 12 13 record. After hearing the testimony and arguments 14 for and against the proposed action and before 15 16 making its decision, the BOA will consider the 17 relevant testimony, exhibits entered into 18 evidence and the applicable law. 19 Because the decision of the BOA relating 20 to variances, conditional uses and extension of the Development Code order for site plans are 21 22 final, unless overturned by a court of competent 23 jurisdiction, the county may issue development 24 orders and permits for properties in accordance 25 with the decision of the BOA.

However, if an applicant requests the issuance of any such order or permit and such order or permit is issued, the applicant and not the county shall bear any risk that such decision may be set aside, the development order or permit may be revoked, or the development may be otherwise enjoined by the reviewing court. Any application for relief from the decision of the BOA's said action for any

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10aggrieved party, as defined by state law, may be11reviewed by petition and by filing an12appropriate pleading in a court of competent13jurisdiction within 30 days of the BOA decision.14The date of the BOA decision shall be the date15the BOA voted at the conclusion of the hearing.

16 Whenever the BOA denies an application, no 17 new application for identical action on the same 18 parcel shall be accepted for consideration 19 within a period of 180 days of the BOA decision.

20 Any person aggrieved by a decision of the 21 BOA relating to an appeal of an administrative 22 decision may within 15 days thereafter apply to 23 the Circuit Court for review.

24Each individual who wishes to address the25board regarding a particular issue must complete

WIERZBICKI COURT REPORTING

Page 7

Page 8 a request-to-speak form and submit it to the 1 These forms are located on the back of 2 clerk. the table of the commission chambers. You will 3 not be allowed to speak until we receive one of 4 5 these completed request-to-speak forms. We must have these completed forms for public record. 6 7 THE CHAIRPERSON: They're in the back. 8 They've turned green today, but they're in the back. 9 All written or oral communications at the 10 11 time of this hearing with members of the Board 12 of Adjustment regarding matters under review 13 today are considered ex parte communications. Ex parte communications are presumed 14 prejudicial under Florida law and must be 15 16 disclosed as provided in Board of County 17 Commission Resolution 96-13 before a decision by 18 this board or any administrative appeal variance 19 or conditional use request. 20 The Chair will ask as each case is heard that any board member who has been involved in 21 22 any ex parte communication regarding the respective issue to please identify themselves 23 and describe the communication. 24 25 The case we're addressing today is

Page 9 AP-2016-01, 1999 Massachusetts Avenue. 1 Board members, has there been any ex parte 2 communication regarding this case? 3 4 (No response.) 5 THE CHAIRPERSON: Seeing none, would like for the minutes to reflect that we have a 6 7 seventh member present today, so we have seven 8 board members present. 9 Does any board member intend to refrain 10 from voting due to a voting conflict of 11 interest? 12 MR. ROBINSON: I do. 13 THE CHAIRPERSON: We have one. The new board member, Mark, will abstain from voting. 14 So that will give us six voting present. 15 16 Does anyone have knowledge or information 17 obtained from a site visit or other sources? It should be noted that the Chair visited 18 19 the site. 20 Would the individuals who are a party to this item please come to the podium, identify 21 22 yourself, and by stating your name and address for the record, be sworn in by the clerk. 23 24 MR. DUNAWAY: My name is Will Dunaway, 25 with the law firm of Clark Partington. Ι

Page 10 represent the applicant, Sean's Outpost. 1 THE CHAIRPERSON: Okay. You will not have 2 3 to be sworn, as an attorney. MR. DUNAWAY: The applicant does intend to 4 5 present witnesses and would present our applicant rep, who will be Michael Kimbrel. 6 7 THE CHAIRPERSON: All right, sir. You've 8 been provided with a copy of staff's findings of 9 fact. 10 MR. DUNAWAY: We have been provided with a 11 copy of staff's findings. There were no facts, 12 but we anticipate that that was what was part of 13 your board package that you just admitted into evidence. 14 THE CHAIRPERSON: Correct. 15 16 Would you like to go ahead and make a 17 presentation, or . . . 18 MR. DUNAWAY: Mr. Chairman, if you like, I 19 could run through the PowerPoint, just to get 20 everybody acquainted. 21 THE CHAIRPERSON: Is that okay with you, 22 Counsel? MR. DUNAWAY: Mr. Chairman, that will 23 24 be -- I'm not sure if the mic's working, but in 25 any event, if anyone can hear, that would be

fine.

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2	Two procedural points: I would note that,
3	again, Mr. Kimbrel has not yet been sworn but
4	can be sworn prior to him being called as a
5	witness. And I would assume the same thing
б	would be for Mr. Jones, who was not present when
7	staff was sworn.
8	I would like to inquire, if I could, Mr.
9	Chairman. On a matter of voir dire, there was
10	an indication that the Chairman had visited the
11	site. I'd like to inquire as to when that was
12	and in whose presence.
13	THE CHAIRPERSON: That was Let's
14	see. What's today? Today is
15	MR. DUNAWAY: December the 7th.
16	THE CHAIRPERSON: Wednesday, December 7th.
17	That would have been Saturday. And I was alone.
18	MR. DUNAWAY: Yes, sir. Yes, sir. And
19	that was the site at 1999 Massachusetts.
20	THE CHAIRPERSON: Correct.
21	MR. DUNAWAY: Yes, sir.
22	And were you able to fully visit the
23	entire site, the whole eight acres?
24	THE CHAIRPERSON: No, I was not. I didn't
25	transgress anywhere that there was a posted
I	

Page 12 sign. 1 2 MR. DUNAWAY: The posted sign that was on the neighbor's property where the chain was? 3 THE CHAIRPERSON: Yes. 4 5 MR. DUNAWAY: Yes, sir. So you just simply observed it from Massachusetts? 6 7 THE CHAIRPERSON: Yes. 8 MR. DUNAWAY: The public right-of-way? 9 THE CHAIRPERSON: Yes. 10 MR. DUNAWAY: Yes, sir. 11 And at that time, did you see that there 12 was the posted -- or the sign that staff had 13 posted announcing tonight's -- today's meeting? 14 THE CHAIRPERSON: Yes. MR. DUNAWAY: Yes, sir. And a mailbox? 15 THE CHAIRPERSON: I didn't notice a 16 17 mailbox. 18 MR. DUNAWAY: Yes, sir. 19 THE CHAIRPERSON: But I did see the sign. 20 MR. DUNAWAY: Yes, sir. Thank you. And I don't have any further voir dire. 21 22 THE CHAIRPERSON: Sure. 23 MR. DUNAWAY: Nor any challenge. Thank 24 you. 25 THE CHAIRPERSON: Sure. Okay, sir.

Page 13 MR. HOLMER: All right, sir. We'll just 1 2 go through the maps here. This is, once again, Appeal Case 2016-01. 3 This is our location map. This is our 4 500-foot radius map, showing zoning on site. 5 Heavy commercial, light industrial. Our future 6 land use on site is mixed-use urban. 7 8 This is the 2013 aerial map of the site. 9 This is a map indicating the national wetlands 10 inventory layer showing wetlands on site. 11 This is a map of the 2500 foot mailing 12 radius the postcards were sent out to. This is the public hearing sign. Original posting, it 13 fell over in the weather. It's telling when --14 it's tied to the street sign to hold it up. 15 16 This is just a photo of the site entrance. 17 And this is another photo looking east on 18 Massachusetts showing the sign, and that's the 19 mailbox that was being referred to. 20 And this is the site plan. This is the one that was involved with the denial. This is 21 22 one that was submitted with a September date that I circled in red. And I have all these --23 24 we can zoom in on on the pdf. 25 And Mr. Dunaway is correct. With an

Page 14 appeal, we don't go ahead and do findings ahead 1 of time. We just basically do a background of 2 the case and the criteria. 3 THE CHAIRPERSON: Is that okay with you, 4 5 Counselor, if we let staff proceed with the --MR. DUNAWAY: Oh, yes, sir. Absolutely. 6 7 We prefer that. 8 THE CHAIRPERSON: Generally we just go ahead with applicant's opening and then --9 Okay. 10 MR. HOLMER: 11 THE CHAIRPERSON: And go from there. 12 THE CHAIRPERSON: Would you like to make an opening statement, then, or your client? 13 MR. DUNAWAY: Yes, sir. No; we'd take 14 that opportunity, if we could. 15 16 If I may ask a note of procedure, Mr. 17 Chairman, does this end the staff's presentation 18 of the evidence on this matter, or would they --19 I mean, do they want to go after we go and call 20 witnesses? How would the board prefer? Because 21 I want to do it the way you --22 MR. HOLMER: I mean, it's a quasi-judicial hearing. It's not as formal. We can follow the 23 usual plaintiff/defendant, et cetera. 24 25 THE CHAIRPERSON: The usual procedure is

Page 15 for y'all to make your -- make your 1 2 presentation, and then followed by staff's findings, and then there will be discussion and 3 4 questions. 5 MR. DUNAWAY: Yes, sir. Perfectly acceptable. 6 7 If I could, though, before I start with my 8 presentation, because we were provided with the 9 package that is publicly available, but that 10 package is different than just the view of the 11 slides, so I would be happy -- I would be -- it 12 would be helpful for me to understand what that 13 was that was included in the evidence that you accepted, the staff report. And would that be 14 different from that that was provided on the 15 16 link that's publicly available? MR. HOLMER: Right. The PowerPoint is 17 18 just a cleaned-up version. There are some documents in there that I was going to show the 19 board and zoom in on the criteria. 20 21 MR. DUNAWAY: Right. 22 MR. HOLMER: That they're going to need. 23 I have the package. Sorry. The mouse doesn't 24 work so good on this. 25 MR. DUNAWAY: Mr. Chairman, I only asked

Page 16 this so that I can understand what my -- how to 1 2 tailor my presentation. 3 THE CHAIRPERSON: Sure. MR. HOLMER: Here we go. This will be the 4 5 link. The web page. Once again, there are the 6 maps. 7 MR. DUNAWAY: Right. 8 MR. HOLMER: Zoom in. There's the letter. 9 MR. DUNAWAY: Okay. Good. And so that's 10 part of the package. 11 MR. HOLMER: Oh, yeah. Yeah. Yeah. 12 Absolutely. MR. DUNAWAY: Okay. Just making sure. 13 14 MR. HOLMER: Here. Let's go through -would you like to -- do you want to go through 15 16 the whole thing? 17 MR. DUNAWAY: If we could, yeah, what the 18 board was presented as a package. 19 MR. HOLMER: Absolutely. 20 MR. DUNAWAY: So we know what's in 21 evidence already. 22 MR. HOLMER: Okay. So we have the letter 23 from Mr. Dunaway. We have the proof of 24 ownership. Articles of incorporation. We have 25 the deed.

Page 17 MR. DUNAWAY: So we do have the 1 2 compatibility and locational criteria analysis. 3 MR. HOLMER: Yes, sir. MR. DUNAWAY: 4 Okay. 5 The traffic report. MR. HOLMER: Traffic report. 6 7 This is the receipt. 8 MR. DUNAWAY: Right. This was the payment of the \$682.60 appeal fee. 9 MR. HOLMER: Yes, sir. 10 11 MR. DUNAWAY: Following the \$859 12 application fee. 13 MR. HOLMER: Oh, the DRC, yeah. 14 MR. DUNAWAY: Right. MR. HOLMER: This isn't the best version 15 16 of Adobe to work with. Do you want to . . . 17 Okay. This is -- what we're working with here 18 is the site plan that was submitted. It's going to be a little bit difficult to see on 19 20 eight-and-a-half by eleven paper. That's what I said: We've got the digital version we can work 21 22 through. 23 MR. DUNAWAY: Right. 24 MR. HOLMER: And this has all the pages, 25 the plan.

Page 18 MR. DUNAWAY: So just for clarity, those 1 2 pages are the scanned versions of the full-size plan that we submitted to the staff as part of 3 the Landmark Engineering site plan. 4 5 MR. HOLMER: Yes, sir. MR. DUNAWAY: All right. 6 7 MR. HOLMER: Those are the ones that are 8 on the county files, once again the September --9 MR. DUNAWAY: Right. 10 MR. HOLMER: -- plan. 11 MR. DUNAWAY: With the notes and the 12 information there. 13 MR. HOLMER: Yes. 14 MR. DUNAWAY: So that -- and that's everything? 15 16 MR. HOLMER: That should be the last page. 17 It is. Yeah. The last document is going to be 18 the page after this, which is going to be . . . 19 MR. DUNAWAY: Okay. That's fine. This 20 is --MR. HOLMER: C-1, I think. 21 22 MR. DUNAWAY: This would be a good 23 place -- if we could keep this on the screen 24 with this as the -- with the site plan that 25 we've drawn up, that's -- no. That other one.

Page 19 MR. HOLMER: The next one? 1 2 MR. DUNAWAY: Yeah, the next one. It 3 should have . . . 4 MR. HOLMER: Computer's running a little 5 slow. MR. DUNAWAY: Yeah. Understood. 6 7 It's actually the first one. I mean, well, that's the first one. Then there's -- it 8 would be the one that shows the location of the 9 10 site. That's okay. It's going to be that one. 11 This is going to be the last. I think this is 12 it. Nope. 13 MR. HOLMER: Oh. 14 MR. DUNAWAY: Go up. That's it. That's 15 it. 16 Mr. Chairman, with your permission, may I 17 address the board from my seated position at table or would you prefer that I address from 18 the podium? 19 THE CHAIRPERSON: I believe if we don't 20 21 have you at the podium, it won't record. 22 MR. HOLMER: He has a microphone. 23 THE CHAIRPERSON: Oh. That will work. 24 MR. DUNAWAY: And we have a court 25 reporter.

	Page 20
1	MR. HOLMER: Button's on the bottom.
2	MR. DUNAWAY: Okay. So we have a
3	microphone that's on.
4	So with your permission, Mr. Chairman
5	THE CHAIRPERSON: Please.
6	MR. DUNAWAY: Thank you, Mr. Chairman.
7	Mr. Chairman, as is indicated, and members of
8	the board, we're here on an appeal of the staff
9	decision of a denial of the DRC for a permit
10	essentially to have a use of this HCLI, heavy
11	commercial, light industrial property,
12	approximately a little over eight acres.
13	And the use that we are asking was simply
14	so that it be residential. And those
15	residential are housed in temporary structures.
16	This is a homeless area. Let's make no
17	bones about what we are and what Sean's Outpost
18	has been doing for the last three to four years.
19	Let's just start, go back to the beginning
20	of the acquisition of this property by Sean's
21	Outpost, my client. This is an enterprising
22	group of people who came into the opportunity to
23	purchase this heavy commercial, light industrial
24	zoned area, which, as the Chairman knows, having
25	visited, and as you've seen from the aerials, is

Page 21 at the bottom of Massachusetts, the lowest 1 point, as the -- essentially, the series of 2 drainage canals that connect with old burrow 3 4 pits, come through that area draining out, 5 essentially, everything north from Marcus Pointe 6 all the way down. 7 So a large percentage of the property --8 and you can see from the aerial almost half of it, that is the easternmost half, is underwater. 9 10 I mean, it's a swamp. It's wetlands. And it's 11 actually active standing water. 12 And so the upland area is a smaller area. 13 Now, you have seen and you will note that from your -- the aerials, that the property is an odd 14 shape. It would have been a nice -- I don't 15 16 know that it's a square, but let's call it a four-sided parallelogram, so it would have 17 18 evened up, but you see this odd thing that 19 sticks out of it. 20 This was formerly ECUA property. There is an ECUA former -- an old lift station here, that 21 22 as you can imagine in -- it's a low area. 23 Gravity works. You have to move things uphill. There was a lift station here. 24 25 That was replaced. There's a large -- and

you'll see that it's transecting across the property. It's a large easement area that runs across, and there's a main ECUA access to keep that pipe flowing. Yeah, Mr. Holmer's got it, or whoever's operating that is showing that correctly.

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So ECUA owned that odd piece, that you see that it juts out on the western side. And there's been past uses of the property, but mainly there was -- there's an old pad. There were several trailers, and there were some folks that -- that lived out there, but mainly the purpose of it was as an ECUA.

From Massachusetts on that western side -and you'll see this area. And if I may, I'm referring -- Y'all are not going to be able to see this, but if you're talking about the westernmost -- you'll look at your -- at your drawing, you'll see what looks like a road.

20 That connected back. It was a dirt road, 21 and it was the access that ECUA used off of, and 22 you could go both from Massachusetts, and you 23 could go all the way into -- and it connected to 24 what was the backside of the neighborhood there. 25 I don't know if that -- it actually comes

Page 23 out -- I believe that to be Amazon Drive, but 1 that was a routine dirt road and -- where you 2 came and accessed it. 3 So Sitocia acquired this property, had 4 5 plans for development and for improvements. And in the meantime, as those plans were being 6 7 formulated and funds being raised, started to allow people who were being run out -- who had 8 been run out, trespassed off of other areas of 9 10 either private property or public right-of-ways. 11 If you're not familiar with the process, 12 the last count in Escambia County was about 859 active persons who are living on the street. 13 Now, you probably would be surprised to 14 know that in Escambia County School District, 15 16 the school district indicates and counts 2,000 17 school-age children who are classified as homeless. 18 19 Their definition of homeless is different 20 than the homeless count. Their definition of

20 than the homeless count. Their definition of 21 homeless is those who don't have a more 22 permanent structure. They could be 23 couch-surfing or living with aunts or uncles or 24 friends. But when I talk about the count that 25 the Escambia Coalition does of homeless, we're

talking about actual people on the street. 1 2 So we know in Escambia County we don't have enough beds for people who do not have 3 permanent shelter. And so, nevertheless they 4 exist. 5 You probably don't often see those camps 6 7 but they exist. And when I talk about a camp, 8 I'm talking about a structure: A tent, a tarp, a lean-to, a shelter, a bridge, those kinds of 9 10 things that provide some temporary shelter. 11 So Sean's Outpost began to allow, when 12 they were called -- and they would get calls 13 from either the Sheriff's Department or the 14 emergency rooms or other emergency-type situations, crisis shelters, and there would be 15 16 someone who had no place to go. 17 So Sean's Outpost had eight acres of 18 commercial -- heavy commercial, light industrial 19 zoned property. And they said, "Well, you can 20 be here because we won't run you off. You can 21 stay here." 22 And so over the years, and we -- Sean's 23 Outpost has been operating this for -- well, 24 certainly for the last three years. This 25 process started, and it allowed for a central

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Page 25 location which someone could stay who would not 1 be violated. They couldn't -- the sheriffs 2 wouldn't be rousting them because, of course, 3 they had permission to be on the property. 4 5 Then the question became: Well, what is the status of persons who are living on property 6 7 with permission in temporary structures? 8 And in 2014 the county decided, through Code Enforcement, that the status was a status 9 10 that they would not permit, and there was a code 11 violation for temporary shelters. 12 That process went through the special 13 magistrate process. The special magistrate found that there was not a violation. That code 14 violation was dismissed, and the process went 15 16 even -- and was upheld. So the process -- the use of the property 17 18 continued its conforming way, with a shelter 19 Again, tents, tarps, temporary shelters area: 20 for a small number of people that Sean's Outpost 21 gave permission and allowed to be there. 22 Now, this population is not static. There 23 are people who come. They're in crises. They 24 spend some time at Sean's Outpost. They find 25 other places, whether that's permanent or

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whether they move out. 1 2 Some work. Some do not work. Some have 3 medical issues. Some don't. The process is a fluid process. Sean's Outpost, essentially 4 5 through Michael Kimbrel, who is sitting here to my left, manages that. It's an active 6 7 management. 8 The county has been provided, and I hope 9 that you have had -- and if you don't, at the 10 end I'll make sure that you get -- we admit into 11 evidence a detailed operating manual. The 12 county asked for, and we provided that, a 13 detailed operating manual of how this process works. We provided that. 14 It's an active process. The Sheriff's 15 16 Office knows -- they know who to contact. They 17 know how to get in touch with Michael to respond 18 very, very quickly. 19 The Health Department early on in the 20 process with the 2014 violation was very much 21 involved in this process because, as you may not 22 know, camping . . . that is what this most 23 resembles. It most resembles a campsite, a 24 camping area. 25 Camping in the State of Florida is

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Page 27 permitted not by the county but by the State 1 Department of Health. They issue permits for 2 camping and for RV sites. 3 As you know, an RV site is also an area 4 5 which has some level of improvements which allows both temporary structures, in the form of 6 7 motor homes or pull trailers or tents. Most RV 8 sites do have tent facilities. And so this facility, as we started 9 10 looking at what we needed or might need to do 11 from county permission to continue, we looked at 12 the concept of camping. 13 We applied. And when I say "we," I'm talking about Sean's Outpost. I've been 14 representing them since this started, pro bono 15 16 to try to help them get through this process. 17 We submitted an application for a camping 18 permit, a campsite permit to the State 19 Department of Health. That process goes through 20 a local -- there's a local county department, 21 and then it goes on up to the state. 22 After years of evaluation back and forth, meetings, discussions, trying to figure out is a 23 24 homeless camp camping, is camping regulated, how 25 are we going to do it, the State Department of

Page 28 Health ultimately ruled -- and this is in a 1 letter of March 22, 2016, a copy of which I'm 2 going to submit to you in evidence, which 3 indicated -- and you'll have a copy, but I'm 4 5 going to just read. "Your client does not need a license from 6 the Florida Department of Health to continue 7 operating as is currently occurring. Our 8 inspections have not discovered any insanitary 9 [sic] conditions." 10 11 That was a concern, obviously, when you 12 have a group of people who are living outside, what are the sanitary conditions, a legitimate 13 concern for both Sean's Outpost, the residents, 14 and of course the county. 15 16 And so as part of this process, we had 17 actually contracted and we were paying for the 18 County Health Department to date -- actually, it 19 started as weekly inspections and moved on to 20 monthly, and then they got progressively more time in-between because they were coming out and 21 22 inspecting the property and making sure and 23 pointing out and helping us as we first started 24 up, on what the sanitary conditions were. 25 And ultimately what the stable condition

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is and has been for many years is that there are
three portable pot -- portalets that you see,
like at parades, and those kinds of things, and
a washing station, a hand-washing station that
are there.

Those are serviced by Sean's Outpost, weekly service, and taking care of them. They're sanitary. And that process was part of that inspection with the Health Department.

10 So that, again, the letter states, "As 11 currently operated, Sean's Outpost is not 12 included in the facilities that the Florida 13 Department of Health licenses."

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14That is, they determined it was not, in15fact, a recreational camping. And that became16an important concept. I won't go into the whole17thing. We spent a year talking and debating and18agonizing over what is a recreational camp.

19Ultimately it came down to because we20weren't a facility, that if you drove in off the21street pulling a camper and paid us \$14, you22could stay there because that's not how Sean's23Outpost operated, so the State Department of24Health said, "It's not camping, recreational25that we license. What you're doing there is

Page 30 fine, and it's not something that we license." 1 2 So that put us back into the county process. And we had I don't know how many 3 meetings, so we had a lot of meetings with the 4 5 county. And the ultimate question was: What is it? What do you want us to do? What -- help us 6 7 craft an application for the use that we are 8 doing that you can evaluate under the Land Development Code and get to an ultimate position 9 of permitting. 10 11 And then they said to us, "Well" -- and rightly so -- "Well, what do you want to do?" 12 And we said, "Just what we're doing. And 13 we just want to keep doing what we're doing." 14 15 Because in the ensuing years, the ideas 16 that -- and, of course, these ideas are not --17 are not gone, but they're not in a position --18 Sean's Outpost is not in a position to execute 19 on it. The ideas of building a grand, you know, 20 bathhouse with a commercial kitchen facility and an enclosed area, I mean all of those are plans 21 22 that we would love to bring forward and go 23 through that process. 24 And that process is very well understood. 25 If you're building a building and you're going

Page 31 to execute and put some real permanent 1 improvements on it, everybody knows how to 2 evaluate that. The county knows how to 3 evaluate. We know how to do it. The engineers 4 know how to do it. 5 But that's not what the plan is. What the 6 7 plan is, is simply allow the continued 8 residential use in the way that we have been 9 doing it compatibly for these last many years. 10 And the county said, "Well, you got to 11 tell us what that is because we can't evaluate a 12 concept." 13 We said, "Okay. And we'll pay the application fee, \$859, and we'll write down on 14 it what it is that we want to do." And 15 16 essentially it is we want to do the same thing 17 that we've been doing. And they said, "Well, show us what that 18 19 looks like." 20 And we said, "Well, you know, there's some areas out in the uplands where people reside. 21 22 Sometimes they reside where that -- one of those 23 boxes are, and, you know, sometimes the wind --24 we have a storm like we just had, and, you know, 25 that blows down.

"And so when they set it up, it's five 1 2 feet over to the other side or sometimes it's, 3 you know, around the corner. But it generally is an area in which someone puts up a tarp 4 5 and/or a tent, and they end up being a resident there for a period of time." That's what it is. 6 7 That's the use. It's nothing more complicated 8 than that.

So then the question: Well, how do you 9 10 get to it? Well, again, as you saw, this 11 odd-shaped process, it looks like that you 12 can't, but you -- and this took another six months to figure out, but finally realized that 13 you'll see that what looks like -- it's actually 14 a spike strip, but you see that strip that goes 15 16 off? There was a drainage. It's in the top right corner. You know what I'm talking about? 17 18 Yeah, right there.

19So that strip -- run that up and down.20That connects the larger square. That goes --21juts out towards Massachusetts. Yeah.

22 So that actually is a part of the ECUA --23 the former ECUA parcel, but Sean's Outpost, the 24 property owner of the larger parcel, has an 25 easement across that as part of its deed;

Page 33 therefore, has access across it, on it and 1 2 through it for its use. 3 So what you see as labeled on your document as the "dirt road," that quite 4 literally is a road that was created when Sean's 5 Outpost lost the use of the ECUA parcel. 6 7 And so how that came about was, after, 8 again, endless discussions and negotiations with 9 the ECUA, I finally convinced them to excess 10 that property because it is the good upland 11 property for this parcel. It's where the 12 majority of the good high ground is in this 13 parcel. ECUA wasn't really using it, and so they 14 said, "Okay, we'll excess the property." And so 15 16 it went through the public process of excessing 17 property. And at the bidding, Sean's Outpost 18 was outbid and someone else bought the property. 19 You know, there's only so much money that 20 nonprofits have. And that process ended up 21 going -- and that property went to someone else. 22 So when that -- when that was cut off, when we 23 were not able to utilize that property -- if 24 you'll show the members, you'll see along the 25 western property line, our -- Sean's Outpost

Page 34 property line, as part of the attempt to be, you 1 2 know, good neighbors here, there was a board fence. It's just inside the line. 3 It's the zeros and the tacks. You'll see 4 5 that's the fence. So there is a -- there is a board fence that was installed and paid for, 6 7 permitted and built along that boundary that 8 separates the road, the access road, from it, from the property. 9 10 And so from that, once we couldn't enter, 11 which was where you entered the property, was 12 about right there where that wooden gate was, 13 that's where you entered the property from the former ECUA access road. 14 Once that was -- we didn't have access, as 15 the Chairman correctly pointed out, the posted 16 17 signs on the gate there along Massachusetts, if 18 you go back up, we had to have a new way to get 19 into the property. 20 So if you'll go up just a little bit. 21 Yeah. Right there. Stop. So that's where you come in. It's about -- it's near where the 22 23 mailbox is. You just come onto the property. The property is -- it landlocks the 24 25 property that was the former ECUA. There's no

access to the former ECUA property right now, except that you go through someone else's property.

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So you can't access that property from 4 5 either Massachusetts, nor can you actually really legally access it from the south, so you 6 7 can, of course, because Mr. Grimes, who you probably will hear from a little bit later. 8 Since he is one of the property owners, he can 9 access it from his lot because he abuts it from 10 11 the back side.

But in any event, it doesn't have public street access that wouldn't go through either a developed lot or someone else's property, like, for instance, Massachusetts through either ours, or potentially the county owns a park there just to the left, and I use that word loosely.

18 It's a triangle strip of property, which 19 mainly is used for a sheriff car, you know, just 20 monitoring Massachusetts, so it's not -- it's 21 not actually a developed part.

The point being is that, as you can see, we do have access, and that is the dirt road, so what we ended up starting to do is to get back there and to, you know, get food and stuff. We

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just drive down this little dirt road.

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And when I say "dirt road," I refer to what I would call, you know, a pig trail. I mean, that's how it started. Started as a path, and then it's a dirt road. But it crosses the easement area. You'll note that that easement area doesn't go to -- all the way to the end of our

9 property boundary, so there is a -- you could go 10 around it, but that's underwater. I mean, 11 that's -- that's out into -- into the water area 12 there. Okay.

13 So that's the process, and that was the 14 background on that acquisition. Obviously that 15 acquisition made the plans for development and 16 everything change in a big way, as did the issue 17 of money.

And so, again, we were back to the county. And we started in earnest earlier this year, the first of this year. And the reason we started in earnest is because the county issued another notice of violation on a code enforcement.

And they said once again, essentially,
your use is unpermitted. It's an unpermitted
use.

Page 37 1 And so we started meeting with them. We 2 met with staff here at this level, all the way up to the administrator level. 3 And I want to thank the staff. We worked 4 5 very closely because we recognize what we were 6 doing is different. I mean, I assure you there 7 is no permitted homeless camp in the county. Ιt 8 doesn't exist. 9 There's not another similarly situated 10 property that is not an RV park, a camping 11 facility. The closest thing would be the Alfred 12 Washburn Center, but there's no residential 13 overnighting there. And then, of course, the next closest, 14 which is not really comparable, but would be 15 16 like a Waterfront Mission, a fully developed 17 site in which there is overnight dormitories. 18 But the Waterfront Mission looks more like 19 a UWF dormitory than it does a homeless shelter 20 in the -- in the nature of what Sean's Outpost 21 is. Sean's Outpost is actually -- would be more 22 comparable to, you know, the camps either on -on the scenic bluffs or the old Trillium site 23 24 before that was developed and those folks were 25 run out, or along the Gullian Yard FDOT

right-of-ways, and endless numbers of camps that I could mention to you that we don't in public forums.

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The point is that we worked very closely to try to figure out what it is that we are trying to do. And we finally settled in on the situation that we have and the presentation that we made ultimately to the DRC.

9 And that was, we simply want to exist. We 10 simply want you to permit the existing use. 11 We're not building anything. We're not making 12 any alterations to the property. We're not 13 putting in any improvements to the property, 14 that is, structural improvements.

15 It simply is property that Sean's Outpost 16 owns that Sean's Outpost has graciously given 17 permission to a handful of folks who don't have 18 other permanent locations to be, so that they 19 can exist in this county without getting run 20 off, trespassed in the middle of the night or 21 rousted out.

22 So the application. Let's focus on that 23 and what we were looking at. The application 24 that was submitted, and it -- Mr. Holmer, was 25 the application the April 5, 2016? Was that

Page 39 part of the board package? That would have been 1 my letter of April, along with the development 2 review application package. 3 Mr. Chairman, while Mr. Holmer is looking 4 5 for that, I'll just briefly go through. Essentially what we applied for and what ended 6 7 up being agreed to, was we would submit a site 8 plan, a minor site plan application for approval. 9 10 Yeah, that's the October 27th. 11 And so on April 5, 2016, we submitted that 12 application under my two-page cover letter. And the full project information form filled out was 13 attached, and all of the criteria that was 14 stated in the development review application, 15 16 certification process, along with site plans was 17 submitted to staff. 18 And as Mr. Holmer correctly pointed out, there was a back and forth. And you're familiar 19 20 with that back and forth with an applicant and the staff, on trying to get a plan. 21 22 The staff said there was some details that 23 we needed. That resulted in the operating 24 agreement being -- the staff was concerned 25 about. How are you going to operate it? And so

Page 40 there would be -- operating plan was submitted. 1 2 There was -- You know, what about compatibility? That's why the compatibility 3 analysis -- that is part of your package. 4 5 That's why we had that. Compatibility analysis. 6 We got that. 7 We went through the process with all of 8 the staff members at the DRC. Joe Quinn testified from fire safety. Pointed out there 9 10 was some minor issues, including some signage 11 and the need to have some fire -- fire 12 extinguishers. No problem there. Rosa Stephanel testified, and she talked 13 about the need for stormwater ponds, if you had 14 any impervious surfaces that were going to be 15 16 out there. And in that regard, the only 17 requirement for stormwater would be is if there 18 were a requirement for a paved access road. 19 We weren't proposing a paved access road. 20 We get down there fine with the dirt road. The 21 service -- the only actual truck that actually 22 has to go down there, large truck, is the truck 23 that services the porta-potties, and it's been 24 going down there for years. Every week it goes 25 down there. It has no problem.

Page 41 And we submitted a letter from the 1 2 Containers, Inc. that we pay every month for them to service the porta-potties that stated 3 that. We get down there fine. 4 And as I mentioned, Mr. Williams testified 5 and he said the analysis compatibility and 6 7 locational criteria needed to be submitted, 8 which we did. And we met that. 9 So the final thing was Mr. Jason Waters 10 who testified -- and he was with the county 11 access management. And he opined at the very --12 at the DRC that an access -- a paved -- no. An 13 improved access road would be required to be built from Massachusetts all the way back to the 14 15 porta-potties. 16 We said, "Well, why? Because we don't need a road. And the cost of paving a road back 17 18 there is prohibitive because we don't have any 19 money, and we won't be able to meet that 20 criteria." 21 And so this was -- we had gone back and 22 forth over the summer. We thought we had 23 actually reached an agreement with the county by 24 which they said, "Okay. Well, if you'll just 25 improve the apron because we don't want to bust

up Massachusetts when you pull over -- off on Massachusetts, which is actually in the county right-of-way.

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And actually, the bigger trucks -- the trucks that pull off and on there are, you know, both -- as I said, the sheriff's car that parks there in the park area, and -- and any ECUA trucks that pick up the garbage because, of course, we have garbage collection.

But in any event, we said, "Yeah. Absolutely. We'll make an apron," you know, like you do with a driveway coming onto a road. But really, we don't need the road all the way back there.

But at the DRC, Mr. Walters, Jason, said,
"No. Per our design standard manual, 2.2, we
believe a road is required. Road's required."

18 And I cross-examined him. And I -- I 19 appreciated his candor. And in any event, he 20 said, "It's required." And so at the DRC we 21 said, "You know, okay. I mean, you know, you're 22 the one to tell us what are the requirements." 23 We asked -- we said, "Well, issue the 24 permit with the condition that we have to build 25 a road," and then -- and the point being is

1 that -- because, as you know, we're not
2 operating -- we're not doing this process in a
3 vacuum; right?
4 We have already had the code enforcement

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magistrate hearing, at which point we went to the code and magistrate this time, and we said, "We're -- Absolutely. I mean, we do not have county permission to do this use. We don't have that permit. If a permit is required, we don't have it."

And the magistrate said, "Well, what are you doing about that?"

And I said, "You know, well, we've been working with the county for years to try to get that. And we've had the application already submitted, and we're going through the process."

17 And the magistrate said, "Okay. Well, 18 that's what I would require you to do anyway, to 19 go get it. And so keep working. Get the 20 process. And if you get the permit, great. 21 This is all over. And you pay the \$600 that, 22 you know, cost to do the hearing. And if you 23 don't get it, then -- and all your appeals run 24 out, well, then, you know, 90 days after that, 25 you're just going to have to get off."

And so that's where we are. 1 I mean, 2 that's the process we are. We went to the DRC. 3 They said "No." We're appealing to you. Now, to the issue of the appeal. Why are 4 5 we appealing? Well, we're appealing to you because, one, we want permission to do what 6 7 we're doing. That's the main thing. 8 Two, what are the reasons, the legal 9 reasons we're appealing? Well, we believe 10 because the county hadn't -- that the staff 11 should have, under the criteria, issued the 12 permit, because, as you know, for a permit to issue, well, the applicant simply must meet the 13 14 objective criteria laid out in the Land Development Code. 15 The objective criteria in the Land 16 17 Development Code for residential use are very 18 easy. I mean, that's not -- it is not a 19 difficult process. 20 We met and went through every objective 21 criteria that the county asked us to do: Made 22 the application, submitted the information, provided the site plan. In fact, a minor site 23 24 plan, as you know -- you've probably seen some 25 on appeal -- I mean, all you have to do is

Page 45 actually really just do a kind of a neat sketch 1 2 on a notebook paper. 3 I mean, you don't have to go through all this process for -- Again, this is a minor site 4 plan. We're not asking to build anything, and 5 6 no engineering. 7 But we went through that process: 8 Engineering drawings, legal surveys, wetlands evaluation. We did a -- Wetlands Sciences did a 9 10 pull-up wetlands evaluation, a protective tree 11 protection. We went through all of those -- all 12 of those points. And we submitted all of that information. 13 And in the end, it came down to, we think, but 14 that's what I'm hoping we'll get some clarity 15 16 today, we think that it was down to the DSM 2.2 17 on the road. 18 And yet we said, "Okay, Jason. You say a 19 road's required. Well, then issue the permit 20 conditioned on us building the road." I mean, staff issues permits with 21 22 conditions all of the time. Conditional permits 23 are issued all the time. I mean, I dare say no 24 permit gets issued or very few permits get 25 issued without some condition. So we simply

asked them to do that.

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2 And then, of course, obviously that would 3 allow us to, one, continue; two, get out from under the code enforcement magistrate's 4 5 situation; and also then go raise money, so potentially build the road. I mean, you know --6 7 and we'd have that time. As you know, when a 8 permit's issued, you have a certain amount of 9 time to build it. So that was the plan. That's what we would do. 10 11 In fact, after the hearing, Mike received 12 several calls from folks that go, "I got gravel." I mean, maybe we can actually do this. 13 Maybe we can pull it off. It will be amazing. 14 But we said, "Listen, just issue it so we 15 16 can get moving and we can do it." 17 But the county said -- and Mr. Jones is 18 here. He will be able to testify to that. But 19 he said no because it wasn't on your site plan. 20 We can't approve it. Well, again, members of the board, we 21 22 didn't want to build a road. You know, the 23 road, if we were required to build it, it would be built where the dirt road is. There isn't 24 25 any other place to build it. There's no other

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way to get around.

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2 We don't own the property to the west. There's water to the east. And the road's where 3 the road -- the only place a road can be. 4 5 So, you know, but for the fact that that says "dirt road," as opposed to gravel road or 6 7 asphalt road, or whatever else, the road is on 8 the site plan. It's right there before you. So that's where it would have to be. 9 10 In any event, if the county wanted it 11 somewhere else, issue the permit and say, "Build the road -- you know, conditioned on the 12 building of a road, you know, a permanent road 13 in some other fashion." 14 So that's where we are. We believe under 15 16 the standard that you have here that -- and 17 permit to be issued, the applicant must have met 18 the objective criteria of the Land Development 19 Code for the issuance of a permit. 20 We believe we met that. We believe, then also, under the Irving standard of the Supreme 21 22 Court, that once we've met that burden, it is 23 incumbent upon staff and/or those who oppose the 24 issuing of the permit to prove that, in fact, 25 the issuance of the permit would be adverse to

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Page 48 the public. Adverse to the public. And that's 1 a very detailed description, and we will go over 2 3 that in summary. But in any event, there has been no 4 indication -- then the best indication of the 5 fact that it's not adverse is we've been doing 6 7 it for four years. We've been out there. We 8 are peaceably coexisting with the neighbors. 9 Now, I know because I have been at every 10 hearing and I have -- there are diligent, good, 11 hardworking citizens who live in the Mayfair 12 neighborhood who oppose a homeless camp next to 13 their residential neighborhood. I get that. Ι understand the argument. I understand the 14 concern, and I understand their frustrations 15 16 with the fact that this process has taken a long 17 time. 18 But I tell you, board members, there is no 19 other group, no other homeless shelter camp 20 process that's been doing as hard a work as 21 Sean's Outpost has been and has gone through the 22 county approval process more diligently than 23 this group. We have been re -- turning every possible 24 25 way of moving this process forward. And if it

is that we cannot have a piece of property in Escambia County in which an owner can say to an individual, "Hey, you can stay on my piece of property," and the county says, "No, you can't," then we are in a bad situation as far as the county goes.

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Now, I acknowledge and understand that the county staff has indicated and will say it's not about the status of the people who are on the property. It's not that we're opposed to homeless people. We're not opposed to homeless people. You just have to follow the code.

Well, members of the board, we believe we have in every way fulfilled the objective criteria presented throughout this process to have and issue -- to have the county, the staff, issue us a permit.

And if that permit must have conditions based on criteria which they believe to be controlling, with all due respect, they should issue it in that regard. They should issue it conditioned on whatever those conditions and requirements are.

24They ought not just say "permit denied,"25and say "because you didn't put it on the site

Page 50 plan," because again, this has been a fluid 1 process. This has been a fluid process. 2 This site plan hadn't looked -- didn't 3 look this way when we first submitted it. 4 It 5 went through several iterations. I drew it with pdf for a while, and then I would move the boxes 6 7 around, and then I would try to -- and then we'd 8 move the trees around. And then finally we got a real engineer who did it. And we finally got 9 the whole thing. And we submitted it. And we 10 11 believe we've met it. 12 So we're here for you, as a board, a 13 citizen-appointed board in this county, to look at this and say, "Did they meet the objective 14 criteria for issuance of a permit?" 15 And if that's -- if a road is required, 16 17 then with conditions. I mean, we would love for you to issue the permit without the condition 18 because building a road's going to be expensive, 19 20 not necessary, invasive, mess up the -- but if that's what it takes, issue the permit with 21 22 condition of the road. Issue the permit. Because we believe we've met that 23 24 criteria. We believe we've met our burden. And 25 then we believe now that the burden shifts to

Page 51 the county and those opposed to prove that in 1 fact the issuance of this permit would be 2 adverse to the public. 3 I would like to -- Mr. Chairman, that 4 would be concluding my statement and background. 5 I would like to have the opportunity to have 6 staff present their case, and then have an 7 8 opportunity to rebut, and then would reserve 9 some time for closing. THE CHAIRPERSON: 10 That would be the 11 standard operating. 12 And excellent presentation, Mr. Dunaway. 13 MR. DUNAWAY: Thank you, sir. THE CHAIRPERSON: Board, any questions of 14 the applicants at this time? 15 16 MR. STROMQUIST: I'm going to question. The access that you have now coming in, the 17 18 picture that we saw of it was dirt, a dirt road 19 access. How far does that dirt road access go? 20 MR. DUNAWAY: It's all dirt, sir. 21 MR. STROMQUIST: But does it go all the 22 way through the camp? MR. DUNAWAY: Yes, sir. Yes, sir. 23 24 If you're -- and if --25 MR. STROMQUIST: Well, looking at it on

Page 52 this diagram, comes in and curves and then goes 1 2 down . . . 3 MR. DUNAWAY: Yes, sir. MR. STROMQUIST: . . . to the bottom of 4 5 the property? MR. DUNAWAY: Yes, sir. 6 7 MR. STROMQUIST: That is all dirt road 8 access? 9 MR. DUNAWAY: Yes, sir. Yes, sir. 10 MR. STROMQUIST: And it is there. 11 MR. DUNAWAY: Oh, yes, sir. Yes, sir. 12 There was -- there is a -- yes, sir. And I will 13 tell you that as you come around this corner and this -- right in here, it literally -- it really 14 kind of peters out here. 15 16 This is kind of a plane of grass because 17 there's -- anyone that comes down, there's 18 only -- then the only -- the only access, really 19 truck that goes here, this is where the 20 portalets are, if you're following me. 21 You see? These are the three portalets. 22 And then the hand-washing station. This is 23 where they are. And so the truck, you know, 24 comes there, and he services the portalets. 25 And so, yes. And again, I don't want to

Page 53 mischaracterize this road. I grew up on a farm, 1 2 and we call them turn rows, but a pig trail, turn row, dirt road, tracks for two vehicles. I 3 mean, the track for a vehicle, you know, either 4 5 side, two tread going through the -- going through the woods. 6 7 This is a -- if you can't tell from the --8 from the aerial, this is a heavily wooded, beautiful heritage oaks in this area. Some of 9 10 the prettiest trees, I think, probably in 11 Escambia County. 12 MS. RIGBY: I've got a question. 13 Actually, I've got two questions. First, we'll stick with the road for a minute. When the 14 county indicated that they needed you to build a 15 16 road to meet the criteria, was there any 17 specificity as to how the road's to be built? 18 How wide the road is? What material is to be 19 used? Just you need a road? 20 MR. DUNAWAY: In fairness to staff, I 21 think they would probably say, you know, we rely 22 on the applicants to tell us about what they want to do and build. 23 24 When we -- because we weren't trying to 25 build a road, we hadn't researched roads. But

Page 54 they did indicate that it didn't have to be 1 paved. It could be rock and/or gravel. 2 3 MS. RIGBY: Right. MR. DUNAWAY: And I'm fairly confident 4 5 that the design standard manual will indicate, you know, what are the criteria and what are the 6 7 standards for building a road. I can't 8 articulate those. What we were told is -- and I think that I 9 10 can quickly turn to it, but that . . . Okay. 11 All right. I can see -- I have staff reviewed 12 comments. I was going to pull out the staff review, but here on the access manual . . . 13 In the earlier comments, there was no road 14 15 required. The road became a late-coming -- a 16 late requirement as we got closer to . . . 17 So what Mr. Holmer's has -- what Mr. 18 Holmer's has is the standard DSM 2.2, but what I 19 was going to say to you, I think it was 20 actually -- but I don't -- if the staff 21 entered -- do you have the staff comments that would have been the last one which would have 22 had . . . 23 24 MR. HOLMER: The last access the one's I 25 just handed you.

MR. DUNAWAY: Oh, that was --1 2 MR. HOLMER: E-mailed to the engineer. That was Mr. Walter's final comments concerning 3 4 access. 5 MR. DUNAWAY: Okay. And so I'm quoting for you -- this was Mr. Walters. He says, "An 6 7 all-weather surface will be required from the 8 south right-of-way on Massachusetts to the proposed location of the portable toilets." 9 10 And then he also -- I actually, quite 11 frankly, hadn't realized this. He also says, 12 "Construct a five-foot concrete sidewalk along Massachusetts." I don't remember that. 13 But -- I didn't know that, but in any 14 event, it was -- we understood it to be an 15 16 all-weather. It's not in the land -- I mean --17 well, it's in the design standard manual, but I never found it in the Land Development Code, but 18 19 I'll let staff work on that. 20 MS. RIGBY: And not -- not knowing the particulars as far as the width of the road or 21 22 what have you, you agreed to putting a road in. 23 MR. DUNAWAY: I quess the simple answer to 24 that is yes. You know, it -- it -- it's a 25 challenge that we'll have to overcome, but to

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Page 56 1 not say yes would be -- I mean, we'd be over. 2 And we don't want to be -- we don't want it to be over. 3 We want to do whatever we can to make this 4 work. If it -- if it is that absolutely a road 5 is required, you know, and they say -- they say 6 7 it is now. Again, I want to point out that it 8 wasn't required when we first started this process. April comments from staff didn't 9 10 require a road. It only -- we only had to 11 require -- they started requiring the road very 12 late in this process. MS. RIGBY: And by "requiring the road," 13 it does not further require other things, such 14 as retention ponds or --15 16 MR. DUNAWAY: Yes, ma'am. 17 MS. RIGBY: -- striping or --18 MR. DUNAWAY: Yes, ma'am. 19 MS. RIGBY: -- or --20 MR. DUNAWAY: As I indicated, Ms. Rosa 21 stated that -- and again this is why the road 22 was important and critical for us, you know, not 23 to have to do it, because if you put a pervious 24 surface on the property -- on the property, then 25 you have to account for stormwater runoff.

Of course, right now you have a dirt road. 1 2 There's no stormwater. Presumably gravel would be . . . But what Ms. Rosa testified to was 3 that if a road is required -- and she did not 4 5 opine whether it was or not, but that if it were required, there would be stormwater retention 6 7 and stormwater work that would have to be done, 8 again, something that is expense, engineering, and further complicates the process. 9 10 And again, as I pointed out, road wasn't 11 requested. I don't think we need a road. We're 12 not doing anything other than what we're doing, having folks who are down there. 13 The only truck that has to get down there 14 is the portalet truck. Containers, Inc. has 15 16 already submitted a letter that says, "We don't 17 need a gravel road to get down there. We're 18 doing fine. We're doing fine." 19 MS. RIGBY: And there was no discussion

20 from, like, the fire department or the police
21 department or emergency.

22 MR. DUNAWAY: Mr. Joe Quinn testified. He 23 was fire safety. And in his comments, the road 24 was not premised on the requirement of fire 25 safety, so Mr. Quinn gave us requirements for

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Page 58 what was needed. As I indicated, some signage, 1 some fire extinguishers, those kinds of fire 2 3 safety. But he did not indicate on testimony with 4 5 the DRC that it was him who was requiring the road. Mr. -- Jason testified that it was the 6 7 planning director who had directed the road. 8 MS. RIGBY: Okay. 9 MR. DUNAWAY: Per the Land Development Code. 10 MS. RIGBY: Okay. Moving off the road for 11 12 just a minute, in order to understand the use of the property, you had put together a detailed 13 operating manual. 14 Can you give us kind of a summary as to 15 16 how this operates, how . . . how does one -- how 17 are they allowed to live there? Is there a --18 certain constraints that you can live there if 19 you do this, that and the other, or you can live 20 there so long, or you have to report in so we know that you're there, or . . . Can you kind of 21 22 give us a summary as to how this operation 23 works? 24 MR. DUNAWAY: Yes, ma'am. Absolutely. Be 25 happy to do so. And, in fact, would like it,

Page 59 with permission, to provide the clerk . . . So 1 2 what I've handed to the clerk to be admitted 3 into evidence, and without objection, I'd like that to be part of it, is the operating manual 4 5 for the Sitocia Forest and how the process works. And this was submitted to staff. 6 7 But if I may, if I could have Mr. Kimbrel 8 sworn and have him respond to your question, he's in a better position to do that because 9 10 he's the one that they call, so if you'll swear 11 Mr. Kimbrel. 12 THE CHAIRPERSON: Mr. Kimbrel, if you'll 13 step to the mic and be sworn. 14 MICHAEL KIMBREL 15 upon being duly sworn, was examined and 16 testified as follows: 17 18 19 THE CHAIRPERSON: For the record, state 20 your name and address. 21 MR. KIMBREL: My name is Michael Kimbrel, 22 and I reside at 212 Frisco Road. 23 THE CHAIRPERSON: Thank you. All right. 24 If you would synopsize the operating procedures 25 for the area.

Page 60 MR. KIMBREL: Okay. So anyone wishing to 1 2 reside on our property, we have an interview process that they go through with me. And I 3 find out a little bit of their background. 4 5 I do a -- you know, a criminal background check on them. And some of the criteria I look 6 7 for is people over the age of 50, women, members of the LGBT community, and people that are 8 physically disabled. 9 10 Those four segments tend to be the most 11 underserviced in our community. And since 12 I've -- you know, we self-regulate at 15 residents currently, we are able to -- we choose 13 to assist those in most need. 14 And then once they get through the 15 16 interview process, and we find them a spot to 17 set up a campsite out at the property, they have 18 30 days of a trial period because there is a 19 potential that you can get past my interview and 20 then start acting a fool out at the property or 21 not get along with the other residents. We have a handful of rules. The basic 22 23 rules are to keep your area clean. Since we 24 provide portalets and garbage pickup, there's no 25 reason for there to be garbage laying around, so

we do not tolerate that. There's absolutely no violence. There's no drugs. All of those are grounds for immediate termination off of the property.

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5 We do allow drinking, but we have a 6 no-belligerency policy, so, you know, if someone 7 has a couple of beers when they get back to the 8 camp, that's not a problem. But if they get 9 drunk and start acting up and causing problems 10 out there, they will be asked to leave.

11 So we ask that they, you know, respect one 12 another. We ask that if there's any issues, 13 that they try to resolve them themselves, but if it cannot be resolved, I mediate the -- I come 14 out and mediate the situation. 15 Then . . . Ι mean, that basically sums -- sums it up. Do you 16 17 have any other . . .

MS. RIGBY: No. Whenever -- whenever they choose to leave, do they tell you that they're gone or do they come and go sporadically or once there, do they stay a while? I mean . . .

22 MR. KIMBREL: Yes to all of the above. So 23 it varies. People experiencing homelessness all 24 experience it for different reasons. And what 25 it takes to get them out of homelessness is

Page 62 also -- requires different amounts of time. 1 2 So we don't put a set time limit on 3 people, but we do -- we are constantly 4 encouraging them to work on getting out of the 5 situation that they're in. Permanency is not what we look for. 6 7 But we have had people that have waited over a year to get their Social Security 8 benefits so they can get into housing. And 9 sometimes you have to, you know, apply for a 10 11 birth certificate to then apply for Social 12 Security to then get a Florida ID before you can 13 get a job. And so sometimes there's a lot of hoops to jump through before you can get 14 yourself off the streets. 15 16 We've also had people that have stayed out 17 there a week and gotten back on their feet 18 because they just needed a temporary respite. 19 MS. RIGBY: Right. 20 MR. KIMBREL: So . . . And then I've had 21 people that have left and stayed in contact with 22 me, so I get to get follow-ups on how they're 23 doing. And then I've had people that have left 24 in the middle of the night without telling me

and I've never heard from them again, so, I

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Page 63 1 mean -- so that's why I say yes to all of the 2 above. MS. RIGBY: And then do y'all assist them 3 with getting back on their feet or do you give 4 5 them some direction? You know, go talk to these 6 people or go see these people, as far as 7 assisting them? 8 MR. KIMBREL: Yes. Yes, ma'am. 9 So we -- we depend greatly on other 10 organizations that focus on assisting in certain 11 areas. So if someone's needing Social Security 12 benefits, we help point them in the direction of who they need to go talk to and -- and tell them 13 what they need, so that's part of the interview 14 15 process that I have, is assessing what their needs are, and -- you know, and then point them 16 17 in the directions. 18 I sometimes help out with giving people 19 rides to doctors' appointments or, you know, 20 meetings with attorneys. You know, whatever it is their need is, I try to help facilitate that 21 22 for them. But there's a fine line between assistance 23 24 and enablement, so, like, we try to keep a good 25 balance there of -- of not enabling people to,

Page 64 you know . . . to get -- get lazy with it. 1 2 Like, we -- we want them to continue motivation. 3 We want them to be empowered to get themselves out of homelessness, not have me get them out of 4 5 homelessness. MS. RIGBY: Right. And apparently you've 6 been, if you will, manager of the site for a 7 8 couple of years? 9 MR. KIMBREL: Since its inception. 10 MS. RIGBY: Since its inception. Okay. 11 MR. KIMBREL: Yes, ma'am. 12 MS. RIGBY: And . . . I guess that's all. 13 That's all my questions right now. Thank you. MR. KIMBREL: You're very welcome. 14 15 MS. GUND: I've got a question. So the 16 little rectangular piece that's jutting out that 17 you don't own, you've got permission to build a 18 road through there? 19 MR. DUNAWAY: Yes, ma'am. We have legal 20 access across and through that property in the 21 deed, so we have an easement over that entire 22 strip from the -- if you were to square it off 23 at the -- you know, right there. 24 If you were to square off here, all that 25 whole strip, we have an easement over that

entire strip, so we just simply -- the road is 1 2 where it is because it's the first turn past --3 there's a -- there was an old fence. Most of the fence is still there. It's kind of fenced 4 5 off. But it's heavily bambooed and heavily vegetated. But, yes, we have -- we have access 6 7 over that. Now, the property owner is -- has cleared 8 9 some of that strip because, you know, it's --10 again, it's a nice wooded area, and that strip takes you down to the water, the literal water, 11 12 not just the -- you can see where the wetland marsh is at the very end of it, so. Fishing 13 14 path. THE CHAIRPERSON: Any other questions of 15 the applicant? 16 17 MR. CASEY: I'm just curious. Does the services that are provided, does that require a 18 business license? 19 20 THE CHAIRPERSON: You're directing it to 21 counsel? 22 MR. CASEY: To whoever. 23 THE CHAIRPERSON: Mr. Kimbrel, does it 24 require any licensing, I believe, is the 25 question?

Page 66 1 MR. KIMBREL: Not -- not to my knowledge. 2 I don't believe so. And . . . I guess I need to be mic'd. 3 Not to my knowledge. I believe the reason 4 5 it doesn't require licensing is because there's no commerce taking place. I'm not charging any 6 7 of the residents to stay there, so because 8 there -- I'm not having them work for their stay or pay me any money. There's no business 9 transaction. 10 11 MR. DUNAWAY: And Mr. Casey, if I could 12 clarify, was the question to the services of 13 providing rides and directing to Social Security or was it directed to the issue the operating of 14 the camp? 15 16 MR. CASEY: Just in general. 17 MR. DUNAWAY: Yes, sir. And that was --18 goes to the issue of what I was saying, that we 19 went through the licensing process through the 20 State of Florida. And that was the letter, 21 again, that we got that indicated that a license 22 was not required for that, that we were doing. 23 And, in fact, that's exactly what the -what the letter says. And if I could -- and I 24 25 made copies. I'll provide a copy. Of course,

Page 67 the staff has a copy of that. 1 But Mr. Chairman, with your permission, 2 I'll provide -- this is the letter that we 3 received. And I have a copy for Mr. Casey. 4 5 MR. CASEY: Thank you, sir. MR. DUNAWAY: And that is the letter about 6 7 the license that -- permission that the State of 8 Florida says. And the indication was from the 9 Florida Department of Health, is that we did not need a license. 10 11 THE CHAIRPERSON: Thank you. Is that it, 12 Jesse? MR. CASEY: Yes, sir. 13 14 THE CHAIRPERSON: Are you okay? Any other questions from the board? Any 15 16 question from staff of the applicant? 17 I'm sorry, Fred. 18 MR. GANT: Procedure -- procedurally, can we -- can we call major hearsay -- hearsay at an 19 20 informal -- informal hearing -- hearsay accepted 21 in these proceedings? MS. HUAL: It is at their discretion. 22 Τf 23 you wish to entertain the testimony and how you 24 want to deal with it, whether you want to accept 25 it as evidence is up to you. And you'll judge

Page 68 their credibility. 1 2 MR. GANT: Thank you. THE CHAIRPERSON: Staff, any questions of 3 the applicant at this point? 4 5 MR. HOLMER: No. I was just going to proceed with staff's opening. 6 7 THE CHAIRPERSON: If you'd like to make 8 your presentation, please. 9 MR. HOLMER: Sure. 10 MR. ROBINSON: Even though I'm abstaining 11 from the vote, can I ask questions? I have a 12 couple of questions. 13 MS. HUAL: You may participate. However, you should disclose your conflict. 14 MR. ROBINSON: Okay. My conflict here, 15 why I'm not -- or why I will be abstaining has 16 17 to do with where I work. 18 We potentially have a relationship with 19 Sean's Outpost, so I have to abstain from voting 20 for that reason. 21 With regards to the road and cutting 22 through the easement, paving that road, will 23 that cause -- is that something that is going to 24 cause -- I mean, obviously it's an undue 25 hardship, paving the entire road.

But cutting through that other person's 1 2 property, is that something that's going to be able to be done or does that open up a whole new 3 4 permitting and requesting and hearing process for you? 5 MR. DUNAWAY: Mr. Robinson, in answer to 6 7 your question, I don't know what the engineering 8 difficulties will be. There will be engineering challenges. 9 10 As you can see, that -- you know, that 11 road is running alongside that -- close to that 12 wetland line, so I don't know the engineering. 13 But I can address the legal issues, and that is, we legally have permission across that entire 14 15 strip for access, for use. 16 We couldn't -- we couldn't -- we couldn't do anything that would infringe on the use and 17 18 enjoyment of the strip for its property owner. 19 We do not own the fee, but it is burdened by an 20 access, by -- by an easement, which is the 21 entire -- that entire strip. 22 MR. ROBINSON: Okay. 23 MR. DUNAWAY: So we legally can build a 24 road over it. We're legally using it now, and 25 it wouldn't -- it would require coordination,

Page 70 but it would not require another, I would hope, 1 2 lawsuit. 3 MR. ROBINSON: Okay. THE CHAIRPERSON: All right. Staff's 4 5 presentation, please. MR. HOLMER: Yes, sir. Thank you. Can we 6 7 swear in Mr. Jones, please. 8 9 HORACE JONES upon being duly affirmed, was examined and 10 11 testified as follows: 12 13 MR. HOLMER: All right. Andrew Holmer, Development Services Department. 14 So we're here today with an administrative 15 16 appeal. It's a unique thing that comes to this 17 board. Doesn't happen very often. The standards that need to be met are 18 19 different from those that you see every month 20 with a variance or conditional use. Something else I need to -- unusual. You 21 22 know, your normal variance case, you basically 23 have two sides. You have the county and you 24 have the applicant. 25 An appeal like this is unusual, in that

Page 71 you essentially have three sides, if I can try 1 to make sense of that. We have an applicant. 2 We have an applicant that is seeking to find a 3 way to help an underserved part of our 4 5 community. And he's trying to do it in a way that he feels will provide the most help without 6 7 providing harm to the neighboring properties. 8 Yes, the state is -- they license 9 campgrounds. Okay. Our Land Development Code also has criteria for campgrounds. 10 This 11 property is zoned HCL, heavy commercial, light 12 industrial. 13 It's an allowed use. Campgrounds are an allowed use. But with any change of use, you 14 15 need to go through DRC. And I'll go into that 16 process. 17 The other side here is the neighbors. And 18 we have quite a few who have shown up. Excuse 19 I'm assuming a number of these are the me. 20 neighbors. They're in a position of having no 21 Look: 22 guarantees that this camp will have no adverse 23 impact on their property, their way of life, 24 property values. I mean, for most folks, your 25 home is your biggest investment. That's --

Page 72 There's some strong emotions involved on that 1 2 side. 3 Same with the applicant. Here's -- he wants to do -- to help, so obviously there's 4 emotion on that side as well. 5 But the third side in this case is the 6 7 county. We're the reviewing agency. Okay. We 8 issue permits for a change of use. We issue permits based on a development order. 9 10 We, the county staff, in our review we 11 have to distance ourselves from any sort of 12 emotional appeal. You know, we have to be the black and white, rather like our Land 13 14 Development Code. As I tell this board all the time, our 15 Land Development Code is black and white. 16 17 There's no shade of gray for the staff. It 18 either meets the requirements or it doesn't. 19 We have a -- Mr. Robinson, you had 20 mentioned in your comments the paving being an undue hardship. We have -- we have kind of a 21 22 philosophy here we follow at the county, where 23 there's one set of rules that applies to 24 everyone every time. Black and white. Doesn't 25 mean yes or no.

Does everyone have to go through this? 1 2 You know, everybody goes through this, the same requirements. And the requirements in this, our 3 code does give us conditions that have to be 4 followed. 5 And they're in your package. Let me pull 6 that package. So we have -- we have a section 7 8 from the code in here. And it goes through 9 those specific requirements, if you will go to the first couple pages there. Of the -- You 10 11 know, what we've got them on there, if you can 12 go to the next -- come on down. Come on down. 13 Up, up, up. Compliance review. Okay. This is what's 14 in your package. This is what -- this is the 15 16 code that was taken -- the section that was 17 taken out of the code that refers to 18 administrative appeals. 19 So with a variance, you know, you have 20 your criteria based on unique physical hardship on the land, et cetera. 21 22 So for this one, as it says there, 23 straight from the code, BOA shall conduct this 24 quasi-judicial public hearing to consider the 25 appeal.

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Applicant has the burden of presenting competent substantial evidence to you that establishes each of the following conditions.

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First one being, arbitrary or capricious. At previous hearings, I gave you the state definition. I'll do that again, if you'll go to the next slide.

Essentially, with their needing to prove on this case is that the staff's denial -- the staff decision to deny was either arbitrary or capricious, essentially saying that there was no -- no logic behind it, there was no -- no basis in the code for our -- the denial.

14If you'll scroll down. Next one being15Land Development Code noncompliance. And once16again, the burden is on the applicant. You17know, the county did what it did. They're18appealing the decision of the county.

19So essentially, was the -- was the county20appropriate in their decision? What -- did it21follow the LDC? Is there an adverse impact to22this applicant by the way of the county23following the LDC, like we do for everyone else?24Look: Our process is very simple. You come for25your development review. You meet the code.

Page 75 Development order's issued. You proceed. 1 2 Protected interest. Again, all interests 3 are protected the same, whether comp plan, LDC. Individual property owners, we use the same 4 standards for all every time. 5 Greater impact. This last one -- it kind 6 7 of filters into situations where we've had --8 the county approved the development order, and a neighbor or someone will come up to object to 9 the approval. 10 11 It keeps bringing us back to the same thing, one set of rules, and the black and white 12 reality of if a project comes through 13 development review, it meets all the 14 requirements, hey, we issue the development 15 16 order. If it doesn't meet all the requirements, 17 it results in a denial. 18 Now, you know, as I said, staff is outside 19 the emotional realm on this. The denial is not 20 based on the idea. It's based on the submitted 21 plan. It wasn't denied by the staff saying, 22 "Well, this could meet the code," or the 23 applicant saying, "Look: Well, we could do this." 24 25 It's what was done. Did that submission

Page 76 meet the code as it was submitted? Yes or no. 1 2 You know, the idea of a campground, yes, we -we're fitting this there. 3 It's not a residential use. The way our 4 code defines a residential use, it falls under 5 campground. Therefore, it's reviewed that way. 6 7 Is there an option? Mr. Dunaway brought 8 up the idea of conditional conditions added to 9 approvals. You do see conditions added to 10 approvals quite often. You do on a development 11 order. 12 But when you see a condition for approval, 13 it's along the lines of "wetlands to remain undisturbed." For whatever reason, this site, 14 your special condition, you're limited to X 15 16 amount of signage; you are required to have 17 certain hours or something. It's not a condition -- something that 18 19 would need to be on the face of the site plan. 20 The all-weather surface. And the county looks 21 at an all-weather surface as saying, "Hey, it's a hard-driving surface." Okay. It's an 22 improved surface. 23 24 It's not just dirt: asphalt, concrete, 25 gravel, shell. It's something designed to

Page 77 ensure that adequate runoff is taken care of 1 2 through stormwater provision under normal rainfall. You know, it's not going to erode 3 away without -- you know, it's the kind of 4 surface that's not going to deteriorate under 5 your average rainfall, like a dirt road would. 6 7 The problem we on the staff side would 8 have making something like that a special condition, where the development order would 9 10 say, "Okay. It's approved, with the condition 11 that you then come back and make this an all-weather surface." We can't do that. 12 An all-weather surface brings in at that 13 point runoff. When you get runoff, now we're 14 going into the stormwater issues. There has to 15 16 be a separate technical review on that. 17 The plan submitted on the first page of 18 the plan, there are no calculations at all for 19 stormwater runoff. 20 The DRC can't approve a plan saying, 21 "Well, eventually you're going to put something 22 on there. It's going to cause stormwater. We 23 don't know how much, but we're going to sign off 24 anyway." The county cannot do that. 25 Something else that comes in. Once you

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Page 78 start looking in that direction . . . just do 1 2 the regular site plan, if you would. Mr. Walter's comments did reflect that, 3 Okay. If . . . you know, he did mention the 4 idea that an all-weather surface, the width of 5 it may be reduced to 16 feet. That was approved 6 7 through -- by our fire safety folks. They 8 wanted to make sure they could get in there. Ιf 9 it's an all-weather surface, they wanted 16 feet. 10 11 There is a fire hydrant at a nearby 12 corner, so they weren't worried about having to 13 get water. They knew they had the hydrant. But the idea of going -- as a condition, an 14 all-weather surface besides stormwater, it kicks 15 16 in some other things. 17 Mr. Walter's last comment on there was to 18 please on the site plan delineate the area of 19 the access easement. It's right here on the 20 deed for Sean's Outpost. And it delineates that 21 area, if you would, that Mr. Dunaway was 22 referring to. 23 I plat out the legal description. That's 24 it. Okay. That is that 25-foot access easement 25 granted to the Sean's Outpost property. They

Page 79 have the right to access that. They have the 1 2 right to cross it. That needs to be shown on our development 3 4 record plan. It was not. We cannot grant a 5 development order saying, "Well, sure. Everything's good." You know, anybody else 6 7 would tell them to follow the procedure and 8 label that, but "we're not going to do that in this case." 9 We don't do that. One set of rules for 10 11 everybody every time. The easement? There may 12 be issues there with paving that. The deed for 13 the Sean's Outpost property clearly says "permanent access easement." Doesn't say 14 anything about an all-weather surface. 15 16 The county would have issues at that point of saying, "Well, you have an easement. You 17 18 have the right to cross. We're going to want 19 you to develop on someone else's property." The 20 other folks own the piece of property. 21 The county cannot say to an owner, "Well, 22 you have an easement across someone's property. 23 We're going to demand you develop that 24 property." We have to have -- the other folks 25 have to sign off on that being done. So these

Page 80 are other issues that start kicking in when we 1 start looking at an all-weather surface. 2 You know, other things on the plan. At 3 the DRC meeting, all the focus was on the 4 5 roadway and the fact that it wasn't shown on the 6 plan. 7 There's other things that weren't shown on 8 the plan that had been discussed through the various times of the submittal. Buffering 9 10 requirements. Heavy commercial, light 11 industrial. We require a buffer between that 12 and residential uses. On the plan, it's shown as a 10-foot 13 buffer. Just says, "10-foot buffer." 14 Land Development Code calls for a 20-foot 15 16 buffer, with a Schedule C planting. That's a 17 specific delineation of, say, for every hundred 18 feet you need to put this number, this type of 19 tree, this type of bush, et cetera. It's very 20 specific. We require these things to be on a 21 plan for everybody. 22 On here it's just shown as 10 foot. 23 There's a note on there that says to look at 24 page C-3 for the buffer requirements. Page C-3 25 of the plan shows the driveway at Massachusetts.

It shows the requirements for that.

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And it's got two sketches off to the side showing the requirements for planting -- for planting a bush or for planting a tree, not a -okay -- like we require with everyone else, a full listing: We're going to use Schedule C. Here's what it entails.

We ask everyone to put these things on a site plan. It's not -- we're not calling out on one project. We go this way with everything.

11 You know, our . . . our staff, the 12 county -- our point here is pretty basic. If a 13 project comes in and meets the requirements, 14 we're going to approve it. If it doesn't, it's 15 going to be denied.

16 The conditions that we're allowed to 17 approve with conditions are not going to be 18 things that kick in other technical reviews 19 because we have no certainty on that.

We have no certainty that if the all-weather surface, when that goes in, is the stormwater -- what are the calculations? We don't know. Our engineer hasn't gone through that. We don't have anything given to us to move with that.

Is that going to affect the wetland area? 1 Is there additional environmental review? 2 We don't know. There is a lot of uncertainty 3 there. We cannot approve a development order 4 with that level of uncertainty, not with 5 something that is required to be shown on the 6 7 plan. It keeps coming back to one rule, one 8 rule for everybody. 9 So the applicant is seeking to overturn that denial. This board -- this board has some 10 11 powers when it comes to administrative appeal. 12 This board has the power of essentially the official that approved or denied the plan that's 13 out there. 14 Part of that, though, is the idea that 15 16 while you have the power to overturn, this board 17 does not have the power to come through and 18 say -- in fact, I'll read it here from the code. 19 "The BOA shall have the same authority and 20 responsibility to change a decision found to be in error as is given by the LDC to the official 21 who made the decision, but no more. 22 "The board may act only to the extent 23 supported by the established record of evidence 24 25 and only as necessary to maintain compliance

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Page 83 with the LDC and Comprehensive Plan. The board 1 can not offer opinions or interpretations 2 3 generally. "The authority of the board to act as the 4 official does not -- does not -- include any 5 authority to diminish or otherwise change the 6 7 application of any -- any -- technical design 8 standard or specification established or referenced in the LDC." 9 You have the power of the person signing 10 11 the development order. You do not have the 12 power to say, "Hey, let's just go ahead. Let's 13 approve it as is," because we don't know what the technical specifications are. 14 Y'all are a varied group. You have a 15 16 varied amount of experience. You do not have 17 the power of our stormwater engineer to review 18 something that there's no calculations for. 19 So what we're asking, the county, is we're 20 asking you to look at this in sort of a 21 dispassionate sort of way. Black and white. Did it meet the code? Yes or no. Was the 22 23 county decision to deny correct or not? The denial is based on deficiencies in the 24 25 submitted plan, the sort of deficiencies that

Page 84 would have resulted in a denial for any other 1 2 project that came through developer review. It comes down to: Hey, could this meet? 3 But what was submitted that day? Did it meet 4 5 Yes or no. And that -- that's the county's it? stand on this. 6 7 We don't have a lot of leeway here. 8 There's no gray area for the staff. What was submitted that day, the decision was made. 9 Did it meet the code? Yes or no. It did not. 10 Ιt 11 was denied. 12 That's the staff's opening. 13 We'll move on from there, if you have 14 questions. MR. STROMQUIST: I've got a couple of 15 16 questions for you. 17 MR. HOLMER: Yes, sir. 18 MR. STROMQUIST: When I'm looking at this 19 whole project, are you telling us that we as the 20 board could not say the initial submission without a paved road is approvable or do we have 21 22 to include a condition of a paved road into 23 anything that we would yea or nay? 24 MR. HOLMER: You can only act to the 25 extent for compliance with the LDC.

Page 85 MR. STROMQUIST: What I'm saying is, 1 2 initially they put in an application that didn't have a paved road; right? 3 MR. HOLMER: There were multiple site plan 4 submittals. Let me -- You know what I should 5 do? I should tell how the DRC works. 6 I'm 7 sorry. 8 Development Review Committee. Here's how 9 this works: Someone turns in a site plan. Ιt gets reviewed by the various disciplines that 10 11 look at a site plan for approval. 12 Yes, you have planning. You have access, 13 fire department, stormwater, environmental, health department. Anybody that needs to review 14 it does so. 15 16 When those reviewers look at it, they 17 generate a list of comments. They say, "Here's 18 what the LDC says about what you want to do. 19 Please show this. Please provide this, " et 20 cetera, et cetera, on your drawing. The first submittal usually doesn't have 21 22 everything on it, and it didn't in this case. 23 The second plan submitted didn't have 24 everything on it. In fact, it didn't have some 25 of the things that were first requested.

The third submittal. They're coming in 1 for their final. They want to get their 2 development order. That's the end game here of 3 development review is, you turn in your plan 4 that meets all those conditions that were 5 requested. You get a development order that 6 7 allows you to pull permits, and move on. 8 The final submittal was missing a number 9 of these things that had been mentioned all 10 along. Some of them, sure, it may sound petty. 11 You know, hatching the easement or describe --12 you know, labeling that buffer, giving us on the sheet exactly what the plan schedule is for that 13 20-foot buffer, not 10. Those may seem like 14 nitpicky things compared to the idea of the road 15 16 and everything that it would kick in. 17 We require those of everyone, though. We 18 ask the same of every single applicant. Those 19 things were not shown on the site plan. That

20 gets us to this point.

21 It's: Did the plan that comes in that --22 came in meet the requirements of the LDC? 23 This board is being asked: Does this --

24 did the denial, was it based in fact on the 25 code?

Page 87 Here's what the reviewer said. Here's 1 2 their -- they give their references to the code sections. Were those things on there? No. 3 А number of these weren't. That's what this board 4 is left with. Did it meet it? Yes or no. 5 6 MR. STROMQUIST: And I guess my question: 7 You talk about stormwater runoff, but there 8 wouldn't be a problem unless you put a paved 9 road in there. 10 So at current conditions, the way they're 11 using this, there is no stormwater runoff 12 problem? 13 MR. HOLMER: There might be. We don't know. 14 MR. STROMOUIST: But there hasn't been one 15 16 indicated is what I'm getting at. 17 MR. HOLMER: Once again, we don't know. 18 The reviewer mentioned, you know, in his 19 comments the all-weather surface for the trucks 20 going in and out to access the portalets. 21 MR. STROMQUIST: They do that now; right? 22 MR. HOLMER: Yes. Yes. But to come in 23 for -- to come in through development review, 24 once again, it's not could it meet it or is 25 what's currently going on there.

They're requesting a change of use. 1 Ιf 2 you're requesting a change of use, you're going from what you're doing to what is approved by 3 the Land Development Code. 4 If the code is requiring you to meet a 5 certain condition, like in this case an 6 7 all-weather surface, that's what we're dealing 8 with. Yes, the all-weather surface then kicks in all these other reviews. 9 10 Once again, those -- there's no stormwater 11 calculation. The road is labeled as a dirt 12 road. What's required and what was provided that they needed to require is not on the plan. 13 That's why it was denied. 14 MR. STROMQUIST: So you're telling me that 15 16 no matter what our decision is, this still has 17 got more hoops to jump through? 18 MR. HOLMER: The hoops were not all jumped 19 through at the time that this was presented for 20 development order approval. Because the hoops were not jumped through, it was denied. 21 22 This board can overturn a denial of any official action that falls under your --23 24 MR. STROMQUIST: Right. 25 MR. HOLMER: Requirements. But the

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1	section is telling you you cannot overturn some
2	sort of technical specification.
3	You cannot say, "Well, we don't think this
4	should follow the code."
5	It's down to, really, an appeal. It's
б	not: Let's argue about these performance
7	standards. It comes down to: Was the county's
8	denial arbitrary and capricious, really?
9	That's that's really what it comes down to at
10	the end of the day.
11	Was the denial just pulled out of thin air
12	or does that denial did that denial have
13	basis in the Land Development Code? That's
14	really what we're talking about today, not the
15	two emotional sides.
16	I mean, I understand that, but we have no
17	option to go there. We don't want to go there.
18	It's not our business, the emotional side of
19	things. We're black and white. Did it meet it?
20	Yes or no.
21	Board, here's what's being appealed.
22	Based on the code, was the decision just
23	arbitrary? Because if it was, sure, it could be
24	overturned easily. But it was not. It was
25	based on the code. We don't the staff does

Page 90 not have wiggle room to make judgment calls on 1 this. It's black and white. 2 MS. RIGBY: Okay. I want to say 3 something. I've been -- I've done construction 4 5 plans, been a land developer 15 years. I've been through the DRC process. It is a tedious 6 7 process. 8 My concern right now is that I don't think 9 that the board is getting the full understanding 10 of the DRC process. And it may be that y'all 11 can help us clarify this. 12 When you submit a site plan, which 13 whenever I submitted one, it was usually for a subdivision, regular subdivision. Had roads, 14 had stormwater. We had footprints of houses, 15 16 covenants, all that kind of stuff. 17 And the first submittal -- we would have a 18 preapplication. The first submittal, we would 19 get a lot of comments back, and they were 20 standard comments that everybody gets. And as -- as we submit or we discuss or we 21 22 adjust the comments based on our subdivision, we 23 work with the county saying, "Well, you know, you said 10 feet. Could we have 7 feet, or the 24 25 stormwater you wanted here, can we put it more

Page 91 to the north or to the south?" We are in 1 constant conversation with the staff and their 2 different departments, if you will. 3 And then we get to the final. And we 4 5 label everything that they wanted us to label. And sometimes we bend over backwards, that some 6 7 of the items are what I would consider 8 rudimentary. 9 It sounds to me like maybe what was in the beginning in the first plan switched to what it 10 11 is today, what was submitted in the final, as far -- as I don't know if it's use. I don't 12 know if it's -- what you call it. Not a 13 residential area but now a campground. 14 Therefore, it's reviewed differently. 15 16 What I would like to know is -- because 17 this road, did it come in the last minute 18 saying, "Oh, by the way, we need a road"? Was 19 it in the beginning? Was it discussed in the 20 beginning, which is where it should have been, that this will need to be an all-weather road, 21 22 and you will need to show it as a all-weather 23 surface that needs to be 16 feet wide, so forth, 24 and so on? 25 We have engineering plans from -- I think

Page 92 it's Landmark, well-known engineering survey 1 firm in the area. This isn't done on a piece of 2 paper. This is done by, I'm assuming, an 3 engineer and survey work who had probably gone 4 5 through the DRC process before. So this isn't something that -- wasn't just drawn on a piece 6 7 of paper. 8 It was probably given to these engineers, and they probably went step by step because it's 9 10 time-consuming and it's tedious, and it can get 11 very expensive. 12 I guess what we need to know is, what were the beginning comments? What changed? When did 13 the road come into play? When was it an 14 all-weather surface that was 16 feet wide? 15 When 16 did that come into play? 17 MR. JONES: That came into play -- Horace 18 Jones, Director for Development. 19 The chronological order is -- and Mr. 20 Dunaway stated -- is very, very long. It's been 21 a very, very lengthy process. 22 If my memory serves me correctly now, Mr. 23 Will Dunaway -- they were aware of this 24 all-weather surface requirement earlier in the 25 stages, and I think he can state that.

Page 93 MS. RIGBY: For the application process, 1 2 or review? MR. JONES: During -- during our 3 initial -- during our initial going back and 4 5 forth with the reviews. And they were aware of the issue, going back and forth with that issue. 6 7 Before we got to this point, we were -- they were aware of it. 8 9 Now -- now, there was some -- there was 10 some going back and forth trying to -- trying to 11 expert -- we were trying to help them out 12 because of the financial concerns, but the code still spoke so heavily. 13 The requirements of the Land Development 14 Code must be met. During all of this process, 15 16 there was a special magistrate hearing in the 17 middle of this process. 18 And Mr. Will Dunaway can attest to that. 19 And at that special magistrate hearing, the 20 direction was with staff to furnish them all of 21 the necessary comments again. And they'll be 22 working -- and we did that. 23 As a matter of fact, we sent the comments to Mr. Dunaway again. And to -- and at the time 24 25 that they submitted, they were given a certain

Page 94 date to -- to submit to try to bring closure to 1 2 this to the special magistrate. I don't know if you got a copy of that, but stated that we need 3 to bring closure to this with the DRC process. 4 5 So . . . and that helped us all. So when that special magistrate order was 6 7 made -- to try to get those comments to Mr. 8 Dunaway and his client. That was submitted -- I believe I'm saying this correctly. I think the 9 10 record shows it was Mark Spitznagle, Landmark. 11 Staff again -- they determined --12 submitted the comments to him because in the 13 letter that Mr. Will Dunaway submitted, the day he submitted the plan stated that. Mr. -- On 14 the letter, that Mr. Mark Spitznagle -- can we 15 16 see all of the comments? 17 And we did. And we submitted that. So 18 during the initial stage -- like you said, it 19 was pre-op. But during the initial stage, it 20 takes -- we go back and forth, back and forth to 21 try to make sure we get the Land Development 22 viewpoint. And the many -- many times special 23 magistrate order, that helped us to really, 24 really direct them to get to a landing point and 25 staff to get to a landing point.

Page 95 So -- so -- so they were aware of the 1 2 comments on all-weather surface. They were aware of that -- of that being -- of that -- and 3 I think Mr. -- he stated that fact, that they 4 5 were aware of it. But the issue for them is we do not -- we 6 7 asked staff and Mr. -- you stated very 8 eloquently and very, very, very, very, very professional that we have to separate ourselves 9 from the emotional side of it. 10 11 But their problem is, "Mr. Jones," he told 12 me many times -- talking about Mr. Kimbrel --"We don't have the funds." But the code does 13 not look at that. The code looks at the 14 letter -- of what the letter of the code 15 16 requires. 17 And access management -- stormwater. And 18 when they submitted those plans, there's 19 nothing -- we saw what the plans, the dirt --20 dirt-dry was wet. You need to try to -- let's go back and forth, see if we can -- again, you 21 22 can try to get that worked out. 23 But the day of when it came closer and 24 closer to the BOA or to the -- to the step 28, I 25 believe that was the DRC denial, my memory. I

Page 96 think that was the submitted -- October was when 1 2 I think was one of them. They still wasn't there until the last minute I heard again in Mr. 3 Dunaway on -- on this particular issue. And 4 5 that's why it was denied. Yes, this has been a very lengthy process 6 7 to try to bring closure to this point. The 8 use -- and I think Mr. -- the use has -- was already basically classified an order through 9 10 with the help of the special magistrate, that, 11 yes, this is a commercial review. It's not 12 residential. It's not -- it's not normal. But as he 13 stated as a matter of factly, that it's not a 14 residential use. That use was already -- that's 15 16 what we require for any commercial development. 17 Requires a site plan review process. And that's 18 why they are in this process, trying to go 19 through it. 20 And we -- we work and try to get to the point where at least give the staff all the 21 information to review. And the road was not 22 23 there, which, as you know, trigger stormwater. 24 And all those comments were mentioned, 25 but -- and I think he stated for the record that

Page 97 we just didn't have the funds. But we cannot 1 2 look at that, regardless of how much it -passionate they may be about it. 3 And I think we stated this board have to 4 5 look at: Was the decision to deny it, was it based on requirements of the design study 6 7 manual, which is definitely part of the Land 8 Development Code? 9 And that's the reason why it was denied, 10 based upon those status. Yes, very lengthy, 11 very long, but we had to get to this point for 12 closure. 13 And that is where we are at this point today, from the direction of the special 14 magistrate trying to comply with that special 15 16 magistrate order, and trying to follow through 17 so that they'll know to bring closure to this 18 issue from the site plan review site. 19 MR. STROMQUIST: Horace, what would happen 20 if we agree that they had to put in the 21 all-purpose road and you guys have denied their 22 permit? 23 Where do they go from here? I mean, 24 there's a -- I don't want something that all of 25 a sudden they have no place to go and the site

closes down.

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2 MR. HOLMER: Okay. There's two avenues: One, as with any decision of this board, there's 3 30 days to appeal that to Circuit Court. 4 5 Two, they have indicated, "Hey, we could meet these requirements." 6 7 Okay. If you can meet the requirements, 8 turn in a plan showing that, and then we'll go 9 to the DO stage. I do not have the -- all the 10 information from the special magistrate's last 11 ruling. I'm not sure . . . There was something about time kicking in, but I wasn't the person 12 13 arguing that case. I don't have the magistrate's ruling, so 14 there may be some things there that need to be 15 16 followed in that direction. I believe Mr. 17 Dunaway can address that part. 18 MR. DUNAWAY: Sure. 19 MR. HOLMER: If someone turns in a 20 development order, it doesn't meet the requirements, it gets denied. That doesn't mean 21 22 they can't resubmit meeting the requirements. 23 MR. JONES: And I would add to that, and 24 even if they did, the requirement's still going 25 to be the same. It's still -- See, that's the

Page 99 thing also, too. Once you start -- you know, 1 2 once you start looking at road access, whether it's gravel, dirt -- it cannot be dirt. It got 3 to be semi-impervious surface, whatever the 4 5 requirements is in whatever it is. Definitely stormwater. And then -- and it 6 7 could -- has the potential of triggering another fire review by fire safety to make sure that 8 whatever that surface is -- this is my 9 understanding, that whatever that surface 10 material is, got to be able to withstand a 11 12 truck. 13 I'm not the expert. I know Mr. Will is going to say there's a possibility. So 14 whatever -- if they -- if there's a decision by 15 16 this board to remand it back, I don't know if 17 I -- I don't know if that's possible. 18 They're requiring -- the code still going 19 to stand as it stands. And it may require 20 engineering plans from a -- to do all the stormwater calculations, but that's a fairly 21 22 lengthy road, as you can see. 23 So -- so -- so -- and that's what --24 that's why it was denied, based upon -- if -- if 25 there is -- if -- if they feel like that with

Page 100 the whole process was flawed, the courts can 1 2 decide that, whether or not there was some 3 discrepancy in the Land Development Code. The 4 courts can -- can -- can -- can -- can 5 work on what else will we need to do -- what we need to do from that point. 6 7 But the -- the -- the requirements of the 8 Land Development Code still going to speak for itself, even though it may be remanded back, if 9 that's the decision. 10 11 We still going to -- we still going to 12 have -- meet the same standard. And it may trigger other reviews. We just cannot say at 13 that point -- at this point. 14 What's the time frame? 15 MR. STROMOUIST: 16 Say they resubmit it with what you're asking 17 In the meantime, we don't have somebody for. 18 coming in and kicking everybody out. I mean, 19 what's going on? 20 I'm sorry, Mr. Stromquist, MR. HOLMER: but that is where the other side of the house, 21 22 not the planning development side of the house. That's for the code enforcement side and special 23 24 magistrate come in. 25 Once again, not having a copy of that

Page 101 ruling, I'd kind of defer that to Mr. Dunaway, 1 if he would like to address how that would 2 factor in. 3 MR. STROMQUIST: I mean, is it 90-day time 4 frame? Is it six months? 5 MR. HOLMER: We -- we don't have one. 6 Oh, 7 oh. I think I know where you're going. Ιf 8 someone's denied a variance, they can't come back for 180 days. This isn't like that. 9 10 MR. STROMQUIST: That's why I wanted to 11 make sure we weren't putting them in limbo for 12 six months. MR. HOLMER: This doesn't have the same 13 requirement, but I know there was something in 14 15 that magistrate's ruling that we know is going 16 to play a part. I just -- I just wasn't a part 17 of that. 18 MR. DUNAWAY: Mr. Chairman, may I -- may I 19 address and respond to Ms. Rigby's question? 20 THE CHAIRPERSON: Absolutely. 21 MR. JONES: For the special magistrate, I 22 have a copy of the order -- of the signed order. 23 If you want to submit that in evidence, I do 24 have a copy of the signed special magistrate 25 order.

Page 102 And -- and -- and I am not -- I am not no 1 2 lawyer, but I think it's -- it gives three 3 statements on page six, if you want to . . . Mr. Dunaway, which is part of the packet. I 4 would like to submit -- if possible, I would 5 like to submit a copy of the signed order from 6 7 Mr. Robert Beasley, special magistrate. 8 (Mr. Robinson left the hearing.) 9 MR. DUNAWAY: Mr. Chairman, for the 10 record, that's dated 10 August 2016. 11 THE CHAIRPERSON: Okay. 12 MR. DUNAWAY: A seven-page document. 13 THE CHAIRPERSON: We need a motion from 14 the board to accept this. 15 MR. STROMQUIST: Make a motion to accept 16 the document. 17 THE CHAIRPERSON: Got a motion from Bill. 18 MR. DUNAWAY: No objection. 19 MS. GUND: Second. 20 THE CHAIRPERSON: We have a second. 21 Those in favor, signify by raising your 22 right hand. 23 (All board members hands raised.) 24 THE CHAIRPERSON: Passes unanimously. 25 Let the minutes reflect that Mark

Page 103 Robinson, board member, was excused to depart. 1 2 We maintain a quorum. 3 MR. HOLMER: And we're going to label this as -- we'll call it Staff Exhibit 1, for 4 5 purposes of adding it. THE CHAIRPERSON: That's fine. 6 7 MR. GANT: Question, Mr. Chairman. 8 Essentially, are we allowed to supplement the record? Can we submit an exhibit? Can our 9 10 staff do that? The plaintiff? Or does it --11 that procedure -- showing that -- submit the exhibit into evidence? 12 THE CHAIRPERSON: I think the motion 13 covered that. 14 15 MR. GANT: Okay. 16 MR. JONES: But I -- I want to -- I want 17 to clarify for the record, to preserve the record, the order was October -- August. 18 19 MR. DUNAWAY: August 10th. 20 MR. JONES: August 10, 2016. That's 21 the -- and there was an amended order with some 22 changes, minor changes -- minor submissions. 23 That was September 7, 2016. So I would like to 24 submit both of these orders, both the special 25 magistrate order and the amended order, as is

Page 104 evidenced in the record. 1 2 MR. GANT: Mr. Chairman, Mr. Dunaway 3 being -- as submitted is correct. MR. DUNAWAY: No objection. Thank you, 4 Mr. Chairman record. 5 MR. GANT: Reflect that also. 6 7 THE CHAIRPERSON: Yeah. 8 MR. DUNAWAY: Mr. Chairman, may I 9 address --10 THE CHAIRPERSON: Yes. 11 MR. DUNAWAY: Ms. Rigby really did cut 12 through the three years of my life very 13 succinctly in that process. If we were developing a subdivision, we'd 14 be done, you know, except for the fact that, you 15 16 know, I'd be working for a developer that 17 doesn't have any money. 18 But beyond that, we understand that. We 19 know how to build roads, put in infrastructure, 20 build a house at the end of it. We know how to 21 do that. We know what the code says on that. 22 Staff knows what the code -- what the code says on that. 23 24 Staff does not know what the code says 25 about doing nothing. That is, we came to them

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and said, "We don't want to do anything. 1 We're 2 not building anything. We're not going to do anything. It's -- it's our property." 3 We just want people -- people wander up. 4 5 They go through the process that Mr. Kimbrel just explained to you. We'd like to have them 6 7 to say, "You may stay here. It's our property. 8 You may -- you may have a safe place to be." 9 That's what we're doing. That's the thing 10 we were doing. And we went through just endless 11 discussion about, well, what does that mean? Is 12 that a land use change? Ms. Rigby knows this. We're not building anything. If we're 13 building a building back there, we'd have to get 14 access back to it. We know how to do that. 15 We 16 were trying to simply get a use. Importantly -- and this is important. 17 18 You've already heard staff admit and say that 19 this is an allowed use. The code allows this 20 use. This is an allowed use on this particular 21 zoning area. 22 Now the question is, now what? And this 23 is the concern. And there is the process. And 24 this is why you have pointed out we didn't 25 submit for anything.

## WIERZBICKI COURT REPORTING

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Page 106 We -- in fact, we argued for a year Ms. 1 2 Rigby, and Mr. Chairman, and this board -- we 3 argued for a year with the county that we don't need a permit. We're simply there. 4 It's our 5 property, and people are there. What is that? And I will -- I will say -- and I'm going 6 7 to submit this -- but this was -- Mr. Jones 8 provided this to you because I -- you know, I 9 asked him, and he'd hopefully provide it. And 10 he signed it on July 6, 2016, the summer, 11 because by that time we were under the gun with 12 the code enforcement because we had to get something going. 13 14 We didn't have the time that you -- you know, going back and forth in some form of 15 substance, label it, and do the trees, and then 16 17 hashmark it. We were done. Magistrate said, 18 "Do it. You got to be done." 19 But here's the document. I'm going to 20 present the whole document, but I -- I want to 21 just read for you what gets to the point that 22 you're saying. 23 In the second paragraph, it says, "Given 24 that an application is a request to obtain 25 required county approval of a regulated land

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use, your letter -- and it says "the letter."
He was referring to my letter. I had actually
sent a letter, out of frustration to the county
administrator and said, "I'm not doing anything.
We're not trying -- we're not asking permission
to do anything. What is it we're supposed to
do?"

8 And he said, "Your letter's assertion of a 9 request to do nothing" -- because I had said, 10 "We're not doing anything."

"Your assertion of a request to do nothing and not develop is contrary to the submission of an application to permit a regulated use." No; I know. I agree with Mr. Jones. It was a catch-22.

16 If truly nothing is proposed, then nothing 17 requires review and approval. But the "nothing" 18 in quotes that is proposed to be done is the 19 something that has already been done.

20 That is the doing of something prior to 21 approval does not make a subsequent request to 22 obtain approval a request to do nothing. At a 23 minimum, such a request is to approve what has 24 been done.

I mean, that's what I'm trying to get

25

Page 108 through. That's what we're trying to say. Is a 1 2 road required? Yes. 3 If we're going to put back a -- and our original fault was, we were going to build a 4 5 shelter down there. It was going to be a large area. We would have a kitchen facility, 6 7 bathrooms, place -- we -- we were -- that was 8 going to require a road. Everybody knew that. 9 We knew that. 10 But we don't have any money. We ran out 11 of money. That wasn't the process. So we came 12 back to the county. We said, "That isn't going to work." 13 And they -- and they go, "Well . . . " and 14 we said, "We just want to do what we're doing." 15 16 And you say we have to get permission, so we're 17 going to ask you for permission. 18 And they said, "Well, you got to do a site 19 plan, and you got to pay \$859 to submit the site 20 plan." And we said, "Well, what do we put on the 21 22 site plan? 23 "Well, you know, you gotta get -- you have 24 to get a survey, a wetlands survey. You know, 25 you gotta, you know, show us where the tents are

Page 109 going to be." 1 2 Well, the tents move. 3 "Like, give us an idea. You know, I mean, just tell us something." 4 And then finally -- finally -- and again, 5 you can go to the staff. They're in a catch-22. 6 7 They said over and over to you, "Black and 8 white. We follow the code. Black and white. We follow the code." 9 10 I get it. But you're the shades of gray. 11 You're -- you've the opportunity to say --12 because they're under the gun, because the 13 magistrate hearing -- because the county put code enforcement saying, "Hey, you don't have 14 permission to be here." 15 16 Of course we said we didn't need to, but 17 in any event, the special magistrate said, 18 "Look, y'all got to do something. You gotta be 19 done. Submit the thing and make it -- get our 20 approval, don't get our approval. Follow the appeal process if you have to, but come back to 21 22 me at 90 days afterwards and tell me what's going on." 23 24 That's why the process ended. Otherwise, 25 we would be, just like you, Mr. -- we'd still be

Page 110 working with staff. And -- and again, Mr. Jones 1 is right. We said -- they said, "You know, 2 look. Have to build a road back there." 3 Well, we can't do it. I mean, we can't 4 5 build a road. Is that really required?" "Well . . . " and we went, again, back and 6 7 forth. I had hope and I still hope, because I 8 want to hear, that we're going to hear this, 9 "It's not arbitrary and capricious that we require a road because if you're not -- it is 10 11 arbitrary and capricious to require something 12 that's not required." So I want to get to an issue of exploring that. 13 But if it is that -- if that is the case, 14 then you can condition it. I know what Mr. 15 16 Holmer and Mr. Jones are saying. They're 17 saying, "We can't because we're staff." 18 And again, I understand the position 19 they're in. They -- they can't bear the burden 20 of signing off on the first homeless shelter in Escambia County to be permitted. I get that. 21 22 But you can. The board -- this board is 23 seven. You can tell the county, "Hey, you know 24 what? Under the circumstances, Mr. Kimbrel's 25 explained, and the document that he submitted,

Page 111 and the good work that you've done, and the fact 1 2 that you've been doing it for three years, and it's a compatible process, and the land use 3 shows that it's an allowable use, and you're not 4 doing anything differently than you've been 5 doing for the last couple of years, absolutely, 6 7 we're going to check that in the block, and 8 we're going to allow that. 9 You can do that. That's not a -- that's 10 not beyond your purview. That's why we're here. 11 That's why there's an appeal process. 12 If it turns out that it's not, then the next step is, I'm going to have to appeal it to 13 the Circuit Court, and we're going to ask a 14 judge to do exactly that. 15 16 And we're going to say, "Your Honor, we 17 met every objective criteria of the Land 18 Development Code." 19 And he's going to say, "What were you 20 trying to do?" "Nothing." 21 "Really?" 22 23 And then he's going to say, "Well, why did they deny it?" 24 25 "Because we didn't hashmark the X, the

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Was it

1access area, and -- and we didn't have -- we2didn't show an all-purpose road on the plan3because we didn't want to build an all-purpose4road."5And we're going to -- He's going to say --6then he's going to follow the criteria of urban,7and he's going to go, "Hmm. Looks like you met

the requirements for the issuance.

adverse to the public?"

8

9

10 And he's going to find it's not. He's 11 going to find that it's not because the staff 12 has already told you it's not. They've already 13 told you that it's not about the homelessness. 14 It's not about a nuisance. It's not about a 15 problem. If you -- if it were, we would have 16 already heard that.

17 Then the neighbors are not -- they don't 18 want this there. I get that. I understand 19 NIMBY. I understand "not in my back yard," but 20 that's -- that's different.

21 So what you've asked and what Mr. Holmer 22 has said is that we didn't meet the technical 23 requirement.

We did. In fact, look at the -- Mr.
Holmer, where is the board's -- the DRC denial?

Page 113 That's before them, right, in their package? 1 The three-page denial? The four-page denial? 2 MR. HOLMER: I've got -- I've got a hard 3 4 copy right here. 5 MR. DUNAWAY: Okay. MR. HOLMER: I'll put it up on the screen. 6 7 MR. DUNAWAY: We'll want to make sure that 8 that thing -- let's look at the DRC denial. There's a -- it's a four-page document, and 9 10 the -- the first standard project conditions --11 the first seven are just standard project 12 conditions. 13 The second are special project conditions. And -- and they're -- they're listed. And 14 that's fine. That's -- you know, again, they're 15 16 always conditions. 17 It could have been -- you can tell that on 18 page three, if we get it up -- okay. So -- so 19 this is the -- that's the standard project 20 conditions. They're always project conditions. These are the standard ones. 21 22 Go to page three, three of four. Special 23 project conditions. There are three special 24 project conditions. You can tell that number 25 three was -- the first two are always there.

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Number three was added. Any further 1 2 development within the parcel boundaries will 3 require review for compliance with stormwater. Okay. That's a conditional requirement. 4 5 So if you find that you need a road, put it as number four. But look on page four. Go 6 7 to page four, the denial. It was not approved. It was denied. 8 The development plan is denied for the 9 10 reasons noted below. Well, note those below. 11 Keep scrolling down. Exactly. Exactly. There 12 isn't any. 13 What's the denial? And the denial is, 14 well, because we don't want a homeless shelter. 15 We don't want -- we don't want people living in 16 tents out on Sean's Outpost. 17 I don't know. We've met the objective criteria. The burden shifts. 18 19 MR. JONES: I -- I would like -- I would 20 like to -- I would like to -- we do understand 21 that Mr. Dunaway is applicating for his client. 22 And we're advocating for what was done for the 23 process and the LDC. 24 And again, I believe that this board --25 Mr. Drew stated very, very, very good. Was my

Page 115 decision. What's the Escambia County decision? 1 2 To deny the development order. 3 Was it arbitrary and capricious? And I still stand by it. No, it was not. This are 4 5 Land Development Code requirements that were required per the Land Development Code. 6 Black 7 and white. Those were not submitted. And no, we cannot approve special project 8 conditions of that magnitude because of the 9 10 extensive review that is required with 11 stormwater, and for the road, and for access. 12 Yes, we do minor -- very, very minor 13 special project conditions, as we stated, for signs, and then very, very minor, but this Land 14 Development Code of Escambia County, that's not 15 16 authorized me to. Those requirements must be reviewed by staff, must be on the site plan, 17 18 must be reviewed by staff, must be reviewed, and 19 they must meet the Land Development Code 20 before -- and we keep on saying a permit. This is a development order, which is distinct and 21 22 different from a permit. 23 In the special -- in the special 24 magistrate hearing -- Again, I know we're 25 arguing over whether or not that letter, which

Page 116 I -- I will like to see that letter, Mr. 1 2 Dunaway, that -- that -- with my signature. (Mr. Dunaway hands a document to Mr. 3 4 Jones.) MR. DUNAWAY: And I would ask -- I have 5 the original, so they can --6 7 MR. JONES: This -- this -- this is not a 8 letter from me. This is not a signed letter. 9 Again, I would like to say -- say for the record -- be noted, it was noted that it was a 10 11 signed letter by me. It is not a signed letter 12 by me at all. 13 I can -- this was -- this is one of my staff members who put together some things to 14 help facilitate this process. This process. 15 16 And what was signed was stated that, yes, 17 we gave him -- we gave them some information, 18 information only to help them proceed with the 19 process. 20 I did not write that information. It was 21 a staff member who I -- I trust emphatically. 22 It was based on internal -- and I guess going back and forth to help you, especially with your 23 24 location criteria. This can help you do this. 25 So -- so -- so that's -- and I date the

Page 117 date that I gave it to him. 1 2 MR. DUNAWAY: And you signed it. MR. JONES: Yes. I -- I dated it and I 3 signed it to make sure that he got this, but as 4 5 far as me stating that, I did not write the content of that. I did not write the content of 6 7 that at all. 8 It's just -- yes, I -- I gave the date --9 I want to make sure I document that you got 10 this. So -- so -- so -- so I want to 11 clarify that for the record. 12 Now -- now -- now, during the special 13 magistrate hearing, Mr. Will, he made those same remarks and comments because the use. It shall 14 be here, whatever. 15 16 The special magistrate stated 17 emphatically -- and it's stated it's on page 18 four, which y'all have a copy. I would like to 19 read it for the record, Mr. Dunaway. 20 It says, "I agree with the county that the 21 current use by Sean's Outpost constitute a 22 development activity." So that that same 23 argument that he's been making for many, many, 24 many -- with County Attorneys' Office, with the 25 County Administrator, that -- that it would

Page 118 not -- we're not doing anything. 1 2 According to the code, you are. So that's 3 why we got you in this process. And we had -- we had had no one, as far as 4 my staff -- we do not go in with the intention 5 of automatically saying no, unless the code says 6 7 completely no with the zoning. 8 But with the process, we always like to give people the opportunity, but we had to bring 9 10 closure from the special magistrate hearing. 11 And this . . . we cannot do this. We cannot do this. 12 This board -- this process requires you to 13 make a decision. Was the denial of the permit 14 and -- denial of the development order to -- for 15 sake of clarity, as a development order, was 16 17 that arbitrary? Did I -- did we have the 18 grounds to make that denial? And the code gave 19 us the grounds to make that denial. 20 If they make -- if -- if they want to --21 if -- whatever their decision is, it will go 22 before a court. It will be up to the court to 23 make those same assertions and argue that with 24 special magistrate. 25 But the special magistrate hearing is sort

Page 119 of cut and dry. That they discuss uses. 1 And -and -- and -- and we cannot -- so are we 2 authorized the -- the -- the -- the staff to 3 make those special project conditions and 4 what's -- the Land Development Code is not 5 giving you the right to do that. It does not 6 7 give them the right to do that. 8 That's why we be careful, with the 9 understanding of this board, with your duties and your responsibilities, to make sure that 10 11 what's my -- it was a decision to deny it. Was 12 it based upon facts or was it based upon 13 fiction? The requirement is there. It speaks for 14 itself. And regrettably, their -- their 15 16 circumstances, I have -- we have to separate 17 ourselves from that issue. 18 MS. RIGBY: So based on -- based on the 19 letter that we just saw, the denial letter, what 20 is the basis for the denial? MR. JONES: The basis for the denial, 21 22 which is -- which is -- Mr. Dunaway was at the hearing. And it was clear, for the record. 23 24 That's why I say we could verify the tape for 25 the record. It was clear. Mr. Dunaway was

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there.

1

2	And the same thing that I said at that
3	meeting I'm saying again. If you want to put up
4	for the record was clear that it was because
5	of the requirements of the Land Development
6	Code. They were not met.
7	They did not meet the access requirement.
8	They did not what what trigger a
9	stormwater review. None of that was shown.
10	None none of that was reviewed by staff.
11	None of that.
12	So, therefore, it had to be the plans that
13	they submit that my staff reviewed. They were
14	not there. So so so based upon my duties
15	as the as the planning director, I
16	recommended to the Chair at the time that this
17	development order be denied based upon those
18	facts, which they are governed. You can hear
19	the same facts.
20	And Mr. Will Dunaway was present, and so
21	able, so eloquent today to present why it was
22	denied. Not that he said that he doesn't know,
23	because he already made the case why it was
24	denied. So he heard that at that meeting.
25	MS. RIGBY: So based on this letter

Page 121 MR. JONES: What? 1 MS. RIGBY: Based on the denial letter it 2 3 says, "See below." But there's nothing below. What should have been below is a reason for the 4 5 access requirement and stormwater requirements 6 were not met. 7 MR. JONES: Mm-hmm. 8 MS. RIGBY: That's what it should say. 9 Okay. 10 Let me back up here. Let me try to 11 understand this whole thing. In the beginning, 12 when the DRC reviewed the project, what was the 13 DRC reviewing? 14 MR. JONES: We was reviewing the site 15 plan. 16 MS. RIGBY: Was it -- was it a 17 commercial --18 MR. JONES: It was reviewing --MS. RIGBY: -- site? Was it a 19 20 residential --21 MR. JONES: To answer your question --22 MS. RIGBY: -- site? 23 MR. JONES: -- Ms. Rigby, this was a 24 commercial activity. We reviewed this per -- as 25 a commercial development activity that requires

Page 122 site plan review, yes, ma'am. 1 MS. RIGBY: Okay. So it was reviewed as a 2 commercial site. 3 MR. JONES: Yes. 4 5 MR. HOLMER: The property use is listed as vacant commercial. Going to a campground is a 6 7 change of use. Change of use on commercial 8 sites requires development reviews. 9 MR. JONES: Yes, it does. 10 MR. HOLMER: The magistrate, of course, 11 kicking all of us back into this situation, we 12 had to figure out where we were going. MS. RIGBY: So it started out as 13 commercial use, but because it's a vacant site, 14 15 you can't have a vacant commercial use, I guess, 16 so then it went to a campground use? 17 MR. HOLMER: That was -- the developer 18 review was the change of use of the activity on 19 that site. 20 MR. JONES: Mm-hmm. 21 MR. HOLMER: That hasn't changed. The 22 development order was denied. It remains vacant 23 commercial. To change that to anything else 24 does require the DRC, along with the order we 25 got from the magistrate that put all of us into

Page 123 the DRC position. 1 2 MS. RIGBY: So was it reviewed as a campground or was it reviewed as a commercial 3 vacant land? 4 MR. HOLMER: All right. It was reviewed 5 as a vacant commercial site going to campground. 6 7 MS. RIGBY: Okay. 8 MR. HOLMER: That's the use change. 9 MS. RIGBY: Going to a campground. 10 MR. HOLMER: Yes. 11 MS. RIGBY: So those performance standards 12 or design standards were then in a campground standard, if you will. 13 MR. HOLMER: If you will, yes. There's --14 there's -- there's generic, you know, change of 15 16 use, commercial piece of property. There's 17 generic ones that go along with that. And I know we're -- everybody's gotten 18 19 wrapped up in the idea of the roadway. Ι 20 understand that. That would kick in these other reviews. Let's not overlook the fact -- I mean, 21 22 it got overlooked in all the discussion at the 23 DRC. There are other deficiencies in this site 24 25 plan that would have ended in a denial for any

Page 124 other plan. It's not just that road. You know, 1 2 standards and things required on the plan that would hold everybody to . . . 3 MR. JONES: Yes. 4 5 MR. HOLMER: . . . simply weren't done. MS. RIGBY: But the denial said "see 6 7 below," and there was nothing below. That 8 concerns me, that if you can't tell me why I was denied, then I can't tell you how to fix it. 9 10 MR. JONES: I understand -- I -- I 11 understand -- I understand what you're saying, 12 but -- but as I stated before, Mr. Will Dunaway, 13 he was present at the meeting wholeheartedly -there's -- there's a record, and he -- and he --14 15 that's why we're here today. 16 After -- after that happened, that same 17 meeting, the same meeting is what -- he want --"I want to file -- I want to file for the 18 19 appeal." 20 We went back and forth on. We went back 21 and forth on whether he should have to pay the 22 funds. And we made the decision, well, he got 23 to pay for the appeal. 24 So -- so the issue for the denial, yes, 25 Mr. -- Mr. Jewel [sic] is absolutely correct.

Page 125 There were other issues that were -- that --1 2 that are germane to the site plan that were not 3 present. That were not present. 4 MS. RIGBY: But you're --5 MR. JONES: The primary -- the primary 6 issue that was present that was presented at 7 that site plan review hearing -- Mr. Will 8 Dunaway was present. And I know -- I know this young lady -- maybe there was something that we 9 10 may not have done by putting that before him, 11 but that's why we're here today. 12 It was denied primarily for the focus if 13 there was a oversight on someone's part. That's why we are here today. It was done primarily --14 that's why we're here, for the appeal for the 15 16 issuance of the -- because of those requirements 17 had not been met. And if he comes back and still cannot meet them, it will still be the 18 19 same thing. 20 MS. RIGBY: I guess -- I guess my concern 21 as a board member is, we are here today to say 22 whether or not the denial was arbitrary or 23 capricious. 24 I can't tell you because I don't have the 25 facts as to what, in fact, or why, in fact, it

Page 126 was denied. And that's what I can't wrap my 1 2 hands around. I don't have -- I don't have 3 punch lists. I don't have the -- you know, the review of the DRC to say, "Okay. This was 4 required. You didn't do this." 5 I mean, we talked about roads, sort of. 6 7 We talked about the four corners, sort of, but I 8 don't have any -- something concrete that says, you know, the denial was based on A, B, C and D, 9 10 and Mr. Applicant will not do A, B, C and D. 11 And obviously, then, yes, I can understand it. 12 It was denied. And the applicant doesn't want 13 to do it. Do you see what I'm saying? THE CHAIRPERSON: I agree 100 percent. 14 15 Let me ask counselor a question. Based on 16 what Ms. Rigby just said -- and we know that 17 this is -- this is tough for this board to make a decision. 18 19 If we remand this back to staff and charge 20 them with the task of gathering with the 21 applicant, what is the consequence of that? And 22 if there is a consequence, why can't we do that? 23 MS. HUAL: I'm not sure I know what you 24 mean by "consequence." Yes, you have the 25 authority to approve or disapprove or modify the

Page 127 decision of staff, and that could include a 1 2 remand with instruction, so . . . 3 THE CHAIRPERSON: That answers my 4 question. We have a couple of other speakers. 5 MR. GANT: I have a question. How -- To 6 7 the attorney: How are we tied to our -- how do 8 we consider the order to bring order from the DRC in terms of our -- the order eventually and 9 10 went against the staff presentation and -- and 11 the like? 12 Is there any kind of process you must 13 consider, or does one trump the other? I'm just trying to determine is -- the overall fact to 14 the board today, staff comments, the DRC order, 15 16 Dunaway presentation. MS. HUAL: Again, it's in your discretion 17 18 to weigh the evidence as presented. It's all 19 considered evidence. 20 MR. GANT: Did you -- so -- so the -- so 21 the DRC is not -- not the -- the only thing. We 22 need to consider everything else. MS. HUAL: No. 23 24 Okay. You want to instruct us MR. GANT: 25 on the -- we're not struck -- we're not stuck on

Page 128 the one document. 1 MS. HUAL: No. 2 3 THE CHAIRPERSON: There will be a chance to ask further questions for the staff from the 4 5 board, from the applicant. I'd like to call on a speaker. I believe 6 7 it's Richard Grimes. And if you'll step to the 8 podium, sir, and give your name and address and 9 be sworn in. 10 11 RICHARD PIERCE GRIMES, III 12 upon being duly sworn, was examined and 13 testified as follows: 14 MR. GRIMES: Richard Pierce Grimes, III, 15 16 254 Fennel Street, Pensacola, Florida 32505. 17 If you can pull the map up, you'll see the 18 house that says "Grimes." That's my house. 19 All the property that was purchased from 20 ECUA, half of it belongs to me, half of it 21 belongs to my son-in-law's father. He lives one house down from me. 22 23 Yeah, we purchased that property to keep 24 them from coming any closer. I've heard all 25 this about them. Them. Them.

Page 129 What about us? What about the people that 1 2 live in the neighborhood that are here to support me? What about our rights? 3 They burn constantly. How would you like 4 5 to open the windows at your house every night and have it filled with smoke and fire? 6 7 The portajohns are two feet off the 8 privacy fence that they put up. Mr. Dunaway said they put up for the neighborhood. 9 10 They put it up because code No. 11 enforcement was allowed to come on the ECUA 12 property and take pictures. They put the privacy fence up so they couldn't take pictures 13 no more. 14 What about the property where there is no 15 16 privacy fence around on Cleo, where all those 17 people see this? There's nothing blocking it 18 from their houses. What about, you know, you 19 see everybody -- borrow pits? 20 The residents have something to say about a borrow pit being put in their neighborhood. 21 22 When they wanted to put probation and parole 23 downtown in the Coca-Cola building, they didn't 24 want it there because of the undue foot traffic. 25 Well, what about the undue foot traffic in

Page 130 our neighborhood? Yes, I'm not saying all these 1 2 people are bad or mean or going to do anything damaging. It's only going to take one. 3 I have a seven-year-old son. When this 4 all started, I had him and two of my grandsons 5 in the back yard look out the window. 6 There's 7 two men sitting on the ground at the fence with 8 a puppy talking to my children. 9 Now, they deny that. They say that other 10 people were out there and present, and that I'm 11 telling a lie. But I know what I saw. I know 12 what I read in the newspaper. 13 Mr. Dunaway, the very first meeting three years ago, they knew they had to have a road in 14 there that supported a 44-ton fire truck. It's 15 16 in the Pensacola News Journal. It's not -- I'm 17 not just talking off my head. So they knew all 18 this three years ago. 19 They said these people are here 20 temporarily. There's two been back there. 21 One's been back there almost two years. Another 22 one's been back there a year and a half. How is 23 that temporary? 24 Some of those structures -- and I call 25 them structures -- they're tied between trees

Page 131 and Gulf Power -- are as big as my -- almost as 1 2 big as my house. Come on. So we do not -- the neighborhood should 3 have the right. We do not need this in the 4 5 neighborhood. And yes, this will be the first homeless campground permitted anywhere in the 6 United States. 7 8 If this gets permitted here, y'all could 9 wind up having them behind your house because 10 you set a precedent at that point. 11 VOICE IN THE AUDIENCE: That's right. 12 MR. GRIMES: They brought in -- When Mr. 13 King started all this, he put in the newspaper that he did us a favor: He bought land in a 14 blighted neighborhood. I don't consider my 15 16 neighborhood blighted. But he did us a favor. 17 I've had one Realtor tell me that we could 18 expect a 10 to 25 percent drop in our property 19 values over the next two years if this gets 20 permitted. 21 But another one says, "Oh, it's 22 commercial. You can expect your property value 23 to go up." 24 When you look out my kitchen window and 25 see the top of three portajohns and all these

Page 132 tents, I really don't see my property value 1 2 going up any time soon. So I'm here to request that you deny this, 3 that you stand behind the county and deny this. 4 5 You know, it's one thing to want to help people, but you can't destroy somebody else at the exact 6 7 same time. 8 This doesn't need to be in a residential 9 area. If this was a KOA or a Good Sam's, I'd still be standing right here fighting it, so it 10 11 has nothing -- it has to do with the use, not 12 the people that are using it. And that's --13 that's really all I have to say. 14 THE CHAIRPERSON: Okay. Board, any questions of the speaker? 15 16 MS. GUND: I do. So you purchased the 17 rectangular property? 18 MR. GRIMES: No. You see where it's 19 L-shaped there? 20 MS. GUND: Mm-hmm. MR. GRIMES: On the -- be the south end 21 22 where Gulf Power is? That easement -- there's 23 an easement on the south end there that belongs 24 to Escambia County. It's going -- it's a 25 permanent easement. The sewer line runs through

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there and all.

2 From that point, 272 feet is my property. From that point on over belongs to my 3 son-in-law's father, Mr. Biles. And he had to 4 5 leave. He had a doctor's appointment. He was here, and he had to leave. So that's -- Yeah. 6 7 MS. GUND: That other one. 8 MR. GRIMES: No. That's my son-in-law's. 9 That belongs to Mr. Biles. They knew that. 10 They had it on one of their site plans, labeled 11 it in our names, but for some reason it's not on 12 this site plan. Labeled it that way. 13 They tried to use it as a buffer. They had it labeled as a buffer on one of their site 14 plans. No one -- It didn't belong to them then, 15 16 but, you know, they listed it as a buffer. 17 MS. GUND: So that is this rectangular 18 piece. 19 MR. GRIMES: That's me right there, yes, 20 ma'am. MS. GUND: Okay. Parcel of land, but you 21 22 don't own that other rectangular piece? 23 MR. GRIMES: No. That belongs to Tony Biles, my son-in-law's father. So it's in the 24 25 family.

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Page 134 MS. GUND: He agreed that they can build a 1 2 road across it. 3 MR. GRIMES: Not a road. We bought it, and we -- we were under the impression they had 4 5 the right to cross it. I don't know . . . nobody said they that could go in there and 6 7 build any of that. We were told they couldn't 8 build anything on it or, you know, occupy it in any way, shape or form. They just had the 9 10 ability to cross over it, is what ECUA informed 11 us when we bought the property. 12 MS. GUND: Thank you. 13 MR. GRIMES: Okay. THE CHAIRPERSON: Any other questions? 14 Staff, do you have questions? 15 16 MS. HUAL: Board members, I just wanted to 17 caution you to follow up on your questions. 18 Your decision, whatever it may be, must be 19 supported by competent, substantial evidence. 20 So as you hear the testimony of lay witnesses, their testimony should be limited 21 22 strictly to facts of which they have personal 23 knowledge, unless you wish to qualify an 24 individual as an expert. Any other testimony is 25 considered pure speculation.

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1	THE CHAIRPERSON: Correct.
2	MS. HUAL: So May I ask the
3	witness
4	THE CHAIRPERSON: Yes.
5	MS. HUAL: And, yes, please refrain from
б	making assertions about property values unless
7	you're qualified as an expert on that. I've got
8	in the PowerPoint could you switch to that?
9	This all the way. All the way down to the
10	very last one.
11	Mr. Grimes, I'm going to show you it's
12	not in that one. Okay. Never mind. Go back to
13	the second one, if you would, please.
14	On that site plan on that site plan,
15	the long parcel on the west side that we're
16	talking about, on the site plan it's shown as a
17	single parcel of land running all the way from
18	the easement that's at the south end all the way
19	up through to the top and including the leg, so
20	to speak, that has the easement across it, on
21	the site plan that's all shown as ECUA parcel of
22	land that has one property reference number, you
23	purchased this property. It's no longer ECUA
24	property; is that correct?
25	MR. GRIMES: Hadn't been for two years.

Page 136 MS. HUAL: Okay. The lower half of it 1 2 belongs to you. 3 MR. GRIMES: Mm-hmm. Yes. MS. HUAL: The upper half to the Biles. 4 5 MR. GRIMES: Mm-hmm. MS. HUAL: Okay. And you've already 6 7 testified they're not here to -- they're not going to ask any questions about that. 8 9 MR. GRIMES: Right. Right. 10 MS. HUAL: That is important for the 11 staff, this issue of ownership. You know. MR. GRIMES: Okay. I --12 13 MS. HUAL: The county --14 MR. GRIMES: Can I walk up there? 15 MS. HUAL: Sure. Sure. I will have to 16 show it with the mouse, but --17 MR. GRIMES: Right here, if you take this 18 line right here and you draw it across, 19 everything this way is legally registered in my 20 name and deeded to me. Everything that way 21 belongs to Mr. Biles. 22 MS. HUAL: Okay. 23 MR. GRIMES: And it's legally deeded on 24 the county -- if you went to the county plan, 25 you'd see the division.

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1	MS. HUAL: It's like Sean's Outpost has on
2	their easement, the right to cross that.
3	MR. GRIMES: To cross it, yes.
4	MS. HUAL: Thank you.
5	Just wanted to the county has an issue
6	here, once again, with any site plan, treating
7	this as we would anyone else. If we're
8	approving a site plan that does involve someone
9	else's property, this involves yes, there's
10	an easement across it, but the ownership is in
11	the Biles. It's not ECUA. We want our plan to
12	be accurate. We want the plan to reflect that
13	there's an easement across that, and the
14	ownership.
15	MR. GRIMES: Sure.
16	MS. HUAL: Parcel numbers change when it's
17	submitted. We need to have that reflected on
18	the plan. We ask that of anyone. That's one of
19	those things that was not shown on this, the
20	requirement for that easement to be same sort
21	of I know it sounds nitpicky, but if we're
22	involving someone else's property they own, we
23	have requirements that we expect to be shown on
24	the plan. Thank you.
25	THE CHAIRPERSON: Thank you, sir.

Page 138 Any questions? Counselor. 1 2 MR. DUNAWAY: I actually thought Mr. 3 Holmer was asking him a question. Was he making 4 argument? I wasn't sure. 5 MR. HOLMER: I asked a question and explained why. 6 7 MR. DUNAWAY: Okay. Understood. 8 Before I did cross-examine, I appreciate 9 the board attorney clarifying that. And I would just make that as a standard objection, that is, 10 11 that nonexpert testimony be not considered. This is a lay witness, so that testimony 12 13 regarding these other issues would be ignored. 14 CROSS-EXAMINATION 15 16 \_ \_ \_ 17 BY MR. DUNAWAY: 18 Mr. Grimes, you have complained to the Q. 19 Board of County Commissioners about the use of the 20 property by Sean's Outpost, have you not? 21 Α. Yes. 22 How many times have you appeared before 0. the Board of County Commissioners to complain about this 23 24 use? 25 A. I believe I spoke twice.

Page 139 And you've been -- you were present at the 1 Q. 2 DRC to object at that board; is that correct? 3 I've been to every DRC county -- you know, Α. every meeting about this, yes. 4 5 Including every special magistrate Q. meeting? 6 7 Α. Yes. 8 Q. Every opportunity you've been here to object to this use by Sean's Outpost; correct? 9 10 Α. Yes. 11 And you would consider that their use of Ο. 12 the property to be, from your standpoint, a problem? 13 Α. Yes. And were you the one that helped in 14 Q. getting the word out to area neighbors about this issue? 15 16 Α. Yes, sir. I was the number one person. Ι 17 mean, I'm at ground zero, yes. 18 Right. Your property actually abuts to Q. 19 the west; correct? 20 Yes. Α. And you have a house that is in lot six 21 Ο. that's labeled on --22 23 Α. Yes. 24 Ο. That's where you reside. 25 That's my homestead, yes. Α.

Page 140 And then all the ways behind you was the 1 Q. 2 ECUA property before you and your son-in-law's father, who is Mr. Biles, is one lot north of you? 3 4 Α. Yes. 5 And y'all bought it at auction. Q. 6 Α. Right. 7 And y'all own the property. Ο. 8 You knew that its prior use, right -- you 9 were familiar with its prior use? 10 It was a gentleman to be -- I hope Α. Yes. 11 this is admissible. Freckles the Clown originally owned 12 it. When he passed away, his son lived on it on two 13 trailers. And they grew some trees and stuff back there. They had a little greenhouse at one time. 14 I know that -- for a fact that the county 15 16 during one hurricane, he allowed them to dump a lot of 17 debris on there. The county went in there and had them cleared up, and put -- he lost the property to back 18 19 taxes, and then they bought it from the gentleman that 20 bought it on the back taxes. So the prior use was a residential use in 21 Ο. 22 a temporary structure, and then it had code violations 23 because it was used for dumping; is that correct? 24 Α. No. I believe it -- they had two trailers 25 on it that he lived in, but it was more commercial, used

Page 141 for, you know, flower -- I don't know what the word for 1 it -- landscaping business, something like that, yes. 2 3 MR. DUNAWAY: I have no further questions. THE CHAIRPERSON: Board have any questions 4 5 of the speaker? Thank you, sir. 6 7 MR. GRIMES: Thank you. 8 THE CHAIRPERSON: Ivan -- Alvin Kelly. 9 MS. KELLY: Should be Catherine Kelly. My husband's not going to speak. 10 THE CHAIRPERSON: That will be fine. 11 12 State your name and address and be sworn in. 13 MS. KELLY: I'm Catherine B. Kelly. I reside at 4335 Bridgedale Road, which is three 14 blocks west. 15 16 17 CATHERINE B. KELLY 18 upon being duly sworn, was examined and 19 testified as follows: 20 21 THE CHAIRPERSON: Go ahead. 22 MS. KELLY: As I stated, I reside -- my 23 husband and I reside three blocks west of the 24 Sean's Outpost. We resided there for 37 years. 25 And since Sean's Outpost has been there

Page 142 for the last three years, they have been allowed 1 to cut trees, burn wood, leaves, and other 2 3 trees. If I cut a tree in my yard, I have to get 4 5 permission to do it, to cut it down. Now, there is a no-burn ordinance that has been constantly 6 7 ignored. 8 And Sean's Outpost for the last three 9 years, since they've been allowed to cut and 10 burn constantly, almost daily, I have not been 11 able to enjoy sitting on my front porch because of the smoke in the air. It's very difficult 12 13 for me to breathe because I have asthma, and it's a health issue for me. 14 There is also a safety issue for me 15 16 because there are a lot of strange people coming 17 through the neighborhood and Sean's post has 18 been three blocks away from our home. 19 Sean's Outpost is illegally on this site 20 because we do -- they do not have access to come 21 in there because of the burning that they do. 22 The trucks -- the fire trucks can't go in and out of there. 23 24 And I know all of you have viewed and 25 looked at the local news and the national news

Page 143 as to what happened in Tennessee last week. 1 The 2 possibility exists that the same thing can happen to our neighborhood. 3 I can't burn leaves in my yard. Why 4 should they be able to do all the burning that 5 they do on their property? There shouldn't be a 6 7 double standard. 8 And for safety reasons, I am requesting 9 this board to deny them access to -- well, I 10 can't -- you can't deny them access to their 11 property, but to please side against them being 12 on this property and doing the things that they are doing, for my personal reasons, and as well 13 as a lot of other people that live in the 14 neighborhood that are here and present today. 15 16 And I'm just asking you to consider my 17 objection because of health reasons, safety 18 reasons. 19 The trucks -- fire trucks can't go in 20 They say they have fire extinguishers. there. Fire extinguishers they don't always stop. 21 22 There's eight -- eight acres out there. And 23 they have been allowed to cut and burn. And I 24 don't think it's right. 25 If I burn leaves in my yard, Code

Page 144 Enforcement will do something about it. And I 1 2 don't think it's right that they are allowed 3 because the air should be for everyone. And they allowing me not to enjoy my personal 4 property because of the smoke in the air. 5 Please consider my objections. 6 7 THE CHAIRPERSON: Thank you. 8 Board, any questions of Mrs. Kelly? 9 (No response.) 10 THE CHAIRPERSON: Staff? 11 (No response.) 12 THE CHAIRPERSON: Mr. Dunaway. 13 14 CROSS-EXAMINATION 15 BY MR. DUNAWAY: 16 17 Q. Ms. Kelly, if I'm not mistaken, this is 18 the first time that you've voiced an objection to this 19 process in an open public hearing; is that correct? 20 Yes, open public. Α. 21 Q. Yes, ma'am. But I have talked to Mr. Kimbrel 22 Α. personally . . . 23 24 Q. Yes, ma'am. 25 . . . down at the county commissioners' Α.

Page 145 meeting. 1 2 Q. Yes, ma'am. We appreciate that. And I expressed my concern. 3 Α. 4 0. Your concern. Yes, ma'am. We appreciate 5 that. 6 With regard to the allegations of cutting 7 and burning, were you familiar with the -- aware of the 8 fact that the county code enforcement apparatus has been -- well, I don't think it to be wrong to say 9 "vigilant" over the Sean's Outpost for the last several 10 11 years? Were you aware that code enforcement --I have -- I don't know what the Code 12 Α. Enforcement's have done. 13 Yes, ma'am. 14 Q. But when I smell the smoke, I get in my 15 Α. 16 car and go and look and see that the smoke -- it goes up in the air, in the atmosphere. 17 18 Yes, ma'am. Q. 19 And it spreads all the way over three Α. 20 blocks from there. And I'm sure it extends further. 21 Ο. And you've made that complaint to Code Enforcement? 22 23 I have called. Α. 24 Ο. To Code Enforcement? 25 I have called. Α.

Page 146 1 Q. Yes, ma'am. Yes, ma'am. 2 With regard to the illegal cutting, have you seen trees being felled on the property? 3 4 Α. No, I have not seen any trees being felled, but I can see smoke. 5 6 Q. Yes. 7 Α. And it's coming from someplace. 8 Q. Yes, ma'am. 9 Α. Sand don't burn. And you were talking about the cutting of 10 Ο. 11 trees, specifically is what I was referring to. 12 Α. Whatever is on their property that they are getting rid of, they have been burning it. 13 And you've seen trees being cut? 14 Q. I've seen the smoke. And you can look 15 Α. 16 straight through there and see that it's clearer than 17 what it was. 18 Yes, ma'am. Q. 19 Α. Over the years. I've stayed here at my --20 at our address for 37 years. 21 Ο. Yes, ma'am. Yes, ma'am. 22 And I never been able to look through that Α. 23 property and see through there. The water that's down in the drainage, I've never been able to see that. 24 25 Yes, ma'am. And you live to the west; Q.

Page 147 1 correct? A. Yes, I do. 2 Q. So between you and Sean's Outpost is Mr. 3 4 Grimes' and Mr. Biles' property. 5 A. Yes, it is. MR. DUNAWAY: Yes, ma'am. No further 6 7 questions. 8 THE CHAIRPERSON: Any other questions from 9 the board? 10 (No response.) 11 THE CHAIRPERSON: Thank you very much. 12 MS. KELLY: Thank you. THE CHAIRPERSON: Staff, would you like to 13 14 make a closing statement? MR. HOLMER: I'll be happy to speak. 15 16 MR. DUNAWAY: Mr. Chairman, just a point 17 of procedure. I would request an opportunity to 18 have rebuttal. 19 THE CHAIRPERSON: Yes. 20 MR. DUNAWAY: I'd like to call Mr. Kimbrel. I'd call Mr. Kimbrel. 21 22 23 MICHAEL KIMBREL 24 having been previously duly sworn, was examined 25 and testified further as follows:

Page 148 MR. DUNAWAY: Mr. Chairman, may I ask the 1 2 questions from here to facilitate that process? 3 THE CHAIRPERSON: Yes. 4 5 DIRECT EXAMINATION 6 7 BY MR. DUNAWAY: Mr. Kimbrel, earlier, in questions of one 8 Q. of the board members you provided some background and 9 10 details of the operation of the facility out there. 11 What I'd like to now ask you some 12 questions about, the actually -- the actual permitting process that got us here, and --13 14 MS. HUAL: Would you mind using the 15 microphone? MR. DUNAWAY: Oh. Well, I regret that it 16 17 appears that the battery -- maybe I've got -maybe it will. Does that work? 18 BY MR. DUNAWAY: 19 So Mr. Kimbrel, you've been involved in 20 0. 21 this process from its origination; is that correct? 22 Α. Yes, sir, that is correct. 23 And Sean's Outpost purchased this Ο. property. And what were your plans initially for the 24 25 property?

Page 149 Our plans initially were to build a 1 Α. bathhouse with shower facilities and restrooms, a 2 washroom for laundry purposes, as well as having a 3 series of tiny homes that people would graduate up to 4 5 from initially a campground area to a graduation into tiny homes. 6 7 Ο. And you knew and understood that that 8 process would have required an access road; correct? 9 Yes, sir. Α. 10 And then, when we first started going Ο. 11 through the process with the county, when all of those 12 kind of larger plans went by the wayside, what was the process by which we got to where we finally decided that 13 it looks like we're going to have to make an application 14 simply to do what we're doing? What was that process 15 16 when we finally made that decision? 17 Not quite sure if I understand your Α. question. 18 19 So basically, we -- from the initial 20 plans, massively changed once we were outbid for the ECUA property. And then from that, we started bit --21 22 our main source of funding ended up . . . 23 Donations that were coming in? Ο. 24 Yeah, yeah. Donations started drying up, Α. 25 and so we didn't have the funding that we initially had

Page 150 thought that we were going to have. And so it -- the 1 2 process slowly started getting whittled down to what you're currently seeing on the screen today. 3 And just to clarify, what you're currently 4 Ο. 5 seeing on the screen is essentially what is the present operation, with just a few more tent sites; is that 6 7 correct? 8 Α. Yes, sir, that is correct. 9 Ο. And that is the current operation, is 10 simply people with permission can pitch a tent and go 11 through the process as is outlined in the . . . 12 Α. Yes, sir, that is correct. 13 Ο. What trees and clearing have you done on the properties illegally? 14 15 Α. None. 16 Q. Has there been any other commercial activity or any other unpermitted activity out there, 17 18 other than what -- the idea that people are just 19 referring there? 20 No, sir. Α. 21 Ο. So you heard Ms. Kelly just state that the 22 area is cleared. That area that was -- is the strip, 23 that area has been cleared, hasn't it, that you cross 24 over that's owned by Mr. Biles? 25 Yes, sir, that -- that -- that area has Α.

Page 151 been cleared, minus -- minus the trees. 1 Who cleared that? 2 Q. I believe Mr. Biles did. 3 Α. Because he owns that property; right? 4 Q. Yes, sir. 5 Α. Okay. What area of Sean's Outpost has 6 Q. 7 been cleared? 8 Α. Other than, like, basic landscape 9 maintenancing [sic] --So y'all removed all --10 Ο. 11 Weeds. Α. 12 Q. -- of the junk that you found out there. Yes, sir. 13 Α. And what was that? What did you find out 14 Q. 15 on the property? 16 Α. Out on the property when we first initially bought the property, it ranged from -- there 17 18 was a series of flower pots to a jet ski, huge piles of 19 rubble from -- which looks like construction debris. There was some playground equipment. It -- it -- it 20 basically looked like a dump site. 21 22 And what improvements did y'all make in Ο. 23 that? 24 We -- we removed all of the debris. Α. 25 The -- some of the construction debris, like huge pieces

Page 152 of concrete we used to outline trails and what is called 1 the road or the dirt path, the dirt road. 2 And even Code Enforcement commended us on 3 a good job of cleaning it up and a good use of the 4 construction debris that had been on property. 5 Explain to the board the process that 6 Ο. 7 you're working with, the State Department of Health and 8 local health officials and those inspection processes 9 that were occurring on the site. So we initiated weekly inspections with 10 Α. 11 the Escambia County Health Department at a fee of \$50 12 per inspection. 13 And they would come out once a week basically unannounced. They would call me 30 minutes 14 ahead of time, saying, "We're on our way out there." 15 16 And I would -- sometimes was able to meet 17 them; sometimes was unable to, to escort them through 18 the property. And they would walk around, if I was with 19 them, point out, you know, this is going to be a 20 problem. This isn't a problem. These are things you want to look for that 21 22 are going to be health violations. And these are things that we look for when, you know, we're inspecting 23 trailer parks or RV campgrounds. 24 25 And in some cases, if things that they had

Page 153 pointed out to me existed during one of the inspections, 1 2 they would note it in the inspection, and then it had to be corrected by the next inspection, so when they'd come 3 back out, they would notate that it -- you know, the 4 5 previous violation was corrected. And over time, they started requesting 6 7 that we do less and less inspections. If I'm correct, 8 they currently do one inspection a year for most permitted facilities. 9 And so, after, I believe it was, six to 10 11 eight months of weekly inspections, we dropped bimonthly 12 to eventually monthly, to where now they -- they do not come out and inspect. And I believe that they've even 13 stated that our campground is cleaner than some of the 14 RV parks that they inspect. 15 So what, if any, adverse issues are going 16 Ο. on out there, from a neighborhood perspective? You've 17 18 heard Mr. Grimes, and you've heard Ms. Kelly testify. 19 What is your response to that? 20 So some of the concerns that they have Α. 21 I -- I share. I personally would like to see less 22 burning going on, but our rule out there is that they 23 can only burn for one of two reasons: And that's either 24 to cook or to stay warm, which is also permitted in the 25 county code.

Q. And you've gone through that process and know that those are two exceptions to the open-burning rule; correct?

Correct. And -- and they -- they are well 4 Α. 5 aware that they are not allowed to cut down any trees or б anything on the property, so they either pick up dead 7 growth off of the ground or there have been people from 8 the neighborhood and the surrounding Escambia County 9 area that has brought in firewood on their own accord. I haven't asked -- I have never requested 10 11 firewood to come in, which people have just brought in 12 firewood, knowing that they would need something to stay warm with. If we had the finances, we would probably 13 lean towards propane. 14

Q. And, in fact, you provided through the winter months, at the county's request, propane heaters; correct?

A. Yes, sir. And -- and we still have them.
And when we have the propane, we use that in lieu of
burning.

Q. Michael, what other aspects -- what other efforts have you and Sean's Outpost taken with regards to any type of problems or concerns that have come up and been brought to your attention? I mean, have they been quickly rectified?

Page 155 Yes, sir. 1 Α. 2 Q. And give us an example of a situation that 3 was -- you know, that came up, came to your attention and was rectified. 4 5 I'm actually drawing a blank right now, Α. but let's see. 6 7 0. Well, Mr. Biles -- earlier there was 8 testimony that you put in -- Mr. Grimes testified that 9 you put in the fence to keep the Code Enforcement from 10 taking pictures. Is that why you installed the fence? 11 No, sir. Α. 12 Ο. Why -- why did you install the fence? 13 Mr. Grimes had no problem sharing with us Α. 14 that he was not too happy about what we were doing. And 15 we were trying to be respectful neighbors because 16 working in homelessness, we are -- we are very much aware that homelessness is very much frowned upon. 17 It's -- in -- in some cases even vilified by -- the view 18 19 of homelessness is that it's all criminals and drug 20 addicts. 21 And so we -- we understand that that's -that that's the view, so out of respect, we wanted to 22 23 put up a privacy fence. And we -- we share all concerns 24 with the criminal element in homelessness. We recognize 25 that there is a criminal element in homelessness. And

Page 156 those people are not welcome on our property. 1 2 MR. DUNAWAY: No further questions. 3 THE CHAIRPERSON: Thank you, sir. 4 MR. KIMBREL: Thank you. 5 MR. JOLLY: I'm sorry. May I speak? THE CHAIRPERSON: Did you sign up? 6 7 MR. JOLLY: No, sir, I didn't. 8 THE CHAIRPERSON: We'll get your 9 signature. 10 MR. JOLLY: Didn't know I was supposed to. 11 MR. JONES: Once he signs the form, can he 12 speak because time is --13 THE CHAIRPERSON: Come forward, sir. And if you'll be kind enough to state your name and 14 address and be sworn in. 15 16 MR. JOLLY: My name's Louis Jolly. I live 17 at 1418 Cleo Drive. 18 19 LOUIS JOLLY 20 upon being duly sworn, was examined and testified as follows: 21 22 23 MR. JOLLY: I been living at that place 24 in -- on Cleo Drive for a long time. And I'm 82 25 years old. As far as those people talking about

Page 157 cutting down trees, I've seen them cut the trees 1 2 down. I've cleared the -- be clearing the bushes 3 in there. My fence is my back yard, and the 4 tents the people live in, they probably as far 5 as from here to that window there is how close 6 7 they are to my property. 8 And every morning when I get up and step out my back door, I'm on notice. I don't know 9 who's back there or who's not back there. 10 11 People coming and going all the time, but I'm concerned about my safety, my wife's safety, and 12 my neighbors' safety. 13 So as far as smoking and setting those 14 porta-johns go, they smell pretty ripe sometime, 15 16 so when I get ready to sell my property, when 17 you show your property to somebody, and they 18 say, "Well, what's all that blue stuff? What's 19 all that back there?" 20 I said, "Well, them's the homeless people 21 live back there. You can get that put in the 22 house. When you buy the house, you can get that for free." 23 24 So I just wanted to say that very -- I'm 25 82 years old, and we're concerned for our safety

Page 158 as well. Thank you. 1 2 THE CHAIRPERSON: Just a moment. 3 Board, any questions? (No response.) 4 5 THE CHAIRPERSON: Staff, any questions? Counselor. 6 7 MR. DUNAWAY: Nothing. 8 THE CHAIRPERSON: Thank you, sir. 9 State your name and address. MS. JOLLY: My name is Helen Jolly. I'm 10 11 Jack Louis Jolly's wife. 12 13 HELEN JOLLY 14 upon being duly sworn, was examined and testified as follows: 15 16 17 MS. JOLLY: I live at 1418 Cleo Drive. 18 Our house is right adjacent to the tents. The 19 tents are as close from one end of your podium 20 to the other end. That's how close we are. We can look out our kitchen window and see 21 22 the people walking around. There's probably 23 four to five tents back there. They're large, 24 very large. They have two or three vehicles out 25 there.

They turn their vehicles when they drive 1 2 in. They are -- their lights shine, you know, right on our back door, which comes out the 3 side. 4 5 And in discussing how thin or thick the woods are, when we moved here, we chose not to 6 7 have a privacy fence because we do like to see 8 the woods. 9 So when Mr. Freckles died, and then when 10 his nephew moved out, there was no more woods 11 down -- there were no more -- they both lived in 12 a trailer, and they took the trailer -- the 13 nephew took the trailer with him. And so naturally, the woods are thinner 14 15 now because we can see these people. We hear 16 them. If they're fussing and fighting, we hear 17 that. 18 We found a dog in our back yard that did 19 not climb the fence. It was a very sick dog. 20 And there's no one -- there's only one lady living on our left side, and she has dogs in her 21 22 house that lives in her house, so she's an 23 animal lover, but the dog was very sick. And my 24 husband fed him. And he finally left -- and the

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next day, and we didn't see him anymore.

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My husband let him outside the fence 1 because he could not climb the fence. He had a 2 large growth on the very back of his back, and 3 he was very mangy. And he was -- he was so weak 4 5 he could hardly walk. And as far as the tree cutting, there was 6 7 a big -- big large tree, maybe about 11 inches 8 in diameter on the right side -- on their side 9 of the fence. 10 And when we -- my husband and I both walk 11 because he had an illness. And so our yard is 12 very large, and we walk in our yard. And when he -- when he -- when we walk, we walk down that 13 side. 14 And one morning the tree was down. It had 15 been cut to a -- maybe about three feet from the 16 17 bottom. And it was laying down. So they had 18 cut the tree overnight because we're in our back 19 yard every day. But we don't stay there because we don't feel comfortable. 20 And there is burning, like Ms. Kelly said. 21 22 She may live three blocks over but we live adjacent to them. And there is burning a lot. 23 24 And we did notify code to begin with, but 25 then, you know, we realized that well, code

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couldn't go to -- they couldn't always -- they couldn't go inside the property, so we stopped contacting them.

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But we, too, have allergies. And we can't breathe good, so we have to stay inside. And when they -- when they moved in this property, they kept it very quiet what they were doing.

8 And, in fact, my husband was walking. And 9 he asked Mr. King when he came down the alley 10 behind our house, which belongs to the county, 11 and then Mr. Grimes bought the property that's 12 behind them and adjacent to us as well. He 13 bought that property.

14But Mr. King was coming down the alley15behind our fence. And my husband introduced16himself to him and asked him if they were17building.

And he mumbled and kept walking. He didn't say anything, so we didn't know anything. We watched because we saw the toolshed that they had out there that they were using to mow and do different things with. And we observed that.

But, yes, we can take pictures from our
back yard. We don't have to climb on anything.
And if any of you would like to come out to our

Page 162 house, you're very welcome. We would welcome to 1 2 take you back there and show you exactly. And those tents go all the way down from 3 their privacy fence on the left or to the west 4 5 all the way to the east, as far as their 6 property, I suppose. 7 Thank you. 8 THE CHAIRPERSON: Thank you, Ms. Jolly. 9 Any questions of Mrs. Jolly? 10 (No response.) 11 THE CHAIRPERSON: Staff, any questions? 12 (No response.) 13 THE CHAIRPERSON: Counselor, any questions? 14 15 (No response.) 16 THE CHAIRPERSON: Thank you, Mrs. Jolly. 17 MS. JOLLY: You're welcome. 18 THE CHAIRPERSON: We will ask for closing 19 statements at this time, beginning with the 20 staff and ending with the applicant. MR. HOLMER: Thank you, Mr. Chairman. 21 22 I'd like to bring us back. We've gotten 23 some testimony here. Once again, there's been 24 testimony that's got a lot of emotion attached 25 to it. There's been testimony about the use of

the property.

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We're not here today to determine the use on the property. We're here today to discuss the denial of the development order.

5 The person serving as chairman that day? 6 Should they have written in that entire -- the 7 whole list? Sure, they could have. Would it 8 have changed the denial? No. Those 9 deficiencies were still there, the deficiencies 10 that resulted in the denial.

Y'all made mention of -- some board members made mention of remanding again. We're not here with a conditional use, where this board determines if a use is appropriate or not.

In that case, sure. You could say, "Hey listen. There's -- there's some outstanding issues here. Why don't you go back? Why don't you go back and see if you can resolve those and then we'll talk about it?"

20 You're not determining use. We're 21 determining that development order: Was the 22 denial backed up by facts in the code or was it 23 not? It's -- it's -- I mean, I hate to 24 keep saying this. It's that simple.

It's not feelings. It's not could it meet

Page 164 It's did it. Did it meet it that day? Was 1 it. 2 the decision right? 3 Could they go back? Sure. They could go back. Could they meet the conditions? Hey, 4 5 that's -- that's what the county was asking for in the first place. That's not what we're here 6 7 today to talk about. 8 We're here today because the applicant has come and said, "This denial was incorrect. 9 Tt. 10 was denied incorrectly. There was not a basis 11 for the denial." 12 Appeals are a different animal before this board. It's not a matter of coming in and 13 saying, "Here, have a second bite at the apple." 14 That would be great. That's fine. You know, we 15 16 want everyone to come into compliance. 17 We say all the time, especially Mr. Jones 18 says all the time about granting or finding a 19 way, giving someone a path to compliance. 20 So there is a path to compliance. It's meeting the requirements of the LDC. That's not 21 22 what we're here about today. What we're here 23 about today: Was that denial factually based? 24 Yes or no. 25 This board, when it comes to an appeal --

Page 165 So if you scroll down, please. 1 These are the 2 pages from the Land Development Code dealing with administrative appeals. 3 Please go down. So here we have final 4 5 determination. It's laying out that you're going to need -- if you do a finding one way or 6 7 the other, here's what your finding is. 8 You're going to have to state how the decision of the administrative official was 9 10 arbitrary or capricious. If that's not proven, 11 then you would need to affirm the denial. And below that, if you would just scroll 12 down, board authority. Let's face it: I'm a 13 geek about these development standard things. 14 Ι truly think this board's authority is not to say 15 something is some technical standard that can be 16 waived or it's okay to move ahead without, 17 because there is -- there is a further technical 18 19 review called for. 20 If we want to talk about the roadway and 21 going to some sort of impervious use or 22 semi-impervious use surface, there's a ratio for 23 each one of those as to the stormwater that 24 comes off of it. That's how stormwater 25 calculations are based.

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We don't have any calculations. 1 There 2 were none of those on the site plan. The 3 request is in there: "Hey, we want to see this all-weather surface," but there's no 4 calculations. 5 The things -- the deficiencies missing on 6 7 the plan, they're there. We're -- we don't get 8 to look at it. And I keep saying this. I'm sorry. We don't get to look at this as, "Wow, 9 10 is this an appropriate use or not?" 11 This isn't the avenue for that. This 12 isn't what the DRC is doing. The DRC is doing: 13 Does the plan meet this? Yes or no. The denial was based on deficiencies on the plan. 14 Like I said, three sides. We're right in 15 16 the middle. Okay. We don't necessarily want to 17 be in the middle. That's where we are. 18 The magistrate was quite clear, explaining 19 to the applicant and to the county, "Hey, go 20 through the DRC. Bring this to a resolution." 21 The application -- the site plan submitted 22 for that resolution in October had multiple deficiencies that would have resulted in a 23 24 denial for any use. You could have brought in a 25 grocery store, and with all those deficiencies,

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Page 167 it still would have been denied for a grocery 1 2 store. The use isn't factoring into the staff's decision. 3 The county does not -- the county 4 disagrees with the idea that the denial was 5 arbitrary and capricious. 6 7 We've outlined areas of the code where the 8 facts are. We've explained that the denial was based on those deficiencies. Those are facts. 9 10 Those are facts. That was not arbitrary. We're 11 not talking about somebody not liking a use. That's capricious. We didn't go there. Staff 12 13 did not go there. The staff went letter of the law. 14 And really, at the end of the day, that's what this 15 16 is about, was it -- was it arbitrary and 17 capricious, the denial? County says no, it's 18 The burden should be, if the applicant not. 19 wants to overturn that, they need to prove that 20 it is. Thank you. 21 THE CHAIRPERSON: Thank you, sir. 22 Board, any questions of staff? 23 (No response.) THE CHAIRPERSON: Counselor, before your 24 25 summary, would you like to ask staff any

questions?

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MR. DUNAWAY: Mr. Chairman, I believe -- I 2 believe we've covered all that. I'd be happy to 3 move right into closing. 4 5 THE CHAIRPERSON: Okay, sir. Remember your mic. 6 7 MR. DUNAWAY: Thank you, Mr. Chairman and 8 members of the board. And we do appreciate the time and effort that you spent, along with the 9 public who are here who have been through this 10 11 process, again, many times. 12 And you are the appeal board. You're the 13 board that acts in the shoes of the planning director, and you get to make the decision that 14 the planning director can make. 15 16 The standards here are very clear. The 17 Irving standards of the Supreme Court give it 18 those -- those standards. That is, did the 19 applicant show substantial compliance with the 20 objective requirements of the Land Development Code for the applicant use that it was 21 22 requesting? What it was requesting here in this 23 case. 24 If it did, then the burden shifts to the 25 staff to prove that the issuance of that permit

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Page 169 would be adverse -- in fact, adverse to the 1 2 public. General ideas of, "I don't like it, not in 3 my back yard, " Supreme Court has already 4 indicated that that kind of lay testimony does 5 not rise to the level of an adverse use. 6 7 We've met those objective criteria. The 8 staff failed to meet its burden in showing that it's adverse. This board ought to approve the 9 10 permit. 11 And let us get to that point. What is it 12 that you would be approving? Because Mr. Holmer 13 said this is not about the use of the property, and any quotes from the special magistrate as to 14 what we were going through. 15 16 And let me be clear, because Mr. Jones 17 brought this up: The applicant, Sean's Outpost, 18 did not -- we weren't -- we are not fighting 19 currently today the fact that we had to make a 20 development review submittal. We gave in to 21 that. We gave up on that fight. We lost. 22 We filed the application for the 23 development permit. We paid the fee, \$859. We're here. We know that we are going through 24 25 some process of approval.

Page 170 The question -- and I think Ms. Rigby 1 pointed this out in her discussion with the 2 staff. And I think the staff's articulation 3 back to you shows very clearly the tension and 4 5 the problems that we're having. We're not talking about a subdivision. 6 We know what a subdivision is. We're not talking 7 8 about a KOA campground, which I think Mr. Grimes stated eloquently his position on that. 9 It doesn't matter whether it's going to be 10 11 a homeless camp or a KOA campground. Mr. Grimes 12 is going to be opposed to somebody doing 13 something to make this property behind him not 14 vacant. It's commercial property. It's currently 15 16 vacant. We wanted to use the use that we're 17 doing now. The magistrate addresses that in 18 page two of the original order. 19 And he says -- and he goes, "The county 20 position is that the change of use from vacant to the existing use is a, quote, 'development', 21 22 pursuant to the Land Development Code." 23 I get that. Mr. Holmer pointed it out. 24 He said, "That's why we had to file the 25 application." We agreed. We did so.

And so what is it that we were doing? 1 Just that. Just that. We want that use to be 2 3 approved. And we know that that use is approved because the code says it's approved, and the 4 5 staff has already testified earlier they told you this is an allowable use. 6 7 So what, then, is it that needed to be 8 approved? And it gets to the point of where 9 we -- of where we are. The code -- look at the 10 provisions. And Mr. Holmer had them up there. 11 It says here, "The specific provisions 12 identified in the appeal application are 13 applicable. Make sure that these are applicable to the decision." 14 Well, look in your package. Look at my 15 16 letter of October the 27th. You have that 17 package before you. I state that at the DRC, 18 the issue is narrowed to the county claim that 19 the design standard manual, DSM, Section 2.2 20 required the construction of an all-weather 21 access road. 22 And you heard Mr. Jones testify in 23 response to Ms. Rigby's question. What is it? 24 Because the development order doesn't say. Just 25 says, "Denied. See below." Nothing there.

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And he said it's the access road and the 1 stormwater that would be associated with it. 2 But we know from the testimony that stormwater 3 is not required if there's no access road 4 5 required. So the question is: Is there an access 6 7 road? Is that required? Staff said DSM 2.2 8 requires that. We didn't hear any testimony or 9 evidence submitted to that today. 10 But in any event, we -- the applicant said 11 to the DRC: "Okay. Issue the permit contingent 12 upon the access road. Make it a condition." 13 Staff says, "We can't do that because it wasn't on the application. We can't add to it." 14 But you see, you've got -- you've got special 15 16 conditions all the time. Go back and do the 17 stormwater -- the flood plain analysis. And all 18 kinds of conditions that are put on there. 19 We don't think this road's necessary. And 20 the reason, again -- and point this out -because we're not doing anything. We're not 21 22 developing anything. 23 We're simply asking for what is the use. And that's what the magistrate said. 24 The 25 change -- the existing use is vacant. We know

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1 that.

2	What is the use now? Well, people are
3	there. There went the battery. They're using
4	it. It's a residential use. We know that the
5	use is allowed under the code. The question is:
б	How do you get to a point in which you, the
7	county, can approve?
8	MR. JONES: Probably need to get to the
9	mic. Be able to hear you and record it.
10	MR. DUNAWAY: How do we get to a position
11	in which the county
12	(Microphone stand collapses.)
13	MR. DUNAWAY: Because it's happened
14	before.
15	MR. HOLMER: I got it. It happened to you
16	the last time.
17	MR. DUNAWAY: Mr. Chairman, I'm just going
18	to hold it so it doesn't drop through.
19	MR. HOLMER: There you go.
20	MR. DUNAWAY: So that's the whole point.
21	What is it that we're doing? It's the use. It
22	was vacant. You know that there was a
23	trailer two trailers on there. Hauled the
24	trailers off. It was used as a dump, so we're
25	using it for residential use and temporary

Page 174 shelters, so that's -- that is the issue that's 1 before you. That's the clear matter that is 2 before you on this case. 3 We believe that you, based on the fact 4 5 that you've seen, can overturn staff and issue the denial -- and issue the permit. 6 7 If you feel uncomfortable with that, then 8 we are asking, just as we asked the DRC, then overturn staff's condition, issue the permit and 9 condition it on the implementation or the 10 11 building of an all-weather road. 12 Again, I point out that we're not doing 13 anything. There's no -- the only reason the road it said was there was for the 14 porta-potties. Of course, you know, that's --15 16 we're past that point. If you want to make it a 17 condition, then do so. You have that authority. The staff said that it's black and white 18 19 and there are no shades of gray, but if this 20 were the case, there wouldn't be an appeal process. You act as the planning director. 21 Planning director has a lot of discretion in the 22 23 review and interpretation of the Land 24 Development Code. 25 As has already been stated, this is a use

that has never been permitted in Escambia
County. I get that. It's a difficult decision.
It's one that the staff needed your support. It
needed a board of citizen-appointed persons who
can say to the county and to the -- our citizens
that, "You know what? This is an allowable
use."

People are living in Escambia County in a 8 tent all the time. We ought to give them a 9 10 place that is permissible, and this landowner is 11 doing so. It's a commercial zoned property, 12 heavy commercial, light industrial. We didn't 13 even go into all the details as to what could be permitted in this type of location in this type 14 of area. 15

16 The densities for this property, of which 17 there are currently 15 dwellings, people who are 18 dwelling on this eight acres, the densities in 19 here well exceed hundreds, the number of people 20 who could be permittable living in this area, 21 neighbors to the Mayfair Subdivision.

We get it that it's an unpopular use. We get it that people are justifiably -- are regrettably concerned about the people who don't have permanent housing, but as you stated -- as

you've heard from the director, and as you see from the detailed analysis and the detailed operations manual, this is a well-run process.

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Code Enforcement is -- I promise you that the county is well aware of 1999 Massachusetts. Code Enforcement knows where we are. If there were issues regarding nuisance or any type thing, they would be written up. We would be written up. Those have not come before you.

10 There's not been the clearing that was 11 talked about, trees. There's not been any 12 adverse use of the property. In fact, the only 13 competent substantial evidence before you is that the property has been greatly improved. 14 It's been greatly improved from its previous 15 16 use. That use is for the housing of persons who 17 don't have permanent housing in Escambia County, and that is the use that Sean's Outpost requests 18 19 that you allow to continue.

20 We allow -- we request that it be granting 21 of the permit without the road, but if you 22 believe that that is, in fact, a DSM 2.2 23 requirement, then condition that on the issuance 24 of the permit and give us the permit. Thank 25 you.

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Page 177 1 THE CHAIRPERSON: Thank you, sir. 2 Board, any questions of the applicant? 3 (No response.) THE CHAIRPERSON: Staff, any questions of 4 the applicant? 5 6 (No response.) 7 THE CHAIRPERSON: The Chair will now 8 entertain a motion regarding this item. In your motion, please state whether or not you adopt 9 staff's findings of fact. 10 11 If for any reason you do not accept 12 staff's finding of fact, please go through the 13 criteria and address each one specifically as why you do not concur with staff's findings. 14 Do we have a motion? 15 16 MS. RIGBY: I thought we didn't have a staff's finding of fact per se on an appeal. 17 18 MR. HOLMER: There's not. That 19 boilerplate language . . . Sorry. That's 20 boilerplate language because most cases that 21 come before us -- Once again this is a different 22 case. Y'all are deciding to overturn the denial 23 or, you know, agree with the denial is basically 24 what's . . . 25 MS. RIGBY: In overturning the denial, we

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1	don't do we therefore we don't therefore
2	accept the development order; correct? Because
3	then that would be acting as a development
4	review specialist.
5	MR. DUNAWAY: Which you are. I mean, just
6	for clarification. The code Land Development
7	Code says that you in the appeal have all of the
8	authority as the planning director for the
9	county. You are now the planning director for
10	the county.
11	MR. HOLMER: And it's the highlighted
12	portion right there in front of you.
13	Also remind you about the technical
14	specifications to exempt any development from
15	required review or approval by the authority.
16	You know, you can't change technical standards
17	or the application therefor. You are deciding
18	was the was the denial good or bad,
19	essentially.
20	MS. HUAL: If you could just scroll up to
21	the board finding right there.
22	MR. HOLMER: There you go.
23	MS. HUAL: So in essence, if you decide
24	that the appeal decision was an error, in
25	which case you may wish to reverse it or modify

Page 179 it, or you may find -- affirm that decision. 1 2 Those are the options. And the decision was to deny the development order. 3 4 MR. HOLMER: Correct. 5 THE CHAIRPERSON: So bottom line: We either accept or deny. 6 7 MS. HUAL: Affirm. 8 THE CHAIRPERSON: Affirm or deny. Affirm 9 or deny. 10 MR. CASEY: Mr. Chairman, I have a 11 question. 12 THE CHAIRPERSON: Yes. You may affirm in 13 whole or in part. And by that I mean modify it. Okay. 14 MR. DUNAWAY: Deny and or remand -- well, 15 16 in that case, yes. 17 THE CHAIRPERSON: Or remand it. MS. HUAL: Well, if you're not affirming, 18 19 meaning you're reversing in whole or in part and 20 you add modification with an instruction, then that would entail remanding. 21 22 MR. JONES: And -- and -- and attorney, I 23 would suggest that if that is the decision, I 24 want specific and -- specifics on what this 25 board is directing. If that's the case, I'm

Page 180 going to be asking to request so that they'll 1 know . . . we'll know on what we are looking for 2 if there is a remand, based upon the Land 3 Development Code. 4 MR. GANT: Let me see the rest of 5 Paragraph B in its totality. I can't see it. 6 7 Thank you. 8 MR. CASEY: Mr. Chair, my question is, I 9 guess just being straight, without trying to search for the wording, is in the case of 10 11 accepting staff's finding of denial, where does 12 the applicant go from here? 13 Can he go back and do the re-ap to complete the requirements? I'm not sure if 14 that's something that staff could answer or the 15 16 applicant could answer. 17 MR. DUNAWAY: I'd be happy to answer for 18 Mr. Casey, subject to the staff's . . . 19 MR. JONES: Go ahead -- comments. 20 MR. DUNAWAY: The Land Development Code 21 provides for the opportunity to appeal the Board 22 of Adjustment's decisions to a Circuit Court. 23 Circuit Court then would rule as to the legality 24 of the action here. 25 So that would -- that would be the next

Page 181 step if the board affirmed, essentially, the 1 2 staff denial. MS. HUAL: I think Mr. Casey's question 3 was whether or not the applicant would have the 4 5 opportunity to go back to the DRC and meet the stated requirements that were deficient --6 7 MR. CASEY: Correct. 8 MR. DUNAWAY: Under the current --9 MS. HUAL: -- on the first go-round. 10 MR. DUNAWAY: -- procedural requirements 11 that are before us that were set by special 12 magistrate Beasley in the order that you were -submitted and that you have, the options that 13 the special magistrate gave the applicant were: 14 Obtain the permit or cease the activity within 15 16 90 days of final appeal. 17 So we know in that circumstance that under 18 the current Land Development Code, an appeal of 19 a staff decision is not the same as a 20 conditional use, so there's no 90-day or 180-day 21 cooling-off period. 22 We could resubmit, but we started this 23 process over a year ago the first time, so we 24 would be -- we only have 30 days to appeal, so 25 the appeal process to the Circuit Court is much

Page 182 faster than we know that we could ever get any 1 2 action at the county level. Otherwise, we would 3 trigger the special magistrate's requirement 4 that we vacate the use. MS. HUAL: When did the clock start on the 5 90 days? 6 7 MR. DUNAWAY: The clock starts on the 90 8 days when final appeal is rendered. 9 MS. HUAL: Okay. MR. DUNAWAY: So I couldn't afford not to 10 11 do that because I won't have time in the 30 days 12 to get something resolved to meet the magistrate's order, so that's why I say the 13 practical consequence of that would be an appeal 14 to Circuit Court, of which we would do. 15 16 We would much prefer that if you had 17 some -- if you had some concern about that, that 18 you remand because a remand back from this board 19 would keep us out of the jurisdiction of the 20 special magistrate and would be able to allow 21 that process to continue under the -- under your 22 guidance. You are the planning director now. MR. JONES: I would like to add -- Thank 23 24 you, Mr. Dunaway, for that legal -- and Madam 25 Attorney, that, again -- just -- just for

Page 183 clarification, don't know what you're going to 1 decide but -- if determine that if you continue 2 to come back, with the understanding that it 3 still must meet the requirements. 4 And we do need to -- and I will suggest 5 that we give it a timeline, a reasonable 6 7 timeline. This has been going on for guite a 8 while. 9 We -- we -- because I know that they want 10 closure. We got to get closure to the 11 community. We got to give closure for ourself. 12 This has been going on a good length of time. So -- so -- so those conditions 13 of -- we're discussing, but that's the case with 14 the attorneys, we can be specific -- specific on 15 16 what we're looking at and what staff is required 17 to do and what they expect per the Land Development Code, if that is the case. 18 19 MR. HOLMER: I just want to point out: Α 20 remand, going back, getting a second bite of the apple, seeing could it meet it, that doesn't 21 22 address the question before you today. 23 MR. JONES: Absolutely. Thank you. 24 MR. HOLMER: The question before you today 25 is, was that denial arbitrary, capricious?

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Really, it all boils down to that. It's not 1 2 could they go back and get another chance and make it? Hey, we don't know. At the heart of 3 the matter, we need some sort of finding from 4 5 this board on the issue of the day. MS. RIGBY: Okay. But what I'm seeing, 6 7 you're asking me -- asking us was the denial 8 arbitrary and capricious? But all we know is that it was denied because it didn't meet some 9 standards. What are those standards? 10 11 MR. HOLMER: I went through that. Ι 12 discussed those, which we talked about. Yes, we talked about the roadway and what that could 13 trip. I discussed the buffering requirements 14 that weren't met. I discussed the labeling. 15 16 MS. RIGBY: But you said there was other 17 things. If we had a list of -- and -- and I 18 guess that's what I'm looking for. I'm used to 19 seeing it, is that we denied you -- we denied 20 you, Mr. Applicant, because of this list. MR. DUNAWAY: "See below." 21 22 MS. RIGBY: And the applicant can say, "Yeah. I better do that." 23 24 Then, yes, you denied it and it was -- it 25 was a fair denial because the applicant is not

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going to do it.

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2 The applicant has stated that you want a road. To me, it seems like this road came last, 3 but I don't know because I don't have 4 5 documentation that says when the road came into play or -- What I think happened here -- and I'm 6 7 basing on just the information given -- is that 8 this at first was a square peg that was going to fit in a square hole, and everybody on the board 9 10 knew what was going on. 11 That square peg rounded because they 12 decided they couldn't afford to do the bathhouse

or -- or the structure, so the square peg became round. But we've still got this square hole. Okay?

16 So now we have to somehow figure out how 17 this square -- this round peg can fit into the 18 square hole. And through that process, there 19 has been many variations of comments that, okay, 20 well, since you're not doing this anymore, the 21 bathhouse, the permanent structures, you're now 22 doing this, now these are your criteria to fall under. 23

24Like he said, we're doing nothing. What25do you want us to do if we're doing nothing?

Page 186 This is an animal all in and of itself. 1 This probably is not in the LDC, as far as 2 performance standards, as far as criteria, to a 3 certain degree. I don't know. 4 I would -- in my mind, I would think that 5 they would be looking at this as a campground, 6 7 and what are the criteria, the conformity of a 8 campground, and do they meet them. 9 They meet the standards A through G but 10 they don't meet standard S, Q, L and M. Ι 11 can -- I can -- I can say, "Yes, your 12 denial was correct." But not knowing specifics, 13 in general that is arbitrary. MR. HOLMER: You've talked about doing 14 subdivisions. Different animal. Fully 15 16 understand that. You're going through that 17 process. 18 When you get to the stage for a 19 development order, let's say your preliminary 20 plat. As to those comments, one of the things you get and you get signed off is from each 21 22 reviewer signing that disposition sheet saying, 23 "Hey, everything's done." 24 MS. RIGBY: Mm-hmm. 25 MR. HOLMER: We move forward. Because

Page 187 that's your thing, saying, "Hey, I met all their 1 2 conditions." 3 MS. RIGBY: Right. MR. HOLMER: We don't have that. 4 It 5 didn't meet all the conditions before going to the sign-off stage. Once again --6 MS. RIGBY: Why did it go to final if it 7 8 didn't meet that step? MR. JONES: Because -- I would like to --9 to submit this for -- in evidence. 10 The 11 evidence -- And I know that Mr. Rigby -- I mean 12 Mr. Dunaway definitely has this. There was a letter forwarded to him by 13 order of the special magistrate stating that we 14 15 had to send a copy of these comments to Mr. 16 Dunaway, the comments that are -- that are right here -- he got a copy -- stating on what he got 17 18 to do for the September 28th site plan review 19 meeting. These comments right here. 20 MS. RIGBY: Okay. 21 MR. GANT: Read those comments. 22 MR. JONES: Yes. Yes, yes, yes. For the record -- for the record -- I'm 23 24 quite certain that Mr. Dunaway has this letter. 25 Certain.

Page 188 We need -- it says, one of the comments --1 2 MR. DUNAWAY: Mr. Chairman, the only -- if I could, the only reason I would object to this 3 is because the appeal that we're doing is coming 4 5 from DRC. We're coming from a denial at DRC. As Ms. Rigby knows, at DRC, lots of things 6 7 get resolved one way or the other. Out of 8 DRC -- and I refer back to your standards for -and that is, the specific LDC provision 9 10 identified in the appeal application, are they 11 appropriate? 12 The appeal application made clear, and it's part of your record -- the appeal 13 application and the county -- the staff didn't 14 object to that. They didn't -- and then they 15 16 didn't present any evidence contrary to that. But the appeal -- and look at my letter of 17 October the 27th. That's my appeal. That's my 18 19 letter to you as the board, my appeal. 20 And it says, "At the DRC, the issue was 21 narrowed to the county claiming that the design standard, DSM 2.2, required an all-weather 22 road." 23 24 And again, the testimony during the 25 hearing -- now we're in argument -- but the

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testimony during the hearing was from Mr. Jones this was narrowed to the road, the all-access road.

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And the reason it was is because the county knew that the road would kill the project. It knew that, because I had been up front with that since way back before.

I can't build a road if I don't have any money. I can't build a road, so is there a way we can work through this process without the road?

And -- and there was a time -- but at the end, it turns out that, no, you can't. And so we said, "Well, condition the permit -- issue the permit conditioned on the road."

But what's before you is an appeal of the DRC, not appeal of staff's random comments because I -- you know, we've got April comments. We've got all kinds of comments out there.

20 But as you know, Ms. Rigby, it's what was 21 the denial at DRC. And the DRC was narrowed to 22 the issue of the all-weather road, so we 23 believed that we were appealing the denial of 24 the staff based on an all-weather road. That's 25 what we -- that's what we thought.

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That's why we paid the \$682.60 to make this appeal, so we could bring it to you and say, "One, we don't think the road is necessary and we don't think the staff has proved it. And we didn't think they proved then. We don't think they proved it tonight -- I mean today." But if it is, as we said at DRC, clearly

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8 to the DRC, well, then, issue the permit conditioned on it because everything else we've 9 10 done. And that's what we appealed. That's what 11 the third paragraph is, so that's what your 12 provision -- specific LDC provision. Identify in the appeal application, are they appropriate 13 to the decision, and was the decision not in 14 compliance with those provisions? 15

We think we've met all those objective
criteria, and the burden would shift under the
Irving standard.

19So I would object to Mr. Jones now in20argument, after the hearing is closed and the21board is discussing, to introduce comments which22I acknowledge we received. Absolutely. We23received a bunch of comments throughout the24years, but we narrowed these issues down at DRC25to the 2.2 DSM, was an all-weather road

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required? That's what we appealed.

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2 MR. JONES: Now, in response to answering 3 the question -- there was a question asked regarding -- because I think -- I think it's 4 5 perfectly clear that they stated that they did not want to do, which is the primary -- one of 6 the primary concerns, which is probably most 7 8 costly for them. That's not my issue. That's not my issue, the cost. 9

I think it was stated emphatically by Mr. Stromquist that -- that they are aware of the comments, but they did not meet the requirements of complying on the site plan, to give us the opportunity to review for stormwater for the road in any other comments that that may trigger this.

17 They acknowledge the fact that they 18 received the comments. He just acknowledged the 19 fact that he got them. He just acknowledged the 20 fact that they know that they can do it, but "we 21 really don't want to do it."

So I think -- and I think at this point, the testimony is quite clear from Mr. Drew and Mr. Dunaway of what the primary issues are from -- from the comments that they received,

Page 192 and they acknowledged those things. 1 2 So and if you -- and again, that's why I 3 say, we have those. If you want to see them, we can submit them right now. 4 But it has been acknowledged that they 5 have them. We know why we're here. Because we 6 7 just cannot and don't want to meet the 8 condition. That's his -- his assertion, board, his assertion that due to this condition, we 9 cannot -- our code does not allow for this 10 11 because other things that stated that -- that 12 this triggered this -- this triggered this. 13 It's in here. They were aware of things so we were -- but through that, Mr. Rigby -- Mr. 14 Dunaway already gave his closing remarks. 15 16 I'm just responding to the comments that 17 Ms. Rigby is stating to readdress that fact, not 18 to rehash this all over again. 19 And what he said by him was said by Mr. 20 Drew, too, for me. The conditions . . . there 21 MR. HOLMER: 22 are conditions. They're small things. They 23 don't trigger other things. 24 The reason that the county approves a 25 development order, we want everything on that

Page 193 site plan. It's real simple. We have 1 2 inspectors who go out to make sure everything was done according to the plan on that piece of 3 4 paper. 5 If we were to conditionally approve something, a road, we don't know how much 6 7 impervious surface. We don't know how much 8 runoff. We don't know how the stormwater is going to be handled. 9 10 If the county approves the site plan 11 without all that -- without that stuff on there, 12 what happens when the complaints roll in? 13 MR. JONES: Absolutely. MR. HOLMER: Well, I think they're causing 14 15 problems for me downstream. Our inspector goes 16 out with a set of plans. It's not on the plans. 17 It's, "Well, we're going to do this." Where's the calculations? 18 19 We're in a position if it's not on that 20 plan and we need it on that plan, we have to 21 stop it at that point. There's a reason why 22 everything needs to be drawn on that plan. 23 And years down the road, someone could 24 have an issue. "Was it drawn on the plan?" 25 "No, it wasn't drawn on the plan. It was

Page 194 just going to be worked out later." 1 2 Mr. Jones is correct. We simply don't 3 have that leeway. We're not doing that. I'm 4 sorry. 5 MR. CASEY: Mr. Chair, if I may say, you know, what we're here to decide, if the process 6 7 was done correct. 8 And listening to everything, taking out 9 the emotions, I'm hearing that's -- and I'm convinced that staff is saying that two 10 11 requirements weren't met. And the applicant is 12 also understanding that the requirements weren't 13 met. So that being said, you know, I'm 14 convinced that the process -- the justification 15 16 for staff to deny it, I'm in a position that --17 I don't take it real light -- if all the 18 discussion's been taken care of, to move that we 19 accept the recommendation of staff's denial. 20 THE CHAIRPERSON: Okay. We have a motion to accept staff's finding of fact. 21 22 Do we have a second? 23 MS. GUND: Well, I too believe that you 24 weren't doing nothing. You were doing something 25 with the property, and going through the process

Page 195 of the county. And the county was in it for a 1 lot of years. I mean, they know the process and 2 3 that the process was not followed, so I second. I agree with Mr. Casey, and I second that 4 motion. 5 THE CHAIRPERSON: We have a motion and we 6 7 have a second. Second by Judy. Motion by Mr. 8 Casey. Discussion. 9 MS. HUAL: Just to clarify, the motion is 10 11 to affirm the decision. MR. CASEY: Yes, the denial. 12 13 MS. HUAL: Okay. 14 MR. CASEY: Correct. THE CHAIRPERSON: Discussion? 15 16 (No response.) 17 THE CHAIRPERSON: All those in favor, 18 signify by raising your right hand. 19 (Three hands raised.) 20 THE CHAIRPERSON: Oh, boy. Those opposed, likewise? 21 (Three hands raised.) 22 23 THE CHAIRPERSON: It's a tie vote, so the 24 staff's findings are accepted. Okay. 25 MR. DUNAWAY: Ms. Hual, may I ask a

Page 196 procedural question? 1 2 MS. HUAL: Yes. 3 MR. DUNAWAY: Given the fact that we have a three-three vote, and knowing that I have to 4 5 appeal that process, the motion was to accept staff's findings of fact, which we know there 6 7 are no findings of fact. MS. HUAL: Which I asked for the 8 9 clarification. 10 MR. DUNAWAY: Then Ms. Gund stated the 11 process was not followed. 12 MS. GUND: I'm sorry. 13 MR. DUNAWAY: I would request --14 MS. GUND: The process was followed. I'm sorry. I meant to say that the process -- the 15 county has a process, and it was followed. 16 It 17 was -- well, how do I put that? I guess it was 18 not followed by you guys. 19 MR. DUNAWAY: That's -- that's -- yeah, 20 that's what I heard -- I heard you say, that 21 Sean's Outpost did not follow the process. And 22 so I don't know what to appeal. 23 MR. GANT: I think the -- the vote was to 24 affirm the staff's -- approve -- approve the 25 staff's decision -- findings and decision, so I

Page 197 think that's -- is that correct? 1 MS. HUAL: That was what I understood. 2 3 And that was why I made a point of clarifying, to be sure that that was, in fact, Mr. Casey's 4 motion. 5 MR. DUNAWAY: Yes, ma'am. I just -- And I 6 7 understood that. It's just that there were no 8 findings of fact. 9 MS. HUAL: No. I think it was to affirm the decision. 10 11 MR. DUNAWAY: Yes, ma'am. 12 MS. HUAL: Is that true, Mr. Casey? 13 MR. CASEY: Yes, absolutely. 14 THE CHAIRPERSON: Any other business? 15 (No response.) 16 MR. HOLMER: Yes, ma'am. We do have a 17 variance case on the 21st at 8:30 a.m. 18 THE CHAIRPERSON: Without objection, we 19 stand adjourned. 20 (Hearing concluded at 12:31 p.m.) 21 22 23 24 25

Page 198 1 2 3 CERTIFICATE OF REPORTER 4 5 б STATE OF FLORIDA ) ) 7 COUNTY OF ESCAMBIA ) 8 I, DAVID A. DEIK, CP, CPE, Professional Court 9 10 Reporter, certify that I was authorized to and did stenographically report the foregoing Board of 11 Adjustment proceedings; and that the transcript is a 12 true record of the proceedings contained herein. 13 I further certify that I am not a relative, 14 employee, attorney, or counsel to any of the parties, 15 nor am I a relative or employee of any of the parties' 16 17 attorney or counsel connected with the action, nor am I financially interested in the action. 18 19 20 21 2.2 23 DAVID A. DEIK, CP, CPE 24 Professional Court Reporter 25

# **EXHIBIT** 1



William J. Dunaway Licensed to Practice in Florida and Mississippi

wdunaway@clarkpartington.com Direct (850) 208-7020

April 5, 2016

#### HAND DELIVERY

Horace Jones, Director Escambia County Development Services Department 3363 West Park Place Pensacola, FL 32505

#### Re: Development Review Application; Satoshi Forest; Parcel ID No.: 12-2S-30-7002-000-000

Dear Mr. Jones:

Please find enclosed Sean's Outpost, Inc.'s Development Review Application for the subject parcel. In accordance with the Minor Development Site Plan Application package submittal requirements, I provide the following narrative.

The property is owned by Sean's Outpost, Inc., an entity organized under the laws of the State of Florida. Sean's Outpost provides meals and other services to persons in need. The Future Land Use Designation for the property is Mixed Use Urban and it is in the Heavy Commercial/Light Industrial (HCLI) zoning district.

My client's parcel is approximately 8.82 acres of which approximately 5 acres are jurisdictional wetlands. The area is vacant and heavily wooded. The property abuts Massachusetts Avenue. For the past two years, my client has allowed persons who otherwise have no permanent residence to remain onsite. Those guests have, from time to time, constructed temporary shelters utilizing tents and tarps. Except for a properly permitted privacy fence along the western boundary, no permanent development or other development activity has occurred on the site.

In the attached application, my client proposes to maintain the status quo. After two years of negotiations with both the County and the State Department of Health, my client received final action on its application for a campground on March 22, 2016. In that action, Sean's Outpost learned that in its present use, the property does not require a license or permit for camping from the State Department of Health and, therefore, it is operating in full compliance with State health and sanitation provisions (see attached letters). The Health Department has periodically inspected the facility and has documented full compliance over the past two years.

125 West Romana Street, Suite 800, Pensacola, FL 32502 • (850) 434-9200

Horace Jones, Director April 5, 2016 Page 2

As indicated on the Preliminary Site Plan, my client proposes no development and seeks nothing more than to continue its use. That is, it does not intend to construct, develop, or otherwise change the nature of the use which has for the past two years coexisted peacefully with the surrounding neighborhood.

The site is serviced by ECUA potable water and garbage service and the sanitary facilities are provided by Containers, Inc. in the form of three portalets and one hand washing station. These sanitary facilities are located near the location of tent site #12 depicted on the attached Preliminary Site Plan. While the attached site plan shows specific locations for tent sites, in actual practice, the tents are more spread out on the available uplands. Health Department Inspectors have continued to provide inspection services and have documented compliance in their Inspection Reports which are also attached.

With kind regards, I remain

Sincerely yours

William J. Dunaway

WJD/bfs Enclosures

clarkpartington.com



PROJECT INFORMATION FORM Development Services Department, 3363 West Park Place, Pensacola, Fl 32505 (Phone) 850-595-3475 (Fax) 850-595-3703 www.myescambia.com

#### Allow 2 working days for the return of this form

SECTION 1-A: MANDATORY - THIS SECTION TO BE COMP	LETED BY APPLICANT
a de la Constance de Contract	Phone: (850) 287-0792 Fax:
	State; FLZip Code; 32505
Project Name: Sean's Outpost - Satoshi Forest	Proposed Use:
Property Reference Number(s): 122S307002000000	······································
·	
Project Address: 1999 Massachusetts Ave., Pensacola, FL 32505	Estimated Parcel Acreage: 8.82
Is Site currently developed? NOYES 🖌 If YES, describe existing	g development potable water and portable tollets along with upland
areas available for tent sites. The site was previously used as a trailer	park.
Is a Conditional Use, Variance, Rezoning or Future Land Use Amendr	ment required for the Proposed development? NOYES
*If you would like to apply for a Variance (as required by th Development Order, please contact Andrew Holmer (850) 5	he Land Development Code) prior to the issuance of a
Select Type of Submittal:	but see narrative for more information.
Site Plan:Site Plan Minor:Unplatted;	
Would you like a Project Champion (Optional Customer Service Prog	
Site Plan Project Submittals	Subdivision Project Submittals
Estimated SQ, FT, of Building Footprint:0	Total # of Phases: Total # of Lots:
Estimated SO, FT, of Impervious Surface	# of Lots in Phase 1, # of Lots in Phase 2.
(Including Bldg Footprint):0	# of Lots in Phase 3: # of Lots in Phase 4:
SECTION 2: This section to be completed by County	
Parcel Future Land Use(s):	_Surrounding Future Land Use(s):
Parce Zoning District/cir	Surrounding Zonies Districts
х ихол толий рилийр).	Surrounding Zoning Districts:
Airport Environment(s):Overlay District(s):	Commissioner District;
Drainage Basin: Hurricane Evacuation Zone:	Flood Zone:
Notes:	
1	
Checked by:	Date:
Planner/Project Champion Verified:	

## **DEVELOPMENT REVIEW APPLICATION**

ESCAMBIA COUNTY DEVELOPMENT SERVICES DEPARTMENT 3363 West Park Place, Pensacoia, FL 32505 850-595-3472 www.myescambia.com

Project Name Sean's Outpost - Satoshi Forest

Project Address: 1999 Massachusetts Ave, Pensacola, FL 32505

Choose of	either BOX 1 or BOX 2, mark ONLY O	NE (1)	applicat	ion type. In BOX 3, mark only one type of proposed land use.
BOXI	Major Development Application Type	BOX	2; 1	Minor Development Application Type
1) - 2) - 3) - 4) - 5) - 6) - 7) -	Site Plan Preliminary Plat Master Plan Unplatted Subdivision Final Plat Artificial Lake Artificial Pond	1)	✓	Site Plan Minor (See form on web site titled "Minor Development Site Plan Submittal" )
BOX3	Type of Proposed Land UseC	ommer	roial	ResidentialBoth

#### List the Property Reference Number(s) for all parcels involved:

<b>Parcel</b>	Sec#	Twp #	Rge #	Sub #	Lot#	Bik#	Bancel Sec #	Twp #	Rge #	Sub #	Lot#	Blk#
1	12	2S	30	7002	000	000	4.4.5					
250												
3							6					

**Project Narrative:** Describe the proposed development project including: 1) all existing property uses, conditions and improvements, 2) all proposed uses, 3) height of each building/ structure in stories and feet, 4) federal and state regulatory permits required, 5) density transfer calculations if density transfer is proposed. (A separate written narrative may be submitted with the application instead of using the space provided below).

#### See attached Transmittal Letter.

1 of 4

H:\DEV SRVCS\PER-000 Permits\PER-200 DRC\PER-220 Checklists\Submittal Checklists\DRC\_application1-25-12.doc

Property Owners: Name: Michael Kimberl	· · · · · · · · · · · · · · · · · · ·			
Street address: 1999 Massachusetts Ave.	City; Pensacola		State: FL	
Zip Code: 32505 Phone: Work ()				
E-mail address: d.edlee@gmail.com				
Developer: Name:				
Street address:	City:		State:	
Zip Code; Phone; Work ()	Cell ()	_ Fax ()	)	
E-mail address:				
Agent / Engineer: Name:				
Street address:				
Zip Code: Phone: Work ()				
E-mail address:				
Provide the requested information in the space provide	d:			
Future Land Use Category(ies): MU-U	Zoning District(s	); HC/LI		
Has any part of the project site been previously involved in for Conditional Use, Application for Variance, Application No Yes If YBS, which type:	n for Vested Rights, Appeal	of Administra	tive Decision, oth	er county review?
Does the proposed project require a Variance, Conditional NoYes If YES, which:	Use Approval, Rezoning, or	r a Future Lan 'ES, attach wi	nd Use Change? ritten explanation.	
*If you would like to apply for a Variance (as required Order, please contact Andrew Holmer (850) 595-3472.	by the Land Development	Code) prior	to the issuance of	'a Development
Provide the requested information in the space provide	ed:			
	Septic Sewer Pro	vider: Contai	Portal Iners Inc. Handv	∍ts (3) ∕ashing Station (1)
Are there existing building(s) on site? No $\checkmark$ Yes_				
Describe last use of building(s):				-
SQ. FT, of Building Footprint:				
SQ. FT, of Impervious Surface (Including Bldg Footprint)	):			
Total Site Acreage: 8.82 Total Acreage to be di				
Total Acres of Wetlands: Approx. 5 To	tal Acres of Wetlands to be	disturbed:	0	
Number of Trees on site: Hundreds Nu	unber of Trees to be remove	d: _0		

If you have any question or comments regarding this application, please contact us at (850) 595-3472. We appreciate suggestions of how to improve our services.

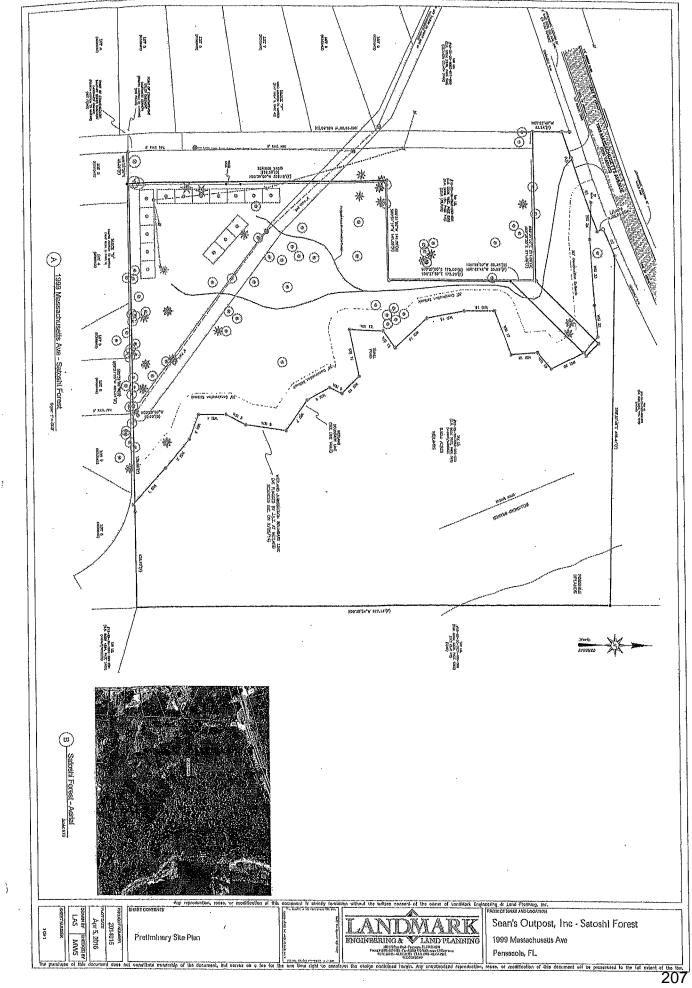
2 of 4 H:\DEV SRVCS\PER-000 Permits\PER-200 DRC\PER-220 Checklists\Submittal Checklists\DRC\_application1-25-12.doc

### DEVELOPMENT REVIEW APPLICATION CERTIFICATION FORM

I affirm and certify that I am duly qualified as authorized agent to make such application; that I understand the questions asked in the application; that all information and statements submitted in any documents or plans concerning this application are accurate to the best of my knowledge and belief; that I understand the application, attachments, and fees become part of the Official Records of Escambia County and not returnable or refundable; that this application is of my own choosing and staff has explained all procedures relating to this request; that there are no guarantees as to the outcome of this request; that the application is being accepted subject to verification of information; that any false information knowingly given by me may result in denial of the application, and that additional information may be required by Escambia County in order to make a determination.

Sean's Outpost - Satoshi Forest	~		
Name of Proposed Development			
Authorized Agent's Signature		Date	
Agents Name (print); Michael Kimberl			
Company Name: Sean's Outpost Inc.			
Street address: 1999 Massachusetts Ave.		City: Pensacola	State: FL
Zip Code: 32505 Phone: Work (850	) 287-0792	Fax:()	
STATE of Florida			
COUNTY of Escambia			
The forgoing instrument was acknowledged	l before me this _	5thday ofA	pril,
year of 2016 by Michael K	imberl	who (	) did ( ) did not take an oath.
He/she is ( ) personally known to me, ( ) p	produced current	Florida/Other driver's licen	se, and/or ()produced current
	as identifi	cation.	
		William J. Duna	way
Signature of Notary Public	Date	Printed Name of Notar	y.
March 13, 2017		EE 883765	
My Commission Expires	**************************************	Commission No. (Nota	ry seal must be affixed)

3 of 4 H:\DEV SRVCS\PER-000 Permits\PER-200 DRC\PER-220 Checklists\Submittal Checklists\DRC\_application1-25-12.doc



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## FLORIDA DEPARTMENT OF STATE DIVISION OF CORPORATIONS

## **Detail by Entity Name**

#### **Florida Not For Profit Corporation**

SEAN'S OUTPOST, INC

#### **Filing Information**

Document Number	N13000006546
FEI/EIN Number	46-3699172
Date Filed	07/22/2013
State	FL
Status	ACTIVE
Last Event	REINSTATEMENT
Event Date Filed	11/15/2014

#### Principal Address

1999 MASSACHSETTS AVE PENSACOLA, FL 32514

#### <u>Mailing Address</u>

1999 MASSACHSETTS AVE PENSACOLA, FL 32505

#### **Registered Agent Name & Address**

MCKENZIE, ALISTAIR 905 E HATTON ST PENSACOLA, FL 32503

#### **Officer/Director Detail**

#### Name & Address

Title DIR

KING, JASON 2430 HENCYE DR PENSACOLA, FL 32514

Title DIR

KIMBREL, MICHAEL 2430 HENCYE DR PENSACOLA, FL 32514

Title DIR

4/5/2016

KING, LESLIE 2430 HENCYE DR PENSACOLA, FL 32514

#### **Annual Reports**

<b>Report Year</b>	Filed Date
2014	11/15/2014
2015	04/30/2015

#### **Document Images**

04/30/2015 ANNUAL REPORT	View image in PDF format
<u> 11/15/2014 REINSTATEMENT</u>	View image in PDF format
07/22/2013 Domestic Non-Profit	

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2015 FLORIDA NOT FOR PROFIT CORPORATION ANNUAL REPORT
DOCUMENT# N13000006546
Entity Name: SEAN'S OUTPOST, INC

**Current Principal Place of Business:** 1999 MASSACHSETTS AVE PENSACOLA, FL 32514

#### **Current Mailing Address:**

**1999 MASSACHSETTS AVE** PENSACOLA, FL 32505

#### FEI Number: 46-3699172

#### Name and Address of Current Registered Agent:

MCKENZIE, ALISTAIR 905 E HATTON ST PENSACOLA, FL 32503 US

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida. SIGNATURE:

## Electronic Signature of Registered Agent

Officer/Direc	ctor Detail :		
Title	DIR	Title	DIR
Name	KING, JASON	Name	KIMBREL, MICHAEL
Address	2430 HENCYE DR	Address	2430 HENCYE DR
City-State-Zip:	PENSACOLA FL 32514	City-State-Zip;	PENSACOLA FL 32514
Title	DIR		
Name	KING, LESLIE		
Address	2430 HENCYE DR		
Clty-State-Zip:	PENSACOLA FL 32514		

hereby certify that the information indicated on this report or supplemental report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am an officer or director of the corporation or the receiver or trustee empowered to execute this report as required by Chapter 617, Florida Statutes; and that my name appears above, or on an attachment with all other like empowered.

SIGNATURE: JASON KING

Electronic Signature of Signing Officer/Director Detail

FILED Apr 30, 2015 Secretary of State CC9330688670

Certificate of Status Desired: No

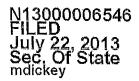
DIRECTOR

04/30/2015



Date

## Electronic Articles of Incorporation For



SEAN'S OUTPOST, INC

. . .

The undersigned incorporator, for the purpose of forming a Florida not-forprofit corporation, hereby adopts the following Articles of Incorporation:

#### Article I

The name of the corporation is: SEAN'S OUTPOST, INC

## Article II

The principal place of business address: 1999 MASSACHSETTS AVE PENSACOLA, FL. 32514

The mailing address of the corporation is: 1999 MASSACHSETTS AVE PENSACOLA, FL. 32505

#### Article III

The specific purpose for which this corporation is organized is: TO CREATE LASTING SOLUTIONS TO HOMELESSNESS, HUNGER, POVERTY, AND SOCIAL INJUSTICE

#### Article IV

The manner in which directors are elected or appointed is: AS PROVIDED FOR IN THE BYLAWS.

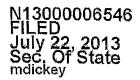
#### Article V

The name and Florida street address of the registered agent is:

ALISTAIR MCKENZIE 905 E HATTON ST PENSACOLA, FL. 32503

I certify that I am familiar with and accept the responsibilities of registered agent.

Registered Agent Signature: ALISTAIR MCKENZIE



## Article VI

The name and address of the incorporator is:

JASON KING 2430 HENCYE DR

PENSACOLA, FL 32514

Electronic Signature of Incorporator: JASON KING

I am the incorporator submitting these Articles of Incorporation and affirm that the facts stated herein are true. I am aware that false information submitted in a document to the Department of State constitutes a third degree felony as provided for in s.817.155, F.S. I understand the requirement to file an annual report between January 1st and May 1st in the calendar year following formation of this corporation and every year thereafter to maintain "active" status.

#### Article VII

The initial officer(s) and/or director(s) of the corporation is/are:

Title: DIR JASON KING 2430 HENCYE DR PENSACOLA, FL. 32514

Title: DIR MICHAEL KIMBREL 2430 HENCYE DR PENSACOLA, FL. 32514

Title: DIR LESLIE KING 2430 HENCYE DR PENSACOLA, FL. 32514 Recorded in Public Records 07/29/2013 at 02:40 PM OR Book 7052 Page 593, Instrument #2013055870, Pam Childers Clerk of the Circuit Court Escambia County, FL Recording \$27.00 Deed Stamps \$623.00

Prepared by:

Wilson, Harrell, Farrington, Ford, et.al., P.A. 307 South Palafox Street Pensacola, Florida 32502

File Number: 1-48088

#### **General Warranty Deed**

Made this July 25, 2013 A.D. By Robert Dale, a married man, whose address is: P.O. Box 11850, Pensacola, FL 32534, hereinafter called the grantor, to Sean's Outpost, Inc., a Florida corporation, whose post office address is: 1999 Massachusetts Avenue, Pensacola, Florida 32505, hereinafter called the grantee:

(Whenever used herein the term "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations)

Witnesseth, that the grantor, for and in consideration of the sum of Ten Dollars, (\$10.00) and other valuable considerations, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the grantee, all that certain land situate in Escambia County, Florida, viz:

A PARCEL OF LAND LYING IN A PORTION OF SECTION 12, TOWNSHIP 2 SOUTH, RANGE 30 WEST, ESCAMBIA COUNTY, FLORIDA, DESCRIBED AS FOLLOWS: THE SOUTH 1/2 OF THE WEST 1/2 OF GOVERNMENT LOT 7, LESS THE WEST 210 FEET OF THE SOUTH 210 FEET OF THE NORTH 310 FEET; AND LESS THE 4TH ADDITION TO MAYFAIR SUBDIVISION; AND LESS AND EXCEPT THAT PORTION CONVEYED TO FLORIDA UTILITY COMPANY BY DEED IN OR BOOK 151, PAGE 715, OF THE PUBLIC RECORDS OF ESCAMBIA COUNTY, FLORIDA; AND LESS AND EXCEPT THAT PORTION CONVEYED TO THE STATE OF FLORIDA BY DEED RECORDED IN OR BOOK 730, PAGE 157, OF THE PUBLIC RECORDS OF ESCAMBIA COUNTY, FLORIDA.

TOGETHER WITH THAT CERTAIN EASEMENT DESCRIBED AS FOLLOWS: A PERMANENT ACCESS EASEMENT, 25 FEET IN WIDTH, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF THE 4TH ADDITION TO MAYFAIR SUBDIVISION AS RECORDED IN PLAT BOOK 6, PAGE 5, OF THE PUBLIC RECORDS OF ESCAMBIA COUNTY, FLORIDA; THENCE NORTH 00°29' WEST ALONG A PROJECTION OF THE WEST BOUNDARY OF SAID SUBDIVISION A DISTANCE OF 580.5 FEET; THENCE NORTH 89°31' EAST A DISTANCE OF 211.00 FEET TO THE POINT OF BEGINNING; THENCE NORTH 44°35' EAST A DISTANCE OF 125.00 FEET; THENCE SOUTH 45°25' EAST A DISTANCE OF 25.0 FEET; THENCE SOUTH 44°35' WEST A DISTANCE OF 150 FEET; THENCE NORTH 00°29' WEST A DISTANCE OF 35.35 FEET TO THE POINT OF BEGINNING, LYING IN SECTION 12, TOWNSHIP 2 SOUTH, RANGE 30 WEST, ESCAMBIA COUNTY, FLORIDA.

## THE ABOVE DESCRIBED PROPERTY IS NOT THE CONSTITUTIONAL HOMESTEAD OF THE GRANTOR.

Parcel ID Number: 12-2S-30-7002-000-000

Together with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

To Have and to Hold, the same in fee simple forever.

And the grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land; that the grantor hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances except taxes accruing subsequent to December 31, 2012.

In Witness Whereof, the said grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in our presence:

Witness Printed Name DONNA SCHI MACHER

Robert Dale

Address: P.O. Box 11850, Pensacola, FL 32534

DEED Individual Warranty Deed - Legal on Face

Prepared by:

Wilson, Harrell, Farrington, Ford, et.al., P.A. 307 South Palafox Street Pensacola, Florida 32502

File Number: 1-48088

State of Florida County of Escambia

The foregoing instrument was acknowledged before me this 25th day of July, 2013, by Robert Dale, a married man, who is/are personally known to me or who has produced \_\_\_\_\_\_\_\_ identification.

Notary Public Tracy Rating

My Commission Expires:\_\_\_\_\_\_

MY COMMISSION # DD 965992 EXPIRES: April 11, 2014 Bonded Thru Budget Notary Services

I.

#### **RESIDENTIAL SALES ABUTTING ROADWAY** MAINTENANCE DISCLOSURE

ATTENTION: Pursuant to Escambia County Code of Ordinances Chapter 1-29.2, Article V, sellers of residential lots are required to disclose to buyers whether abutting roadways will be maintained by Escambia County. The disclosure must additionally provide that Escambia County does not accept roads for maintenance that have not been built or improved to meet county standards. Escambia County Code of Ordinances, Chapter 1-29.2, Article V, requires that this disclosure be attached, along with other attachments to the deed or other method of conveyance required to be made part of the public records of Escambia County, Florida. NOTE: Acceptance for filing by County employees of this disclosure shall in no way be construed as an acknowledgement by the county of the veracity of any disclosure statement.

NAME OF ROADWAY: 1999 Massachusetts Avenue

LEGAL ADDRESS OF PROPERTY: 1999 Massachusetts Avenue, Pensacola, Florida 32505

The County (X) has accepted ( ) has not accepted the abutting roadway for maintenance.

This form completed by:

Wilson, Harrell, Farrington, Ford, Wilson, Spain & Parsons P.A. 13020 Sorrento Road Pensacola, FL 32507

AS TO SELLER(S):

Robert Dale

AS TO BUYER(S

Seap's Outpost, Inc., a Florida corporation by: Jason King, Director

WITNESSES TO SELLER(S):

ted Name: Tracy Retin

DONNA SCHUMACHER

Printed Name:

WITNESSES TO BUYER(S):

inted Name: Tracy Rotain

Printed Name:

DONNA SCHUMACHER

This form approved by the Escambia County Board of County Commissioners Effective: 4/15/95

**Mission**:

To protect, promote & improve the health of all people in Florida through integrated state, county & community efforts.



Rick Scott Governor

Celeste Philip, MD, MPH Interim State Surgeon General

Vision: To be the Healthiest State in the Nation

March 22, 2016

Mr. William J. Dunaway, Esquire Clark Partington Attorneys at Law 125 West Romana Street Suite 800 Pensacola, Florida 32502

RE: Sean's Outpost; Permit Application Number 17-54-1530256

Mr. William J. Dunaway:

Your letter of March 14, 2016 addressed to Mr. David Pearce has been forwarded tome for response. As you can see by the attached letter of Robert Merritt the application for a campground has been denied due to some unanswered questions and most importantly, as currently operated, Sean's Outpost is not included in the facilities the Florida Department of Health licenses. Your client does not need a license from the Florida Department of Health to continue operating as is currently occurring. Of course the Florida Department of Health, is interested in and does regulate sanitation. Our inspections have not discovered any insanitary condition.

We will continue to check the grounds of Sean's Outpost to assure continuance of the current sanitary conditions. Any future communication regarding this application is to be addressed to my office as attorney for the Florida Department of Health in Escambia County.

Sincerely.

ohnson, B.C.S. Rodney M. Chief Counsel

Florida Department of Health Northwest Law Office 1295 West Falrfield Drive • Pensacola, FL 32501 PHONE: 850/595-6500 ext. 5 – FAX-850/595-6530 rodney.johnson@fihealth.gov www.FloridaHealth.gov TWITTER:HealthyFLA FACEBOOK:FLDepartmentofHealth YOUTUBE: fldoh FLICKR: HealthyFla PINTEREST: HealthyFla **Mission:** To protect, promote & Improve the health of all people in Florida through integrated state, county & community efforts.



Rick Scott Governor

Celeste Philip, MD, MPH Interim State Surgeon General

Vision: To be the Healthlest State In the Nation

March 21, 2016

Michael Kimberl 801 East Desota Pensacola, Fl 32501

Application Denial and Notice of Right to Administrative Proceedings Application Document No: 17-54-1530256 Sean's Outpost, Inc 1999 Massachusetts Ave. Pensacola, FL 32505

Dear Mr. Kimberl,

This letter will acknowledge receipt of the DH Form 4037 for a Mobile Home Park, Mobile Home Park Housing Migrant Workers, Lodging Park, Recreational Vehicle Park and Recreational Camp Application dated March 31, 2014 to develop the Sean's Outpost homeless camp into a proposed recreational camp with 17 tent sites utilizing a temporary sewage disposal system on the above referenced property.

You are hereby notified that your application has been denied due to the proposed project does not meet the definition of recreational as described in section 513.01(9), Florida Statutes (FS), or Chapter 64E-15 and the requirements set forth in 64E-6, Florida Administrative Code (FAC), specifically the applicant has failed to answer the following questions:

- 1. Please define how you have designed and intend to operate Sean's Outpost, Inc, Satoshi Forest for recreational purposes.
- 2. A Recreational Camp does not allow for temporary portable sanitary facilities. Due to these restrictions what measures do you plan to implement to prevent the creation of a sanitary nuisance?

As an applicant who has been denied a permit, you have the right to request a variance or hearing to appeal the department's action. Requests for a hearing must be made to this office in writing no later than 21 days from the receipt of this letter. Mediation pursuant to S.120.573, Florida Statutes, is not available to resolve this dispute.

If you have any questions on this matter, please call our office at (850) 595-6700.

Sincerel

Robert J. Merritt, REHS Director, Environmental Health Division Florida Department of Health in Escambia County

Florida Department of Health Escambla County 1295 West Falrfield Drive • Pensacola, FL 32501 PHONE: 850-595-6500 www.FloridaHealth.gov TWITTER:HealthyFLA FACEBOOK:FLDepartmentofHealth YOUTUBE: fldoh FLICKR: HealthyFla PINTEREST: HealthyFja

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#### STATE OF FLORIDA DEPARTMENT OF HEALTH COUNTY HEALTH DEPARTMENT

	COUNTY HEALTH DEPARTMENT	
MOBILE HOM	E, LODGING, RECREATIONAL VEHICLE PARK, RECREATIONAL CAMP, AND MIGRANT PARK INSPECTION REPORT	TYPE: MIGRANT PARK MOBILE HOME PARK
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HEALTH DEPARTMENT INSPECTOR:	The Brough PHONES BLOUGH PHONES I	95-6700
COPY OF REPORT RECEIVED BY:	ichael Kimberl	<u>219</u>
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### STATE OF FLORIDA DEPARTMENT OF HEALTH

	COUNTY HEALTH DEPARTMENT	
PURPOSE:	ME, LODGING, RECREATIONAL VEHICLE PARK, RECREATIONAL	TYPE:
ROUTINE REINSPECTION	CAMP, AND MIGRANT PARK INSPECTION REPORT	MIGRANT PÄRK MOBILE HOME PARK
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HEALTH DEPARTMENT INSPECTOR:	James BIOYAL PHONE: 5	15-6706
COPY OF REPORT RECEIVED BY:	DAID,	21-14
DH Form 4039, 02/12, 64E-15.010(6), F.A.C.	Nichael Kinbert	220

#### STATE OF FLORIDA DEPARTMENT OF HEALTH COUNTY HEALTH DEPARTMENT TYPE: MOBILE HOME, LODGING, RECREATIONAL VEHICLE PARK, RECREATIONAL PURPOSE: 🗂 MIGRANT PÄRK CAMP, AND MIGRANT PARK INSPECTION REPORT MOBILE HOME PARK ROUTINE REINSPECTIÓN Today and 2/21/14 Bill For CONSTRUCT. NEW LODGING PARK COMPLAINT CHANGE OF OWNER RECREATIONAL VEHICLE PARK QA SURVEY CONSULTATION RECREATIONAL CAMP OTHER \_ HIM Insortion TEMPORARY EVENT RESULTS Falest AME OF PARK OR CAMP Satisfactory ADDRESS 1929 Massacinu Setts rensacolo Incomplete owner Seans Outpost 🗆 Unsatisfactory 07-0792 PERSON IN CHARGE WICE REM Her Correct Violations by Next Inspection BEGIN 动行 网络古拉马马马属 ' 📩 8:00 AM ont 1 35 DA DATE **Rermitted** Spaces DATE POSITION # PERMIT NUMBER 1100 MH 7 2105 AM 2105 AM 2 2 01-01-01-01-01-12 6 7 C3-10 EM 3-10 EM 0.0.0.0.0.0.0.0.12 0101010101010101 01010101010101010101 RVanuar ) 11 cla **1**3 is do di do la ciola do -4-11-51 للوجاد والمحاد والمحاد 2 2 2 2 Tent 21212121212121212 ⊡5⊐i20i 14 21-212-2-2-2-2-2 **\_6**\_25 3.3.3.3.1.15 3763737637637637637 3313133133133133133 C41 (C41) (C41) (C41) Permitted Beds ⊏7⊐ 30 r4 c4 16 49:49:49:49:49:49:49 4141414141414 151 5 17 Cabins 5151515161516 51515151515151 C8:135 18 C51 17 is is in the second second .F6:18.7E6:1 **1**8 9040 **6** 6161616161616161 6161616161616 Barracks ©\_°⊑**6**⊐ 19 m 🗄 19 (10) (45) オコオコオオオ 7 c7:12:19 Other. ji **⊂8**⊐ **⊂8**⊐ 20 ACCENT 20 1150 18: \_**E8**] 🚔 20 8161818181818181 816318163181681681681 c91 ∰**⊏9**⊐ lousing 1255 (9) (9) (9) (9) (9) (9) 91191191191191191191 r9-21 OUT OF BUSINESS boye, or a citation, SITE AND LAYOUT SEWAGE DISPOSAL VERMIN CONTROL P. Style- 240 million 🗀 31:911#. 💡 20. Harborage 1. Drainage 11. Approved System 38. 513,FS, Available 2. Space Size 12. Plumbing 21. Extermination 📼 32. Disease Control OTHER STATE RECREATIONAL CAMPS\* **3**9. 3. Density 13. Dump Stations

It is unlawful to modify any Mobile Home, Lodging, RV Park, Recreational, Camp and Migrant Park without first having obtained approval from the department. ITEM NUMBERS

🗂 14. Septic Tanks

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GARBAGE AND

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4. Roads

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9, Backflow Prevention

7. Distribution System

COMMENTS AND INSTRUCTIONS (continue on attached sheet)

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COPY OF REPO	DATE: 2-2-7-14
.DH Form 4039, 0	2/12, 64E-15.010(6), FA.C. X Michard Kingber/ 221

DEPARTME	DF FLORIDA NT OF HEALTH TH DEPARTMENT
CAMP, AND REINSPECTION INSPEC	TIONAL VEHICLE PARK, RECREATIONAL TYPE; MIGRANT PARK TION REPORT IMBRANT PARK
	RECREATIONAL VEHICLE PARK
NAME OF PARK OR CAMP Saturis Folgst ADDRESS 19519 Massachusetts Ave. OWNER Seans Outpost	CITY PEASACO AND IN STREET Satisfactory
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	Sites are Pleased as 5001 as postble
proper permitting.	1 Classic Section Control of Cont
HEALTH DEPARTMENT INSPECTOR:	
COPY OF REPORT RECEIVED BY: DH Form 4039, 02/12, 84E-15.010(6), F.A.C. Michael Kinderl	<i>DATE</i> :222

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#### STATE OF FLORIDA DEPARTMENT OF HEALTH COUNTY HEALTH DEPARTMENT TYPE: MOBILE HOME, LODGING, RECREATIONAL VEHICLE PARK, RECREATIONAL PURPOSE: CAMP, AND MIGRANT PARK MIGRANT PARK E-MAITO: ROUTINE REINSPECTION INSPECTION REPORT MOBILE HOME PARK CONSTRUCT. NEW NEW d.edteegg@amait.com LODGING PARK COMPLAINT CHANGE OF OWNER C RECREATIONAL VEHICLE PARK **QA SURVEY** CONSULTATION RECREATIONAL CAMP and the second Inspection OTHER TEMPORARY EVENT RESULTS Foresta Massachusetts NVe. CITY YEASACOLA - Satisfactory ADDRESS Incomplete: Outoost Seans OWNER 🗆 Unsatisfactory Vichae MMher Correct Violations by PERSON IN CHARGE I Next Inspection $r_{s}$ BEGIN = 8:00 AM on: 900 and 975 Am DATE DATE Permitted Spaces **BERMIT NUMBER** OSITION# ⊏t⊐i00i <u>霧</u>」 2105 AM 2105 AM MН 0 7 2 01-0-01-0-212 C C3000 PM c35d0 em 07-07-07-07 2 12 ະໝີ້ເພິ່າເພີ່ມປີກໍ່ເພິ່າ CO1CO1CO1CO1CO1CO1CO1 RV **5** 13 C4015 4015 Had Had Had 21212121 Tent :5:1201 63 5120 222212 21212121212121 21212121212 C31C31C31 ⊂6⊐125i 6125 15 33 33 33 3.3.3.3.3.3.3.3 Permitted Beds 16 ⊡7⊐13Ŏi 7.30 45-45-45-45-45 4 - **1**6 43143143143143143143143 117 副18 Cabins CB135 8735 (4)c5- (-5-) 575757575757575757 5)(5)(5)(5)(5)(5) 61 61 61 **-9**1/40 **⊏9**⊐i40i c6 🖾 18 6161616161616161 6161616161616 Barracks which 10 3 **a**19 6.6 之際已 ៧០៨ភា 10 45 777777 ĽŻ... c7-1 7.7.7.7.7.7.7 Other BERING CONTROL **20** 1150 d:ti 50i C81 8181818181818181 E8-₫20 81681818181818 21 Housing 12,55 12 55 9 21 97c97c97c97c97c97c97c97 97197197197197197197 OUT OF BUSINESS Stopille Plosidu Sidnie or, a citation, administrat VERMIN CONTROL an the second SITE AND LAYOUT SEWAGE DISPOSAL (man-ar Seataba Tranag □== 31, 911.# 1. Drainage 11. Approved System 🞞 20. Harborage □ 38. 513,FS, Available 2. Space Size 🖵 32. Disease Control 12. Plumbing 21. Extermination OTHER STATE 3. Density 13. Dump Stations RECREATIONAL CAMP ----1 💳 39, SALS DEDMINET. 22, Sites - 74-75 - 74-76 4. Roads 14: Septie Tanks PERMITS AND FEES □ 23, Shelters SANITARY FACILITIES 🗀 41. ..... 5. Setbacks 33, Permit Current ⊐ 24: Heating = . 15. Adequate (1993) DRINKING WATER 📼 34. Plan on File 🕠 🖂 42 har the standard 🖂 25. Wiring--6. Approved System 🗂 16. Ratio 43. 35, Permit Application 7. Distribution System 17. Repair -----36. Fee Paid OTHER LOCAL 26 Beds and Bedding 8. Bact./Chem. Samples 27. Food Service 0. 04 10 144 · · · · · · · · · · · · · · · GARBAGE AND OWNER/OCCUPANT 9. Backflow Prevention: ----1 ., REFUSE DISPOSAL 28 Sanitary Facilities RESPONSIBILITY **7.45**...... 10. Water Stations 18. Storage 37 Maintenance 🖽 46 and Loss made in 19. Collection/Disposal 的现在分词 的复数的 医外外的 医外外的 It is unlawful to modify any Mobile Home, Lodging, RV Park, Represtional Camp and Migranl Park without first having obtained approval from the department. COMMENTS AND INSTRUCTIONS (continue on attached sheet) ITEM NUMBERS Ô 1110 ACASIA in notelling on the int PAS -garage is the PASULE HANNAR DOSP " TANKA TANG WE MANAPAR Note: FOMMAR MAINTAINER and Sanitary NUISANCE 05 health risk at oublic 595-6700 the time HEALTH DEPARTMENT INSPECTOR: PHONE OF Inspectio COPY OF REPORT RECEIVED BY; DATE. 223 DH Form 4039, 02/12, 64E-15,010(5), FA.C. Kimber

			RTMENT OF HEAD HEALTH DEPART		
	PURPOSE: MO		RECREATIONAL VEHICLI		TYPE:
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#### STATE OF FLORIDA DEPARTMENT OF HEALTH COUNTY HEALTH DEPARTMENT

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HEALTH DEPARTMENT INSPECTOR:	James Blougenone: 595-6	<u>007700</u>
COPY OF REPORT RECEIVED BY:	DATE: Z/2(2)	14
DH Form 4039, 02/12; 64E-16.010(5), F.A.C. M. & Marker fichister	unin, <u>~~~~</u>	225

### STATE OF FLORIDA DEPARTMENT OF HEALTH

	COUNTY HEALTH DEPARTMENT	
	PURPOSE: MOBILE HOME, LODGING, RECREATIONAL VEHICLE PARK, RECREATIONAL	TYPE:
	ROUTINE REINSPECTION INSPECTION REPORT	MOBILE HOME PARK
•	CONSTRUCT. INBW	LODGING PARK
	CONSULTATION	RECREATIONAL VEHICLE PARK
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STATE OF FLORIDA DEPARTMENT OF HEALTH COUNTY HEALTH DEPARTMENT	
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### STATE OF FLORIDA DEPARTMENT OF HEALTH

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	DEPARTMENT OF HEALTH COUNTY HEALTH DEPARTMENT	
CONSTRUCT.	MOBILE HOME, LODGING, RECREATIONAL YEHICLE PARK, RECREATIONAL CAMP, AND MIGRANT PARK REINSPECTION INSPECTION REPORT	TYPE: MIGRANT PARK MOBILE HOME PARK LODGING PARK
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#### STATE OF FLORIDA DEPARTMENT OF HEALTH COUNTY HEALTH DEPARTMENT

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HEALTH DEPAR	RTMENT INSPECTOR:	wire Danne	<u>, , , , , , , , , , , , , , , , , , , </u>	· · · PHONE:	595.6706	)
COPY OF REPO	RT RECEIVED BY:	Ft with or	ALK OLLION	DATE:	1/25/14	
	2/12, 64E-15,010(5), F.A.C,	- ·, \ 1			· · · · · · · · · · · · · · · · · · ·	233

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	DEPARTMENT OF HEALTH COUNTY HEALTH DEPARTMENT	
PURPOSE:	MOBILE HOME, LODGING, RECREATIONAL VEHICLE PARK, RECREATIONAL CAMP, AND MIGRANT PARK	TYPE:
ROUTINE	REINSPECTION INSPECTION REPORT	MOBILE HOME PARK
CONSTRUCT,	NEW STATE AND	LODGING PARK
COMPLAINT	CHANGE OF OWNER	C RECREATIONAL VEHICLE PARK
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OWNER	<u>2007/15/10/06/06/100-5+</u> ZIP 21P 27 50 5 and and and a	Unsatisfactory
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CG125 CG125	2. 1 1-24-2 122-22 122-22 12-22-22 12-22-22 12-22-22 12-22-22 12-22-22-22-22-22-22-22-22-22-22-22-22-2	<b>15</b>
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1. Drainage	注意,这些人们是这些人的问题,我们就是这些人的问题,我们就是我们的问题,我们就是我们的问题。	□ 38. 513,FS, Available
2. Space Si		OTHER STATE
3. Density	13. Dump Stations RECREATIONAL CAMPS**	<b>3</b> 9
4. Roads		40, 40, 40, 40, 40, 40, 40, 40, 40, 40,
5. Setbacks	相关的发展这些情况是这些情况是这些情况的。	= 41
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It is unlawful :	o modify any Mobile Home, Lodging, RV Park, Recreational Camp and Migrant Park without first having obtain	ed approval from the department.
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HEALTH DEPAR	TMENT INSPECTOR: PHONE:	a lug
COPY OF REPO.	RT RECEIVED BY: 10 Freinst 10 n Cive DATE: 8/1	5/11
DH Form 4089, 02	/12, 64E-16.010(5), F.A.O.	234

### STATE OF FLORIDA DEPARTMENT OF HEALTH

	DEPARTMENT OF HE COUNTY HEALTH DEPA	ALTH	
CONSTRUCT, IN NEW	ME, LODGING, RECREATIONAL VEHI CAMP, AND MIGRANT PA INSPECTION REPORT	n en ragen de Bolg (22019) a l'are l'arender de RK (2019) Sectores de l'arender d'Arende de Bolg 1	TYPE: MIGRANT PARK MOBILE HOME PARK LODGING PARK
COMPLAINT CHANGE OF OWNER QA SURVEY CONSULTATION CONSULTATION		e and a second sec	RECREATIONAL VEHICLE PARK
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PERSON IN CHARGE WALLY OU	[ himber ] PHONE	<u>xoti: Ot ICanada</u>	Correct Violations by
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	un de la companya de		
HEALTH DEPARTMENT INSPECTOR:	wind and with the	<i>PHONE:</i>	95-6700
COPY OF REPORT RECEIVED BY:	Let Martin Lett	DATE:	<u> 25/ 4</u> 235
	Michael Kimbert		, 200

#### STATE OF FLORIDA DEPARTMENT OF HEALTH COUNTY HEALTH DEPARTMENT

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··•·	COUNTY HEALTH DEPARTMENT	
PURPOSE;	ME, LODGING, RECREATIONAL VEHICLE PARK, RECREATION	AL TYPE:
ROUTINE REINSPECTION	CAMP, AND MIGRANT PARK INSPECTION REPORT	MIGRANT PARK
CONSTRUCT. II NEW		I MOBILE HOME PARK
COMPLAINT CHANGE OF OWNER		RECREATIONAL VEHICLE PARK
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HEALTH DEPARTMENT INSPECTOR:	PHONE:	595-6700
COPY OF REPORT RECEIVED BY:	t with camper for Michael. DATE:	9/12/14
DH Form 4039, 02/12, 64E-16.010(6), F.A.O.		236

	STATE OF FLORIDA DEPARTMENT OF HEALTH COUNTY HEALTH DEPARTMENT	
PURPOSE: ROUTINE CONSTRUCT COMPLAINT QA SURVEY OTHER	REINSPECTION INSPECTION REPORT	TYPE: MIGRANT PARK MOBILE HOME PARK LODGING PARK RECREATIONAL VEHICLE PARK RECREATIONAL CAMP TEMPORARY EVENT
	ARKORCAMP Satoshi Forest 191991 Mussachuseetts Fue city Pensacala Seant Outpost CHARGE Michael Kimberl PHONE 23707912	Satisfactory Incomplete Unsatisfactory Correct Violations by
BEGIN         EN           Z US pr         J S           C1:000         C1:00           C2:005 (AM) (2:10)         C3:01           C3:010 (AM) (2:10)         C3:01           C3:010 (AM) (2:10)         C3:01           C3:010 (AM) (2:10)         C3:01           C3:010 (AM) (2:10)         C4:01           C3:010 (AM) (2:10)         C4:01           C3:010 (AM) (2:10)         C4:01           C3:010 (AM) (2:10)         C4:01           C3:010 (AM) (2:10)         C5:02           C3:02 (AM) (2:10)         C5:02           C3:03 (AM) (2:10)         C5:02           C3:040 (C)	$\begin{array}{c c c c c c c c c c c c c c c c c c c $	□ Next Inspection         3:0 AM on         0:0:0:0:0:10         13:0:0:0:0:10         13:0:0:0:0:10         13:0:0:0:0:10         13:0:0:0:0:10         14:0:0:0:0:0:10         15:0:0:0:0:0:0:10         16:0:0:0:0:0:0:16         16:0:0:0:0:0:0:16         17:0:0:0:0:0:18         17:0:0:0:0:0:0:0:0:0:0:0:0:0:0:0:0:0:0:0
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ITEM NUMBERS	COMMENTS AND INSTRUCTIONS (continue on attached sheet)	ed approval from the department, and the second s and the second
COPY OF REPO	RTMENT INSPECTOR: PHONE: CONTRECEIVED BY: PHONE: DATE: 10)	<u>101/14</u> 237

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	STATE OF FLORIDA	
	DEPARTMENT OF HEALTH	
, 	COUNTY HEALTH DEPARTMENT	ТҮРЕ:
PURPOSE:	MOBILE HOME, LODGING, RECREATIONAL VEHICLE PARK, RECREATIONAL CAMP, AND MIGRANT PARK	MIGRANT PARK
ROUTINE	L REINSPECTION . INSPECTION REPORT	MOBILE HOME PARK
CONSTRUCT.	CHANGE OF OWNER	LODGING PARK
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3. Density	□ 13. Dump Stations RECREATIONAL CAMPS** List Stations	39.
4. Roads		₩140; ····································
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🚍 . 6. Approve	d System 🕴 🖂 16. Ratio	43 <sup>-1</sup>
7. Distribu	1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1	OTHER LOCAL
	GARDAGE ARD	44. 44. 44. 44. 44. 44. 44. 44. 44. 44.
🗀 10. Water S	tations 🖂 18. Storage 👘 🖓 🖓 🖂 🖂 🖓 Maintenance 🚈 002	46 the second commence of the
	19, Collection/Disposal	CHARAN AND AND AND AND AND AND AND AND AND A
It is unlawful.	to modify any Mobile Home, Lodging, RV Park, Recreational Camp and Migrani Park without first having obtain	d approval from the denortment
ITEM NUMBERS	COMMENTS AND INSTRUCTIONS	and the summer of the body of the second
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HEALTH DEPAR	TMENT INSPECTOR: PHONE;	15.0700
	RT RECEIVED BY: DATE:	1-1/15
DH Form 4039, 02	/12, 64E-15.010(5), F.A.C.	238

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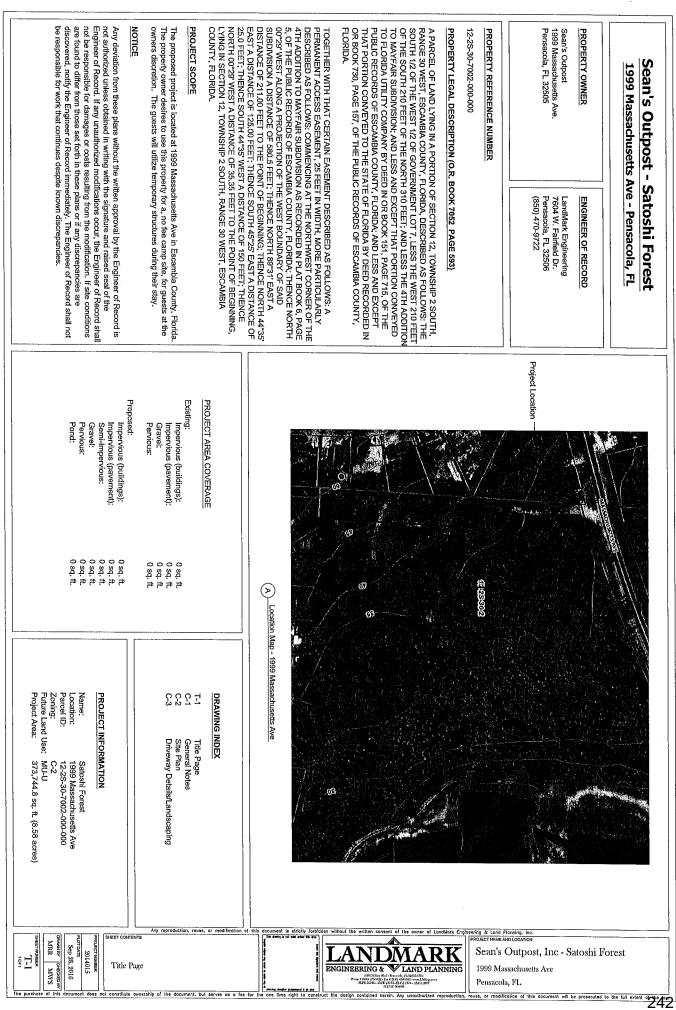
#### STATE OF FLORIDA DEPARTMENT OF HEALTH COUNTY HEALTH DEPARTMENT

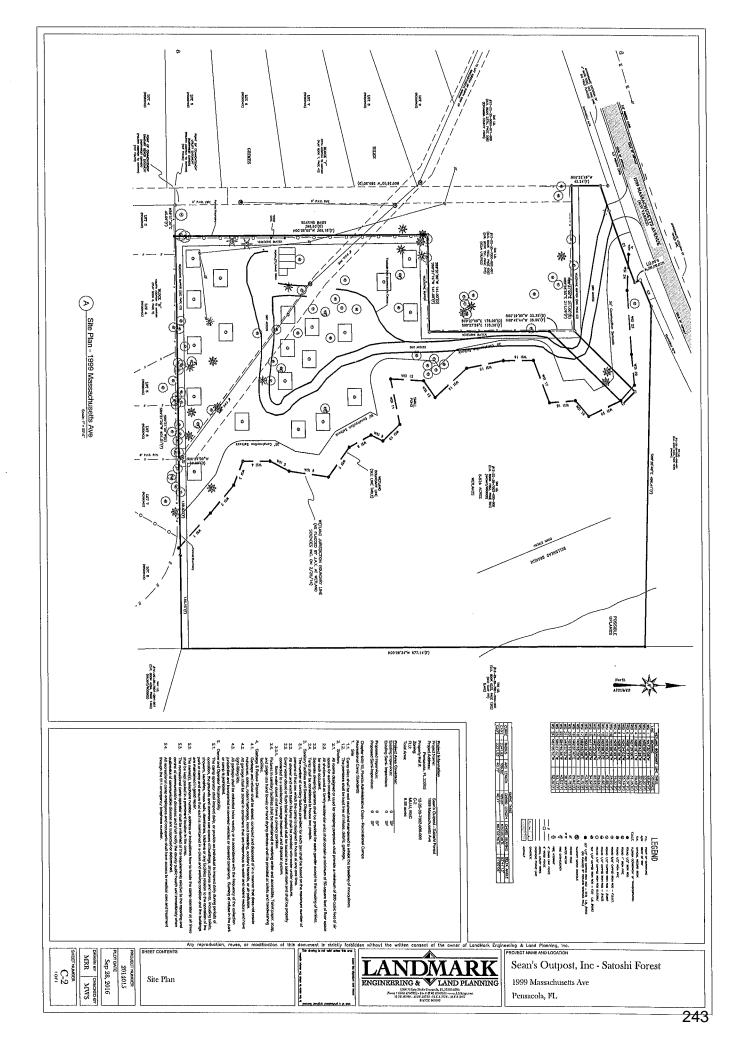
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	C	OUNTY HEALTH DEPAR		
PURPOSE	•	LODGING, RECREATIONAL VEHICL	E PARK, RECREATIONAL	TYPE:
ROUTINE	REINSPECTION	CAMP, AND MIGRANT PARI INSPECTION REPORT	Service and the design of the second period	MIGRANT PARK
CONSTRUCT.	D NEW			LODGING PARK
COMPLAINT	CHANGE OF OWNER	· · ·		RECREATIONAL VEHICLE PARI
$\square$ QA SURVEY $\square$ OTHER $\underline{\mathcal{P}}$	= CONSULTATION	$(1, 1^{d})^{1}$ , $(1, 1, 2^{d})^{1}$ with an $(1, 1, 2^{d})^{1}$ , $(1, 2^{d})^{1}$ ,	etta esta mangadita del terra	RECREATIONAL CAMP
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OWNER	HERBORN BERTHER WERE AND A STREET	2.54 ZP	<u>43505 - 2008 - 20</u>	Unsatisfactory
PERSON IN O	HARGE Michael	Kimbert PHONE	<u>8+ 0792</u>	Correct Violations by
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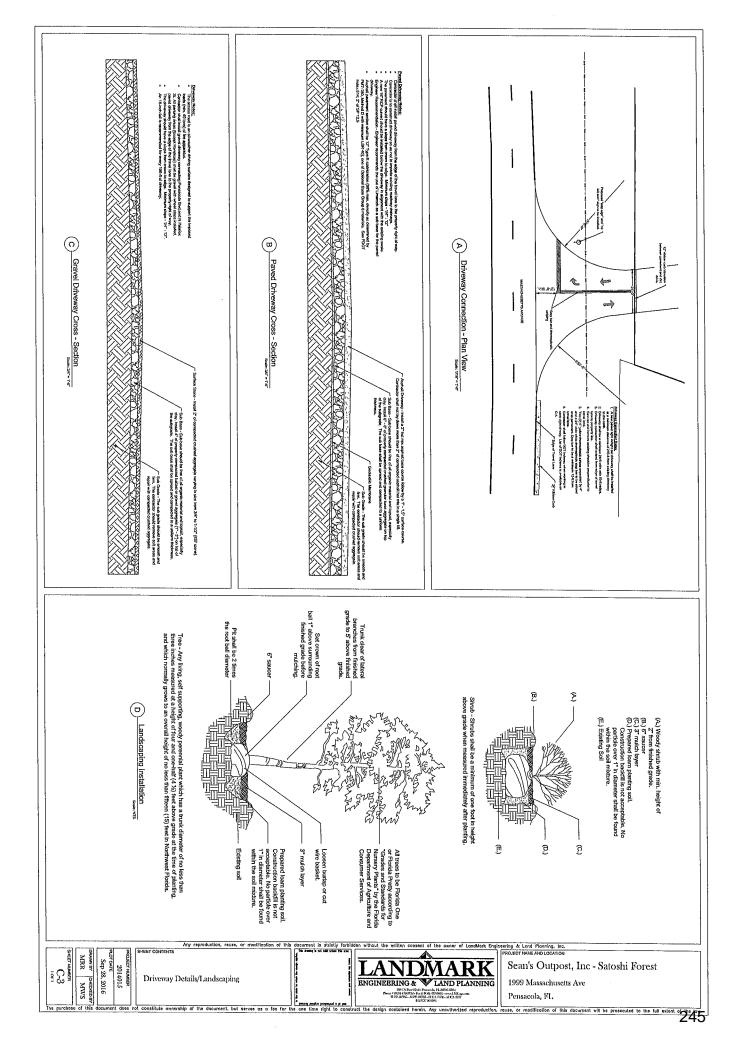
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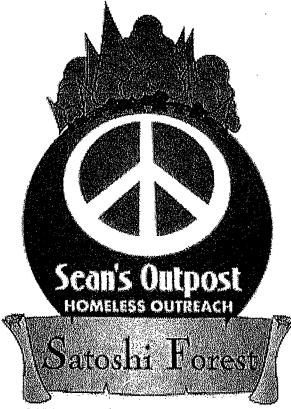




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### SEAN'S OUTPOST SATOSHI FOREST SANCTUARY



1999 Massachusetts Ave, Pensacola, FL

### HEALTH AND SAFETY MANUAL September 2016

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#### **Policy Statement**

The management of Sean's Outpost is committed to providing its guests with a safe and healthful area in which to empower themselves in. It is the policy of Sean's Outpost that:

- A safe space will be provided. It will be expected that guests will maintain their area to the best of their abilities to coincide with the Florida Department of Health's regulations.
- While the responsibility for safety begins and ends with the director, all Satoshi Forest Sanctuary guests are responsible for their own safety and that of their fellow guests. It is the basic philosophy of Sean's Outpost that all incidents are preventable, when the causes are known.
- When an incident occurs, immediate attention will be arranged for the ill or injured individual.
- Guests must report all incidents, injuries, and unsafe conditions to the Director, and will not be subject to retaliation, penalty, or other disincentive.
- Sean's Outpost will assist with and help to develop clear goals and objectives to assist guests.
- Guests recommendations to improve health and safety conditions will be given full consideration.

- Disciplinary action will be taken against any guests who willfully or repeatedly violates any rules. This action may include verbal or written reprimands that may ultimately result in the termination of residency.
- The Director will be actively involved with guests in establishing and maintaining an effective case management plan with partnering organizations and agencies.

The primary responsibility for the coordination, implementation, and maintenance of Satoshi Forest has been assigned to:

#### Name: <u>Michael Kimberl</u> Title: <u>Director</u>

#### Telephone: <u>(850)287-0792</u>

Sean's Outpost is committed to the on-going Health and Safety activities, which include (but not limited to) promoting safe participation, health and safety education, and reviewing and updating safety rules and regulations. This policy statement serves to express the commitment to, and involvement in, providing safe and healthful living conditions at Satoshi Forest Sanctuary. This safety program will be incorporated as the standard of practice for Sean's Outpost at Satoshi Forest Sanctuary.

### Approved by the Board of Directors of Sean's Outpost Date: September 2016

# LOSS CONTROL MANAGEMENT

Loss control management is the application of skills to insure the control of loss to that of guests as well as Sean's Outpost. Loss control management involves prevention, reduction and control of injury and illness, property damage (including fire), security breaches (thefts), liability (auto, general, civil rights, discrimination), exposures (heat, noise, hazardous materials), and recognition and elimination of hazards through safety awareness. The Loss Control Management of Sean's Outpost is a comprehensive approach designed to provide for a safe and healthful environment in direct support of the policies and procedures.

### Loss Control Management goals include:

- The identification of all loss exposures through a Self Inspection Checklist based on risk inventories and reviews of all activities.
- The evaluation of the risk(s) of each exposure through a Risk Assessment.
- The development and implementation of a comprehensive Health and Safety Plan to reduce the number and costs of injuries, illnesses, and property damage related to incidents.
- The monitoring of the Loss Control Management Plan.
- The implementation of a methodology to address and reduce the following "costs" to that of Sean's Outpost and that of the guests of Satoshi Forest Sanctuary that occurs as a result of incidents.

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# Elements of the Loss Control Management Plan include, but are not limited to:

- Identification of loss exposures
- Risk Assessment
- Comprehensive Health and Safety Plan
- Loss Control Awareness
- Loss Control Action Plan
- Loss Control Incentives
- Management Commitment
- Written Framework for Health and Safety Policies and Goals.
- Formal or Informal Safety Inspections
- Safety Meetings
- Medical Monitoring
- Safety Training Incident Review

# **Targets of a Loss Control Management Plan:**

- Injury and Illness
- Fire
- General Property Damage
- Theft
- Absenteeism
- Alcohol & Other Drug Abuse
- Natural Catastrophic Loss
- Environmental Abuse
- Disorder
- Wasteful Behavior
- Other Avoidable Wastes
- Management Inadequacies

# **SAFETY PROGRAM ORGANIZATION**

# Safety Advisory

The safety of the guests of Satoshi Forest Sanctuary is the primary concern of Sean's Outpost. The responsibility for the maintaining of safety is with the Director in conjunction with the guests of Satoshi Forest Sanctuary. These responsibilities include, but not limited to:

- To recommend improvements to the health and safety program.
- To identify corrective measures needed to eliminate or control recognized hazards.
- Review and update safety rules based on incident review findings, inspection findings, guest reports of unsafe conditions or practices, and address suggestions and concerns.
- Evaluate injury and incident reports, identifying trends and patterns, and formulate corrective measures to prevent reoccurrence.
- Prepare and maintain the Health and Safety Manual and other documents that relate to safety.
- To assist in whatever way possible to improve the health and safety of guests, volunteers, and employees of Satoshi Forest.

**Meetings.** Meetings are to be held during daylight hours. A majority of the guests shall be present for any issue that requires group input. The

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Director will submit the notification of the scheduled date, time, and location of each meeting to all guests by either verbal or written communication. Any changes made will be updated to the manual.

# **Safety Program Administration**

Responsibility for the overall implementation of the Health and Safety Program is assigned to the Director of Sean's Outpost. The Director has the responsibility, under the authority and supervision of the Board of Directors, to do the following in the name of Sean's Outpost and Satoshi Forest Sanctuary:

- Establish and conduct, at minimum, yearly Safety Meetings.
- Conduct scheduled and unscheduled inspections to identify and correct unsafe conditions, giving special attention to detecting serious concealed dangers.
- Stop hazardous operations where life jeopardy or major property damage is imminent.
- Submit an annual Safety/Loss Control Report to the Board of Directors, summarizing any actions taken to prevent incidents, including suggestions for safeguards and improvements. The Director should be responsible for compiling, coordinating, and submitting this information to the Board of Directors no later than December 15 of each year including:
  - Provide the Board Of Directors with information, advice, and assistance needed to formulate the policies, directives, procedures, and standards.

- Assist in establishing and maintaining a healthy and safe environment free from unacceptable risks, in conformance with federal and state health and safety guidelines and in compliance with applicable standards, codes, and regulations.
- Review statistical analyses of injury/illness reports, incident investigations, property damage, and vehicle incident reports.
- Recommend general safety education and training programs.
- Maintain or have access to a library that contains copies of codes, standards, safety manual, and reports.

# **Residents Safety Responsibilities**

Each guests of Satoshi Forest Sanctuary should establish and be familiar with the rules and regulations regarding the health and safety of themselves and their fellow guests including the following responsibilities:

- Review the Health and Safety Plan and provide comments to the Director.
- Implement the Sean's Outpost Safety Plan.
- Establish and communicate procedures for conducting safety self-inspections of the areas.
- Establish and communicate procedures to review and analyze causal factors related to close-calls, incidents, safety-related incidents, injuries, illnesses, diseases, and fatalities in order to eliminate hazards or reduce their potential reoccurrence.

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- Evaluate the effectiveness of and recommend improvements to the safety rules, policies, and procedures for incident and illness prevention.
- Establish and communicate guidelines for the safety of fellow guests.
- Communicate information to fellow guests who may have been unavailable to attend meetings and/or have them contact the Director for confirmation.

Guests are encouraged to communicate with the Director as well as fellow residents, regarding ways to improve safety at Satoshi Forest Sanctuary.

# Director

The responsibilities for the Director include but are not limited to the following:

- Implement and enforce safety rules/procedures;
- Apply incident/incident prevention;
- Make the safety of all guests an integral part of regular management functions;
- Take a proactive approach to identify and eliminate, or substantially reduce, situations that may cause incidents/incidents;
- Inspect areas for compliance with health and safety guidelines (self-inspections);
- Report and review incidents/incidents;

- Conduct safety meetings and promote safety awareness;
- Make safety a permanent agenda item for meetings at all levels.

# HEALTH AND SAFETY TRAINING

# Training Purpose

Health and safety training is a specific required component of the Satoshi Forest Sanctuary safety plan offered to all guests. The purposes of this training are to:

- Familiarize the residents with the Satoshi Forest Sanctuary safety policies and practices;
- Decrease the potential for incidents and injuries in the area;
- Achieve compliance with federal and/or state regulations.

# **Training Focus**

The Director is responsible to ensure that guests receive health and safety training including orientation training, general safety procedures, periodic retraining (whenever necessary), and updated training as required by process changes, technological developments, or new injury experience of Sean's Outpost. The Director is responsible for obtaining training to analyze potential hazards and evaluate conditions of Satoshi Forest Sanctuary.

Orientation for all new guests and transfers shall be completed within the first week of residency and shall include but not be limited to instruction on:

- General safety rules that apply to all guests using this manual and other resources;
- Expectations of each guests in the event of emergencies specific tasks;

- Procedures for reporting unsafe conditions, incidents and "close calls";
- Safe operation and maintenance of all associated tools and equipment;
- Interfacing of certain job-specific activities as to the relation of other tasks performed by other guests;
- Specific state and federal regulations;

General safety procedures that apply to all guests will be provided through new guest orientation, by the Director in conjunction with other guests. Job-specific training shall include verbal instructions on safely performing the job, demonstrating safe performance, observation of the performance for proper procedures and having the guests explain the procedure back to the Director to ensure understanding.

Retraining shall be provided to all effected guests when the Board of Directors makes changes in policy, when regulations require retraining or when regulations governing the situation are changed, when the standardized practice for the industry is modified, or when new equipment or processes are purchased or adopted at Satoshi Forest Sanctuary.

The Director shall also provide additional/other safety training based on guest(s) request and information supported by data from injuries and "close calls".

# FIRST AID AND EMERGENCY TREATMENT

# **Minor First Aid Treatment**

First aid kits should be accessible to all guests and be kept in easily accessible areas. Guests who sustain an injury or are involved in an incident requiring minor first aid treatment, should take the following steps in the order that is appropriate for the situation:

- Inform the Director.
- Administer first aid treatment to the injury or wound.
- If a first aid kit is used, indicate usage on the Incident Review Report.
- Provide details for the completion of the Incident Review Report.

# Non-Emergency Medical Treatment

For non-emergency injuries or illnesses requiring professional medical assistance, beyond first aid treatment, guests should take the following steps in the order that is appropriate for the situation:

- Inform the Director
- Proceed to the medical facility of choice. Director or guests may assist with transportation, if necessary.
- Provide details for the completion of the Incident Review Report.

# **Emergency Medical Treatment**

For severe injuries requiring emergency treatment, guests should take the following steps in the order that is appropriate for the situation:

- Call for help and seek assistance from a fellow guests or the Director.
- In all cases requiring emergency medical treatment, immediately call, or have a guests/Director call, to request emergency medical assistance.
- Inform the Director and provide details for the completion of the Incident Review Report.

# **Emergency Contacts**

Personal emergency contact will be held on file by the Director in case emergency contact is required.

# REPORTING

At a minimum, all guests are required to report to the Director all incidents as described below:

- Injury, illness, or death.
- Public injury, death and/or property damage.
- Sean's Outpost property damaged by incident, whether or not it is to be repaired or replaced, and regardless of whom caused the damage.

The Director should report all major incidents to the Board of Directors as soon as possible.

# **Incident Review Process**

The purpose of an incident review is to identify the cause of the incident, thereby allowing the development of remedies to prevent reoccurrence. Every incident or "close call" shall be considered an incident and shall be thoroughly reviewed. A "close call" is an undesirable incident that under similar circumstances could have caused injury or damage.

Whenever possible, the Director will conduct an incident review at the location where the incident occurred. The Board of Directors is responsible for seeing that the incident review reports are being completed properly and that the recommendations are being addressed. The Director shall use the following investigation procedures:

- Implement temporary controls to prevent any further or potential injuries.
- Where possible, preserve the site of the incident and quickly gather evidence that is likely to change or move.
- Make sketches and take measurements/photos from several different angles.
- Identify and interview not only each witness but anyone else who might provide clues to the causes of the incident.
- Review the equipment, operations and processes to gain an understanding of the situation.
- Within seven days from date of incident, complete a written report that shall include recommendations for corrective action.

# **Recordkeeping Procedures**

The Director will develop procedures to control and maintain all guests, employee, and volunteer incident, illness and injury records for the current calendar year, plus the past three calendar years, to include:

- Incident Review Reports
- Safety Meeting Minutes, Recommendations, and Records
- Emergency Contact Information of guests

# SAFETY RULES, POLICIES, AND PROCEDURES

# **General Safety Rules**

The following general safety rules have been prepared to assist our responsible residents in their efforts to live safely. These rules have been designed to support the safety efforts and attitudes of all guests in the performances of daily interactions at Satoshi Forest Sanctuary. As with all organizational guidelines, guests should review safety rules often, and use good judgment while continuing to reside on the property.

Responsible guests understand and respect potential dangers, and adhere to appropriate safe behaviors that apply to the areas in which he/she/they are interacting, working, or visiting. The responsibilities for all guests include but are not limited to the following:

- Practicing established safety procedures
- Taking initiative for his/her/their own health and safety and that of their fellow guests
- Identifying and, where appropriate, correcting unsafe conditions and practices
- Reporting unsafe/unhealthful conditions or operations
- Complying with procedures contained in this manual and other rules, policies, and procedures identified by the Director or Board of Directors of Sean's Outpost

# SELF INSPECTIONS

Effectively managed and well-conducted self-inspection programs constitute one of the most important blocks on which to build a successful health and safety program. The purpose of the self-inspection program is to:

- Systematically identify conditions and or practices, which have the potential to cause injury/illness to guests and cause significant property damage
- Implement effective corrective action, that will eliminate or reduce unacceptable conditions and or practices.

The Director is responsible for safety self-inspections of the areas or facilities. Informal self-inspections should be conducted on a daily basis by guests simply by observing hazardous conditions. Hazardous conditions should be corrected and reported to the Director immediately.

Formal self-inspections should be conducted on a regular basis. Safety checklists shall be developed for the purpose of conducting routine formal inspections and should include all conditions and hazards to be examined. The safety checklists shall be developed for each site/section's specific needs. Formal Self-inspections should be conducted as often as deemed necessary by the Director. Some inspections items may be incorporated in the daily, weekly, or monthly maintenance schedules.

A corrective action plan shall be developed upon completion of all safety inspections including a time frame for completing the correction. The Director is responsible for keeping appropriate reports and records on self-inspections and sharing information with the Board of Directors as appropriate.

Each site/section will need to develop checklists based on the unique nature of the areas requirements. There may also be general guidelines developed based on the industry standards and best practices.

# **EMERGENCIES AND FIRE SAFETY**

Satoshi Forest Sanctuary requires that during every emergency, or unexpected occurrence of a serious event that demands immediate action, an organized effort should be made to protect guests from injury and to minimize property damage. All of the resources should be made available to respond to an emergency. Each guests should know what to do during an emergency in their area. Emergencies include natural disaster, fire, large-scale environmental damage, and other damage or threat to Satoshi Forest Sanctuary as well as the guests, employees, and volunteers.

# **Director Responsibilities**

During an emergency, it is the Director's responsibility to do the following:

- Ensure that the guests, and employees are familiar with the Emergency Evacuation Plan for the property, particularly the recommended exit routes and how to report an emergency. The Director should be responsible for the guests in the event of an evacuation of the property.
- Maintain familiarity with the shutdown procedures for all equipment used by the guests, and to verify those procedures have been completed.
- Know the location and use of all safety, and first-aid equipment.
- Assist in the relocation of guests in the case of an emergency evacuation.

# First Observer Responsibilities

During an emergency, the guests who discovers the emergency should do the following:

- Report the emergency immediately to the Director, including a description of what happened, the specific location, and whether anyone was injured.
- Proceed with First Aid or attempt to control the accident/incident **only** *if* (1) properly trained in First Aid or the emergency response necessary to control the incident/incident, and (2) using latex gloves and other personal protective devices if exposure to body fluids is likely.
- Show the ranking emergency-response officer where the incident/incident occurred, inform them of the hazards associated with the area, provide any other information that should help avoid injuries, and do as the officer requests.

All guests must conduct themselves in such a way as to minimize the possibility of injury. This means applying rules such as keeping combustibles separated from ignition sources, being careful about smoking, and avoiding needless accumulations of combustible materials.

The Director should ensure that guests are properly instructed regarding: (1) potential fire hazards involved in their site and surrounding areas, (2) the proper precautions to minimize fires, and (3) the procedures in case of fire, as well as the location to extinguisher locations.

# <u>SAFETY</u> ANALYSIS

A well-prepared and effectively implemented Safety Analysis program will reduce incidents. A Safety Analysis is a procedure, which provides for integration of accepted health and safety principles and practices into a particular operation.

It is the responsibility of the Director to oversee the Safety Analysis program at Satoshi Forest Sanctuary. The Director will select the areas that should be analyzed, and assure that the Safety Analysis is properly implemented.

# **Conducting the Safety Analysis**

In order to conduct a Safety Analysis, each area is broken down and examined to identify potential hazards. Once the hazard is identified, steps must be taken to eliminate or reduce each hazard.

- Select the area to be analyzed
- Break the area down into its basic fundamentals
- Identify each potential hazard associated with each area
- Determine preventative measures that prevent or reduce the hazards

# Selecting the Area to Be Analyzed

Ideally, all areas should be subjected to a Safety Analysis. However, this may not always be possible. Therefore, consideration should be given to prioritizing all critical areas.

Factors to be considered in assigning a priority for a hazard analysis include the following:

- Incident frequency and severity. Areas where frequent incidents occur or disabling injuries result.
- Potential for severe injuries. The consequence of an incident is potentially severe.
- Newly established areas. Due to lack of experience in new projects, hazards may not be obvious.
- Modified areas. New hazards may be experienced with changes in area procedures.
- Infrequently performed actions. Guests may be at greater risk when undertaking non-routine actions.

# EXHIBIT 3



#### SITE PLAN DEVELOPMENT ORDER with Concurrency Certification

Project: Sean's Outpost-Satoshi Forest Location: 1999 Massachusetts Ave Development Review #: PSP160400044 Property Reference #s: 12-2S-30-7002-000-000 Future Land Use: MU-U Zoning District: HC/LI Flood Zone: X/A

# **PROJECT DESCRIPTION**

Development of an 8.82-acre parcel from a vacant, undeveloped lot to be used as a semi-primitive campground site. Site improvements include the use of temporary structures for housing, installation of port-a-lets, showers, hand washing sinks and garbage dumpsters.

Parking Spaces: N/A Potable Water: ECUA Protected Trees to be removed: None Handicap Parking Spaces: N/A Sanitary Sewer/Septic: Portables Mitigation Trees: N/A

#### STANDARD PROJECT CONDITIONS

- 1. This Development Order with concurrency certification shall be effective for a period of 18 months from the date of approval. Site plan approval and concurrency shall expire and become null and void if a permit for the approved development has not been obtained from the Building Inspections Department (BID) within the effective period and no extension has been applied for. After issuance of such permit, site plan approval and concurrency shall only terminate upon permit expiration or revocation by the BID. The Board of Adjustment may grant one extension for a maximum of 12 months to the original effective period of the Development Order, but application for such extension must be submitted before termination of the initial 18-month period. If the Development Order expires or is revoked, allocated capacity will be withdrawn and made available to other applicants. If the applicant chooses to proceed with development of the project site, a new site plan application must be submitted for review, approval, and capacity allocations subject to Code provisions and Level of Service conditions at the time of the new application.
- 2. This Development Order alone does not authorize site development to commence. A valid Escambia County Building Permit must be obtained prior to any building construction. Site development as described on the approved site plan, including protected tree removal and grading, may occur under the authorization of the Building Permit. However, commencement of such activity prior to issuance of a Building Permit will require a separate **Pre-construction Site Work Permit**, or if no Building Permit is applicable will require a separate

**Parking Lot Permit,** obtained from the Building Inspections Department, with erosion control, tree protection, and all other provisions of the approved site plan fully applicable and enforced.

- 3. All specifications and requirements, expressed or implied by note or drawing, in the site development plans approved with this Development Order must be fulfilled.
- 4. No development activities may commence in areas regulated by state or federal agencies unless all required state and federal permits, or proof of exemption, have been obtained and a copy provided to the County.
- 5. Proof of application from the Emerald Coast Utilities Authority (ECUA) for connection to the sewage system, or from the Escambia County Health Department for an Onsite Sewage Treatment and Disposal System (OSTD), must be obtained prior to issuance of an Escambia County Building Permit.
- 6. After issuance of this Development Order, it shall be unlawful to modify, amend, or otherwise deviate from the terms and conditions without first obtaining written authorization through the Development Review Committee (DRC) departments. Approval of such modifications shall be requested in writing and obtained prior to initiating construction of any requested change. The applicable review process for the proposed modification shall be determined based on the applicant's written description of such modifications. Escambia County may require submittal of a new or revised plan and impose additional requirements and/or conditions depending upon the extent of any proposed modifications. The applicant has a continuing obligation to abide by the approved plan. Initiating construction of plan modifications without written County approval shall automatically terminate and render null and void this Development Order, and shall be subject to penalties and/or increased fees specified by the BCC.
- 7. A copy of this Development Order and the approved site development plans must be maintained and readily available on site once any construction activity has begun, including clearing and grading. The approved building construction plans must also be on site once any building construction has begun.

#### **Special Project Conditions**

- No protected trees shall be removed or negatively impacted on this site as indicted in Wetland Science's "Environmental assessment report", Sheet 1, "Wetland and Protected Tree Sketch" dated February 25<sup>th</sup>, 2014. Permit application shall be made with Escambia County prior to any proposed removal of protected trees, "land disturbing activities", or any other site alteration not currently shown on plans.
- 2.) All site activities shall remain outside the required 30' MER Setback from the "Bellshead Branch" surface water feature, the Wetlands, and their associated 30' Wetland buffer and "Construction setback" as currently noted in the Environmental report and on site plan. Any proposed activities within these protected areas will require prior review and possible permitting as required by the Escambia County LDC and potentially other jurisdictional agencies.
- 3.) Any further development within the parcel boundaries will require review for compliance with the LDC Floodplain Management Regulations and the Florida Building Codes.

#### Development Review Committee (DRC) Final Determination

Having completed development review of the **Sean's Outpost-Satoshi Forest**, site plan application referenced herein, in accordance with requirements of applicable Escambia County regulations and ordinances, the DRC makes the following final determination:

□Approve

The development plan is approved. The applicant may proceed with the development subject to the project description and project conditions noted herein. Use other than that described, or conditions not satisfied, constitute a violation of this Development Order and render it void. Further, this approval does not constitute approval by any other agency.

团Deny

The development plan is denied for the reasons noted below. The applicant may appeal the decision within 15 days from the date below to the Board of Adjustment (BOA) under the provisions of Section 2-1.4 of the Escambia County Land Development Code, and/or submit a new or revised site plan application for review.

0/12/16 Director, Development/Services Department

# **EXHIBIT 4**



William J. Dunaway Direct (850) 208-7020 wdunaway@clarkpartington.com Licensed to Practice in Florida and Mississippi

October 27, 2016

#### Via Hand Delivery

Escambia County Board of Adjustment c/o Escambia County Planning and Zoning Development Services Department 3363 West Park Place Pensacola, FL 32505

#### Re: Appeal of Development Review Committee Final Determination (Project # PSP160400044) Sean's Outpost – Satoshi Forest

Dear Board Members:

I represent Sean's Outpost, Inc. ("Sean's Outpost") in their ongoing efforts to Improve the lives of Escambia County's less fortunate citizens by providing them with a safe place to exist. Specifically, Sean's Outpost has been for the past three years allowing individuals and families to live in tents on their Heavy Commercial – Light Industry (HC/LI) zoned 8.82-acre parcel located at 1999 Massachusetts Ave., Pensacola FL, 32505. There are no permanent structures on the site and known are proposed in the application.

In 2014, the County issued a code violation citation to Sean's Outpost because of the use of tents (temporary structures) on the property. After challenging the validity of the citation, a Special Magistrate found that there was no violation and dismissed the citation. Following several years of relative peace, the County again lssued a code violation citation in January 2016. After several meetings with County officials, including the County Administrator, Sean's Outpost submitted a minor development site plan application to the Development Review Committee (DRC) on April 5, 2016. Following multiple meetings and discussions with the County staff about their comments and concerns regarding the site plan approval for the proposed project, on October 12, 2016, the proposal went before the DRC for a final review.

At the DRC, the issue was narrowed to the County claiming that the Design Standard Manual (DSM) Section 2.2 required the construction of an all-weather access road from Massachusetts Avenue all the way to the rear of the property in order to service the portable toilets. Even though Sean's Outpost did not believe that was a proper interpretation of the DSM, they nevertheless acquiesced to the requirement and asked the DRC to issue the permit with the all-weather road as a condition. Mr. Jones stated that because the all-weather road was not listed on the site plan, then the DRC should deny the permit. DRC denied the permit.



Escambia County Board of Adjustment October 27, 2016 Page 2

Sean's Outpost now appeals the final decision of the DRC to the Board of Adjustment (BOA) under the provisions of Section 2-1.4 and Section 2-6.10 of the Escambla County Land Development Code. The appeal is based on the fact that the underlying record clearly shows that the all-weather road was not desired to be built (and therefore was not part of the site plan), but when it was clear at the DRC that the all-weather road was the ONLY impediment to the issuance of the permit, Sean's Outpost clearly indicated on the record that it requested the DRC issue the permit with the all-weather road as a condition.

Permits are issued every day in Escambia County with conditions. For Mr. Jones to recommend and DRC to deny this application solely on the basis of the fact that the condition was NOT already shown on the site plan was wrong. Recall that Sean's Outpost was not requesting authorization to develop anything – they simply filed the application so the County would approve their use of the property in a manner that had been occurring peaceably and compatibly for years. Site plans for similar actions are routinely hand drawn by applicants, but Sean's Outpost went to the trouble and expenses to have a professional engineer complete a full professional site plan because the County staff kept insisting that such a site plan was necessary. If the only requirement for the issuance of the permit was that the all-weather road be shown on the site plan, the DRC should have allowed Sean's Outpost the opportunity to draw it on the site plan.

Sean's Outpost request this Board overturn the denial by the DRC and issue the permit preferably without the all-weather road as a condition, but if necessary with the all-weather road as a condition.

Thank you for your time and attention to this matter. We will provide your Board with a more detailed briefing and analysis of these issues at the appropriate stage of this appeal. In the meantime, please do not hesitate to contact me should you or your Board have any questions.

Sincerely,

William/J. Dunaway

WJD/sep Enclosures cc: Horace Jones (Via email) Meredith Crawford (Via email) Michael Kimberl (Via email)



# Escambia County Planning and Zoning

Development Services Department 3363 West Park Place Pensacola, FL 32505 Phone: (850) 595-3475 • Fax: (850) 595-3481 <u>http://myescambia.com/business/ds</u>

DO NOT SUBMIT INFORMATION BELOW WITH APPLICATION

# BOARD OF ADJUSTMENT APPLICATION FOR DEVELOPMENT ORDER EXTENSION/ADMINISTRATIVE APPEAL

# A. Prior to Application Submittal

Please contact the Development Services Department located at 3363 West Park Place (595-3475) to make an appointment for a **pre-application meeting** with a Planner to personally discuss your site and prospective plans for it, to review the application forms and criteria with you, to answer any questions you may have, and/or any possible alternatives.

#### B. Application Submittal

It is important for the application packet to be <u>complete</u> and <u>on time</u> in order to process and schedule your request for the required public hearing(s). The submittal deadline is the **FIRST THURSDAY of the PREVIOUS MONTH**. In order for the application request to proceed in a timely manner, all items on the application forms and checklist (attached herein) must be completed and submitted prior to the deadline. *Scheduling a pre-application meeting with a Planner is recommended*. Any incomplete application will not be accepted by Staff and any application submitted after the deadline will be processed for the next available meeting.

The owner and/or agent acting in his/her behalf, <u>must</u> sign the certification(s) where indicated on the application. If an agent is handling the request, the owner <u>must</u> submit an Affidavit of Ownership & Limited Power of Attorney (attached herein) authorizing said agent to act in his/her behalf. Signatures must be properly notarized and dated <u>no more than sixty (60) days</u> prior to application submittal.

No guarantee is made for the approval of any petition. Fees are **non-refundable** regardless of the decision.

# C. Public Hearing(s)

It is the *Applicant's burden* to show consistency with all applicable criteria. **NOTE:** The applicant, or his/her agent, must be present at the Planning Board meeting and the subsequent Board of County Commissioners meeting. The Applicant/Agent will receive Staff's Findings of Fact prior to the Planning Board Meeting.

#### D. Public Notice

Per the Land Development Code Chapter 2, Article 7: Adequate public notice/advertisement will be consistent with Florida Statutes and the Comprehensive Plan prior to the hearing. Current property owners within a 500 foot radius of the subject property will be notified of the proposed rezoning request by DSD at least fifteen (15) days prior to the hearing. Staff will obtain the list of mailing addresses from the Escambia County Property Appraiser's Office website (escpa.org).



# Escambia County Planning and Zoning

Development Services Department 3363 West Park Place Pensacola, FL 32505 Phone: (850) 595-3475 • Fax: (850) 595-3481 <u>http://myescambia.com/business/ds</u>

		Board of Adjustment Application				
		USE ONLY - Case Number: Accepted by: BOA Meeting:				
•	De	velopment Order Extension				
_X	_ Ad	ministrative Appeal				
1.	<u>Cor</u>	stact Information:				
	Α,	. Property Owner/Applicant: Michael Kimberl				
		Mailing Address: <u>1999 Massachusetts Ave., Pensacola, FL 32505</u>				
		Business Phone: Cell:(850) 287-0792				
		Email: <u>d.edlee@gmail.com</u>				
	в.	Authorized Agent (If applicable):				
		Mailing Address:				
		Business Phone: Cell:				
		Email:				
		Note: Owner must complete the attached Agent Affidavit. If there is more than one owner, each owner must complete an Agent Affidavit. Application will be voided if changes to this application are found.				
2.	Pro	perty Information:				
	Α,	Project Name & Development Order Number (if applicable):				
		Sean's Outpost - Satoshi Forest				
	в.	Existing Street Address: <u>1999 Massachusetts Ave.</u>				
		Parcel ID (s): <u>122S307002000000</u>				
	C,	Total acreage of the subject property: <u>8.82</u>				

#### 3. Reason for Request

A. Please explain why the extension or administrative appeal is necessary. See attached cover letter.

#### B. <u>Development Order Extension</u>

The LDC requires good faith efforts in adhering to its established periods, but extension of an eligible LDC time limit may be requested according to the provisions of this section whereby a landowner asserts that the limit does not anticipate legitimate delays in compliance. However, no applicant is automatically entitled to any extension. Short-term (6 month) extensions are evaluated by the Planning Official, and longer extensions (one year) shall be evaluated through a quasi-judicial public hearing review by the BOA. These extension processes allow additional time for concluding the compliance review, developing an approved use, and continuing or reestablishing some uses.

**1. Limits on extensions.** Extensions to LDC periods are subject to the following limitations:

**a. Availability.** Extensions are available and may be granted only for LDC periods that specifically provide that option, only if a complete application for the extension was submitted prior to the expiration of the period for which the extension is requested, and only as otherwise allowed by the provisions of the LDC.

**b.** Approving authority. Extensions to any period not required by the LDC but imposed as a condition of approval by an approving authority cannot be granted by another approving authority.

**c. Individual and multiple limits.** An extension can only be granted based on a specific review of an individual period. If an extension of more than one period is requested, the extension criteria shall be evaluated for each limit.

#### C. Administrative Appeal

Application for appeal of an administrative decision shall be submitted for compliance review within 15 days after the date of the decision being appealed. A quasi-judicial public hearing for the appeal shall be scheduled to occur within 30 business days after receipt of a complete application. The application shall provide information as required by the adopted appeal procedures, including the following:

**1. Decision appealed.** A copy of the written administrative decision to be reviewed on appeal.

**2. LDC reference.** Identification of the specific LDC provisions for which noncompliance is alleged.

**3. Alleged error.** A description of how the decision of the administrative official is considered arbitrary or capricious.

**4. Conditions.** Documentation satisfying the conditions established in the compliance review provisions of this section.

5. Remedy. A description of the proposed remedy.

**6. Other information.** Any other pertinent information the applicant wishes to have considered.

#### D. Medical Hardship

Temporary placement of a manufactured (mobile) home or park trailer may be requested according to the provisions of this section when a landowner asserts that existing medical conditions require in-home care and an accessory dwelling to reasonably provide it. The manufactured home may be placed within any mainland zoning district to remedy a medical hardship according to the temporary use provisions of Chapter 4, regardless of the density limits of the applicable zoning. The requirements to grant the temporary use of a manufactured home or park trailer as an accessory dwelling to provide in-home medical care is considered by the BOA in a quasi-judicial hearing whether conditions warrant such use.

The BOA shall conduct a quasi-judicial public hearing as noticed to consider the requested medical hardship temporary use of a manufactured home or park trailer according to the provisions of this article. The applicant has the burden of presenting competent substantial evidence to the board that establishes each of the following conditions:

**1. Certified need.** A Florida-licensed physician certifies in writing the medical need, specifying the extent of the need for in-home medical care and the approximate length of time for such in-home medical care.

**2. Minimum necessary.** Conditions and circumstances make it difficult or impossible for the recipient and provider of medical care to reside in the same dwelling and the temporary accessory dwelling is the minimum necessary to provide relief of that medical hardship.

3. Adequate public services. The manufactured home or park trailer will have adequate water, sewer, solid waste removal, and electric services available.
4. Compatibility. The temporary use will not produce adverse impacts on the uses of surrounding properties.

**5. Standard conditions.** The temporary use can comply with the applicable standards of Chapter 4.

Last Updated: 1/14/16

# 4. <u>Please complete the following form (if applicable): Affidavit of Owner/Limited Power</u> of Attorney

# AFFIDAVIT OF OWNER AND LIMITED POWER OF ATTORNEY (If applicable)

Pensacola a presentation to the the above reference the year of,	Planning Board and Planning Board and property. This Lin , and is effectiv dered a decision on prescind this Limite	999 Massachuesetts Av ty reference number(s) for the sole purpose of cor d the Board of County Com nited Power of Attorney is g e until the Board of County this request and any appea d Power of Attorney at any t	22S3070020000 If missioners to reque ranted on this Commissioners or th I period has expired	tion and making st a rezoning on _day of ne Board of . The owner
Agent Name: Mic	nael Kimberl essachusetts Av	Email: <u>d</u> e., Pensacola, FL 32505	l.edlee@gmail.co 5Phon	m e: <u>(850) 287-079</u> 2
Signature of Property	Mic	chael Kimberl, as Manager o Printed Name of Property Owne	f Sean's Outpost	1 <u>0-27</u> -16 Date
Signature of Property		Printed Name of Property Own	er	Date
by <u>Michael K</u> Personally Knowl	trument was acknow	wledged before me this 2 entification⊡. Type of Identif William Printed Na B3765	OF ESCAMIBIA	<u>ber</u> 20 <u>16</u> ,
۹ <b>۲۵۸ بریکیپر</b> (Notary Seal)				

#### Last Updated: 1/14/16

#### Submittal Requirements 5.

- Completed application: All applicable areas of the application shall be filled in and submitted to the Planning and Zoning Department, 3363 West Park Place, Pensacola, FL 32505.
- Application Fee: Application Fees: To view fees visit the website: в. http://myescambia.com/business/board-adjustment or contact us at 595-3448

Note: Fees include all notices and advertisements required for the public hearing and a \$5 technical fee. Payments must be submitted prior to 3 pm of the closing date of acceptance of application. Please make checks payable to Escambia County. MasterCard and Visa are also accepted.

- Legal Proof of Ownership (ex: copy of Tax Notice or Warranty Deed) AND a WAV C. Certified Boundary Survey (Include Corporation/LLC documentation if applicable.) Compatibility Analysis (if applicable): If the subject property does not meet the
- roadway requirements of Locational Criteria, a compatibility analysis prepared by the D. WAN applicant is required to provide substantial evidence of unique circumstances regarding the parcel or use that were not anticipated by the alternative criteria. (See "Documented Compatibility" within the request zoning district of the LDC.)
- Signed and Notarized Affidavit of Owner/Limited Power of Attorney AND Concurrency Determination Acknowledgement (pages 4 and 5). E.

- 1) I am duly qualified as owner(s) or authorized agent to make such application, this application is of my own choosing, and staff has explained all procedures relating to this request; and
- 2) All information given is accurate to the best of my knowledge and belief, and I understand that deliberate misrepresentation of such information will be grounds for denial or reversal of this application and/or
  - revocation of any approval based upon this application; and
- I understand that there are no guarantees as to the outcome of this request, and that the application fee 3)
- I authorize County staff to enter upon the property referenced herein at any reasonable time for purposes of site inspection and authorize placement of a public notice sign(s) on the property referenced herein at 4) a location(s) to be determined by County staff; and
- I am aware that Public Hearing notices (legal ad and/or postcards) for the request shall be provided by the

5) Development-Services Bureau Michael Kimberl, as Manager of Sean's Outpost 10-27-16 Printed Name Owner/Agent Signature of Owner/Agent Date Printed Name of Owner Signature of Owner STATE OF FLORIDA COUNTY OF ESCAMBIA The foregoing Instr was acknowledged before me this 271 day of October 20 16 by Michael Kimberl The foregoing instrument Personally Known & OB Produced Identification . Type of Identification Produced: William J. Dunaway Printed Name of Notary (notary seal) Signature of WILLIAM J. DUNAWAY COMMISSION # EE 883765 EXPIRES: March 13, 2017 - 6 -

Recorded in Public Records 07/29/2013 at 02:40 PM OR Book 7052 Page 593, Instrument #2013055870, Pam Childers Clerk of the Circuit Court Escambia County, FL Recording \$27.00 Deed Stamps \$623.00

Prepared by:

Wilson, Harrell, Farrington, Ford, et.al., P.A. 307 South Palafox Street Pensacola, Florida 32502

File Number: 1-48088

#### **General Warranty Deed**

Made this July 25, 2013 A.D. By Robert Dale, a married man, whose address is: P.O. Box 11850, Pensacola, FL 32534, hereinafter called the grantor, to Sean's Outpost, Inc., a Florida corporation, whose post office address is: 1999 Massachusetts Avenue, Pensacola, Florida 32505, hereinafter called the grantee:

(Whenever used herein the term "granter" and "granter" include all the parties to this instrument and the heles, legal representatives and assigns of individuals, and the successors and assigns of corporations)

Witnesseth, that the grantor, for and in consideration of the sum of Ten Dollars, (\$10.00) and other valuable considerations, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, allens, remises, releases, conveys and confirms unto the grantee, all that certain land situate in Escambia County, Florida, viz:

A PARCEL OF LAND LYING IN A PORTION OF SECTION 12, TOWNSHIP 2 SOUTH, RANGE 30 WEST, ESCAMBIA COUNTY, FLORIDA, DESCRIBED AS FOLLOWS: THE SOUTH 1/2 OF THE WEST 1/2 OF GOVERNMENT LOT 7, LESS THE WEST 210 FEET OF THE SOUTH 210 FEET OF THE NORTH 310 FEET; AND LESS THE 4TH ADDITION TO MAYFAIR SUBDIVISION; AND LESS AND EXCEPT THAT PORTION CONVEYED TO FLORIDA UTILITY COMPANY BY DEED IN OR BOOK 151, PAGE 715, OF THE PUBLIC RECORDS OF ESCAMBIA COUNTY, FLORIDA; AND LESS AND EXCEPT THAT PORTION CONVEYED TO THE STATE OF FLORIDA BY DEED RECORDED IN OR BOOK 730, PAGE 157, OF THE PUBLIC RECORDS OF ESCAMBIA COUNTY, FLORIDA.

TOGETHER WITH THAT CERTAIN EASEMENT DESCRIBED AS FOLLOWS: A PERMANENT ACCESS EASEMENT, 25 FEET IN WIDTH, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF THE 4TH ADDITION TO MAYFAIR SUBDIVISION AS RECORDED IN PLAT BOOK 6, PAGE 5, OF THE PUBLIC RECORDS OF ESCAMBIA COUNTY, FLORIDA; THENCE NORTH 00°29' WEST ALONG A PROJECTION OF THE WEST BOUNDARY OF SAID SUBDIVISION A DISTANCE OF 580.5 FEET; THENCE NORTH 89°31' EAST A DISTANCE OF 211.00 FEET TO THE POINT OF BEGINNING; THENCE NORTH 44°35' EAST A DISTANCE OF 125.00 FEET; THENCE SOUTH 45°25' EAST A DISTANCE OF 25.0 FEET; THENCE SOUTH 44°35' WEST A DISTANCE OF 150 FEET; THENCE NORTH 00°29' WEST A DISTANCE OF 35.35 FEET TO THE POINT OF BEGINNING, LYING IN SECTION 12, TOWNSHIP 2 SOUTH, RANGE 30 WEST, ESCAMBIA COUNTY, FLORIDA.

THE ABOVE DESCRIBED PROPERTY IS NOT THE CONSTITUTIONAL HOMESTEAD OF THE GRANTOR.

Parcel ID Number: 12-28-30-7002-000-000

Together with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

To Have and to Hold, the same in fee simple forever.

And the grantor hereby covenants with said grantee that the grantor is lawfully selzed of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land; that the grantor hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances except taxes accruing subsequent to December 31, 2012.

In Witness Whereof, the said grantor has signed and sealed these presents the day and year first above written,

Signed, sealed and delivered in our presence:

Witness Printed Name\_\_\_\_\_DONNA\_SCHLIMACHER\_

DBED Individual Warranty Deed - Legal on Face

Robert Dale Address: P.O. Box 11850, Pensacola, FL 32534

Prepared by:

Wilson, Harrell, Farrington, Ford, et.al., P.A. 307 South Palafox Street Pensacola, Florida 32502

File Number: 1-48088

State of Florida County of Escambia

The foregoing instrument was acknowledged before me this 25th day of July, 2013, by Robert Dale, a married man, who is/are personally known to me or who has produced  $\underline{\beta}$  identification.

Notary Public Print Name: raug Roth

4-11-14

My Commission Expires:\_\_\_\_

6 TRACY HA12IN WY COMMISSION # DD 965992 EXPIRES: April 11, 2014 Banded Thru Budget Notary Services

۱

#### RESIDENTIAL SALES ABUTTING ROADWAY MAINTENANCE DISCLOSURE

ATTENTION: Pursuant to Escambia County Code of Ordinances Chapter 1-29.2, Article V, sellers of residential lots are required to disclose to buyers whether abutting roadways will be maintained by Escambia County. The disclosure must additionally provide that Escambia County does not accept roads for maintenance that have not been built or improved to meet county standards. Escambia County Code of Ordinances, Chapter 1-29.2, Article V, requires that this disclosure be attached, along with other attachments to the deed or other method of conveyance required to be made part of the public records of Escambia County, Florida. NOTE: Acceptance for filing by County employees of this disclosure shall in no way be construed as an acknowledgement by the county of the veracity of any disclosure statement.

NAME OF ROADWAY: 1999 Massachusetts Avenue

LEGAL ADDRESS OF PROPERTY: 1999 Massachusetts Avenue, Pensacola, Florida 32505

The County (X) has accepted ( ) has not accepted the abutting roadway for maintenance.

This form completed by:

AS TO SELLER(S):

Robert Dale

AS TO BUYER(S):

Sear's Outpost, Inc., a Florida corporation by: Jason King, Director

This form approved by the Escambia County Board of County Commissioners Effective: 4/15/95 Wilson, Harrell, Farrington, Ford, Wilson, Spain & Parsons P.A. 13020 Sorrento Road Pensacola, FL 32507

WITNESSES TO SELLER(S);

Name: Trach Retin

Printed Name: DONNA SCHUMACHER

WITNESSES TO BUYER(S):

inted Name: Tracy Rotain

Printed Name:

DONNA SCHI MACHER

## FLORIDA DEPARTMENT OF STATE DIVISION OF CORPORATIONS

## **Detail by Entity Name**

#### **Florida Not For Profit Corporation**

SEAN'S OUTPOST, INC

#### **Filing Information**

Document Number	N1300006546
FEI/EIN Number	46-3699172
Date Filed	07/22/2013
State	FL
Status	ACTIVE
Last Event	REINSTATEMENT
Event Date Filed	11/15/2014

#### **Principal Address**

1999 MASSACHSETTS AVE PENSACOLA, FL 32514

#### <u>Mailing Address</u>

1999 MASSACHSETTS AVE PENSACOLA, FL 32505

#### Registered Agent Name & Address

MCKENZIE, ALISTAIR 905 E HATTON ST PENSACOLA, FL 32503

#### **Officer/Director Detail**

#### Name & Address

Title DIR

KING, JASON 2430 HENCYE DR PENSACOLA, FL 32514

Title DIR

KIMBREL, MICHAEL 2430 HENCYE DR PENSACOLA, FL 32514

Title DIR

4/5/2016

KING, LESLIE 2430 HENCYE DR PENSACOLA, FL 32514

#### Annual Reports

Report Year	<b>Filed Date</b>
2014	11/15/2014
2015	04/30/2015

#### **Document Images**

<u>04/30/2015 ANNUAL REPORT</u>	View image in PDF format
<u> 11/15/2014 REINSTATEMENT</u>	View Image In PDF format
07/22/2013 Domestic Non-Profit	

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#### 2015 FLORIDA NOT FOR PROFIT CORPORATION ANNUAL REPORT

#### DOCUMENT# N13000006546

Entity Name: SEAN'S OUTPOST, INC

**Current Principal Place of Business:** 1999 MASSACHSETTS AVE

PENSACOLA, FL 32514

#### **Current Mailing Address:**

1999 MASSACHSETTS AVE PENSACOLA, FL 32505

#### FEI Number: 46-3699172

#### Name and Address of Current Registered Agent:

2430 HENCYE DR

PENSACOLA FL 32514

MCKENZIE, ALISTAIR 905 E HATTON ST PENSACOLA, FL 32503 US

Certificate of Status Desired: No

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida,

#### SIGNATURE:

Address

City-State-Zip:

Electronic Signature of Registered Agent Date **Officer/Director Detail :** Title DIR Title DIR Name ' KING, JASON Name KIMBREL, MICHAEL Address 2430 HENCYE DR Address 2430 HENCYE DR City-State-Zip: PENSACOLA FL 32514 City-State-Zip; PENSACOLA FL 32514 Title DIR Name KING, LESLIE

hereby certify that the Information Indicated on this report or supplemental report is true and accurate and that my electronic signature shall have the same legal effect as if made under oshij that I am an officer or director of the corporation or the receiver or trustee empowered to execute this report as required by Chapter 617, Florida Statutes; and that my name appears above, or on an altachment with all other like empowered.

SIGNATURE: JASON KING

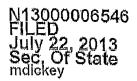
Electronic Signature of Signing Officer/Director Detail

04/30/2015 Date

FILED Apr 30, 2015 Secretary of State CC9330688670

DIRECTOR

#### Electronic Articles of Incorporation For



SEAN'S OUTPOST, INC

. . .

The undersigned incorporator, for the purpose of forming a Florida not-forprofit corporation, hereby adopts the following Articles of Incorporation:

#### Article I

The name of the corporation is: SEAN'S OUTPOST, INC

#### Article II

The principal place of business address: 1999 MASSACHSETTS AVE

PENSACOLA, FL. 32514

The mailing address of the corporation is: 1999 MASSACHSETTS AVE PENSACOLA, FL. 32505

#### Article III

The specific purpose for which this corporation is organized is: TO CREATE LASTING SOLUTIONS TO HOMELESSNESS, HUNGER, POVERTY, AND SOCIAL INJUSTICE

#### Article IV

The manner in which directors are elected or appointed is: AS PROVIDED FOR IN THE BYLAWS.

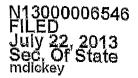
#### Article V

The name and Florida street address of the registered agent is:

ALISTAIR MCKENZIE 905 E HATTON ST PENSACOLA, FL. 32503

I certify that I am familiar with and accept the responsibilities of registered agent.

Registered Agent Signature: ALISTAIR MCKENZIE



#### Article VI

The name and address of the incorporator is:

JASON KING 2430 HENCYE DR

PENSACOLA, FL 32514

Electronic Signature of Incorporator: JASON KING

I am the incorporator submitting these Articles of Incorporation and affirm that the facts stated herein are true. I am aware that false information submitted in a document to the Department of State constitutes a third degree felony as provided for in s.817.155, F.S. I understand the requirement to file an annual report between January 1st and May 1st in the calendar year following formation of this corporation and every year thereafter to maintain "active" status.

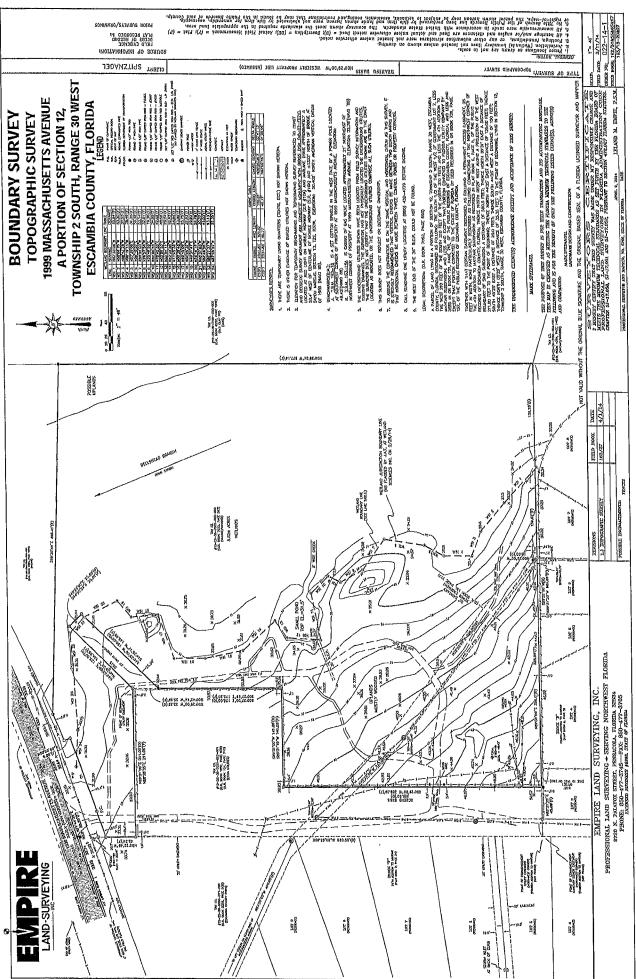
#### Article VII

The initial officer(s) and/or director(s) of the corporation is/are:

Title: DIR JASON KING 2430 HENCYE DR PENSACOLA, FL. 32514

Title: DIR MICHAEL KIMBREL 2430 HENCYE DR PENSACOLA, FL. 32514

Title: DIR LESLIE KING 2430 HENCYE DR PENSACOLA, FL. 32514



<del>2</del>92

### <u>Compatibility and Location Criteria Analysis</u> 1999 Massachusetts Avenue

This is an 8.5 acre heavily wooded site located in the west Pensacola area at 1999 Massachusetts Avenue. Major existing land uses surrounding the property include a cemetery to the north, an abandoned barrow pit on the east, single family homes to the south a county park and vacant lots adjacent and west of the site.

The site is zoned Heavy Commercial- Light Industry HC/LI and has future land use classification of Mixed Use – Urban MU-U. Uses allowed under the HC/LI include the following:

#### LDC Sec. 3-2,11(b)(5)b Recreation and entertainment.

**b.** Commercial recreation facilities, passive or active, including those for walking, hiking, bicycling, camping, recreational vehicles, swimming, skateboarding, bowling, court games, field sports, and golf, but excluding off-highway vehicle uses and outdoor shooting ranges. Campgrounds and recreational vehicle parks require a minimum lot area of five acres.

The site has been used over the past several years as a campground facility which is contained in the allowed uses cited above.

With regard to location and compatibility matters, the Land Development Code contains the following:

### LDC Sec. 3-2.11(e)(3)

(e) Location criteria. All new non-residential uses proposed within the HC/LI district that are not part of a planned unit development or not identified as exempt by district regulations shall be on parcels that satisfy at least one of the following location criteria:

(3) Documented compatibility. A compatibility analysis prepared by the applicant provides competent substantial evidence of unique circumstances regarding the parcel or use that were not anticipated by the alternative criteria, and the proposed use will be able to achieve long-term compatibility with existing and potential uses. Additionally, the following conditions exist: **a.** The parcel has not been rezoned by the landowner from the mixed-use, commercial, or industrial zoning assigned by the county.

**RESPONSE:** The landowner has not requested any change to the existing zoning.

**b.** If the parcel is within a county redevelopment district, the use will be consistent with the district's adopted redevelopment plan, as reviewed and recommended by the Community Redevelopment Agency (CRA).

**RESPONSE:** According to the county list of redevelopment areas, this site and area are not identified as being within a designated redevelopment district.

As discussed earlier, the site is zoned HC/LI with a MU-U land use designation. By way of comparison, the Tall Oaks Campground near Pine Forest Road and Nine Mile Road intersection has a similar zoning and land use classification and has been in existence for over thirty-one years. The rear of the site touches a subdivision to the west with a MU-U land use which is the same as the land use classification for properties surrounding the Massachusetts Avenue site. Both sites have the same zoning and land use classifications with a campground as the existing use. Tall Oaks has demonstrated then, that a campground can coexist next to a residential subdivision.

With regard to the Massachusetts Avenue site, compatibility will be achieved with the application of vegetative buffering on the westerly and southern property lines. The scale and intensity of use as shown on the site plan will be small for the 8 acre site so as not to generate unreasonable noise, traffic or other nulsances to contiguous properties. The site plan identifies some 20 campsites located on approximately 4 acres of the developable portions of the site. Regarding intensity of use, the zoning category will permit up to 25 dwelling units per acre, conceivably permitting some 100 units on the property. The proposed 20 campsites would suggest less intensity and thus greater compatibility with surrounding properties.

Another metric concerning impacts is the amount of potential traffic to be generated by a project onto the street network. This is accomplished by using the FDOT Trip Generation spreadsheet by the Institute of Traffic Engineers (ITE) that identifies trips produced based upon the land use and Its size. In this case, a campground carries a ITE 416 use code showing a four acre campground site generating some 4 trips per day (see attached spreadsheets). For comparison, Fennel Street located west of the site, has some 25 residential units (ITE code 210) along its length and produces some 239 trips per day. By comparison, then, any campground traffic impact on the area will be deminimis.

Finally, vegetative buffering will be utilized as shown on the proposed site plan along the southern and westerly property lines as defined in the Land Development Code:

**Buffer.** A designated area with natural or manmade features functioning to minimize or eliminate adverse impacts on adjoining land uses, including environmentally sensitive lands.

This buffer will consist primarily of the existing trees and understory on the property to provide a natural and man-made buffered area.

Compatibility then, will be achieved by a small, low intense development producing little traffic or unreasonable dust, noise or other objectionable odors or hazards on a site that will provide buffered separation from neighboring properties.

# Spack

#### ITE Trip Generation Rates - 8th Edition Pass-by rates from ITE Trip Generation Handbook - 2nd Edition

Instructions: Enter Exper

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Movie Theater w/ matinee 444 Movie Theater w/ matinee 444	Movie Screens Seals	134546186 NO NA 102022 12503		60%	織家で連ば	0 NA	<u>o</u>	NA
Multiplex Movie Theater 445	KSF <sup>2</sup>	SZERZZZA ARZENA BALOTOZ BARREN REISKANA BARRINA NAZAROT BARREN	NA NA 399 NA NA 629	% 61% ( 8 38% (		0 NA	0	NA
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Zog 481	Employees Acres	MARTINE SERVICE IN COLO VALUE	88% 12% 61 NA NA N			0 0	0	0
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Soccer Complex 488	Fjelds Acres	1234747433 20141740 44201677 242232 244616126 14350 81 3461196 443444	50% 50% 69			0 0	Q	0.
Tennis Courts 490	Courts	AND BUCK DISCHOLDER MADE	NAL			0 0	<u>0</u>	NA
Tennis Courts, 490 Recquet Club, 491	Employees	1200 66 67 Higgs 303 406 86 67 51 94 90	NA NA NA	A NA	的計算法。	0. 0.	0	NA NA
Recquei/Tennis Club 491	Courts KSF <sup>2</sup>	12120870 1212101 12130705 12122		A CNA		0 0	0	NA
Recould Tennis Club. 491	Employees	RE-802003 VACODA LOADICO - 1241 355745777 AMV/186 AMX/195 AMX/195	NA NA NA			0 0	0	NA,
Health/Filness Club 492	KSF <sup>2</sup>	HERE'S AND PROVIDE ADVANCES AND W	45% 65% 57			0 0 0 0	0 Q	<u>NA</u> 10
Athletic Club 493.	KSF <sup>2</sup>	113 40 00 24 2197 44 5 98 24 5 98	61% 39% 62			0 0	0	0
Recreational Com, Center 495	K8F <sup>2</sup>	22288 (1002 BM/1715 MAR	61% 39% 37			0 0	0	0
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Elementary School 520	Employees	11/18 28 039 8 10 39 5 10 39 5 10 39 5 10 39 5 10 39 5 10 30 5 10 30 5 10 30 5 10 30 5 10 30 5 10 30 5 10 30 5	NA NA N	1.4.45 T 2.4 5 PT 1.45 PT 4.4	16.1194183 189169463875	0 0.	0	<u>NA</u>
Elementary School 520	Students KSF <sup>2</sup>		8 <u>55% 45% 49</u> 56% 44% 45			<u>:0.</u> 0	0	0
Elementary School 520	Employees.	12 81 577 82 587 82 181 81 81 81 81	56% 744% 45 54% 46% 49			0 0	0	0
Middle/ JR. High School 522	Śtudents	144/615/7/1 8780/67 1765/161 610/18	55% 45% 49	% 51%	CALL AND	0 0	0	0
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Junior/ Comm. College 640	Employees	· · · · · · · · · · · · · · · · · · ·	<b>9 74%</b> 56% 56			0 0	0	0.
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Church 560	Employees KSF <sup>2</sup>		where a state of the state of t	9% 71%		0 0	0	0.
Synagogue 661	KSF <sup>2</sup>	ANALOGE ALIGNE ENGINE	NA NA 47	3% 52% 7% 53%		0 0	0	0
Daycare Cenler 565	KSP <sup>2</sup>	12/20 12/20 12/20 12/20		V105		0 0	0	NA.
Daycare Center 565	Students	10400/19140 501/1/20 511/2/40 52/2017 10400/19140 501/2/20 511/2/40 52/2017 10400/19140 501/2/2017		7% 53% 7% 53%		0 0	0	0
Daycare Center 565	Employees	MIN 28/10 MAXA191 28 44/79 40 48/18	8 53% 47% 47	7% 53%	和目的是是自己的	0 0	0	0
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Cemetery 568	Employees	1989456109 19891123 19897700 299784	覆 近70% 30% 33	3% 67%	新國國語 197	ō ō	Ö	0

# **EXHIBIT 5**



#### Board of County Commissioners • Escambia County, Florida

Horace L. Jones, Director Development Services

December 09, 2016

William J. Dunaway Clark Partington, Attorneys at Law 125 West Romana St., Suite 800 Pensacola, FL 32502

RE: Notification of Board of Adjustment (BOA) Action at a Special Meeting held on December 07, 2016, Case #AP-2016-01, Appeal of the Development Review Committee's (DRC) denial of project #PSP160400044, Sean's Outpost, Inc., located at 1999 Massachusetts Avenue

Dear Mr. Dunaway,

At the December 07, 2016 Board of Adjustment meeting a motion was made and seconded to deny your appeal request and to uphold the DRC denial of the Sean's Outpost development order. That motion resulted in a 3-3 tied vote. The appeal failed to receive an affirmative majority vote and is denied.

This letter has been notarized should you choose to record it in the Public Records of Escambia County per Florida Statutes, Section 28.222(3)(a).

Should you have any questions or comments, please contact our office.

Sincerely,

Andrew D Holmer Division Manager

¢¢:

Sean's Outpost, Inc., 1999 Massachusetts Ave., Pensacola, FL 32505 Kristin Hual, Assistant County Attorney Front Counter Planners

> 3363 West Park Place • Pensacola, Florida 32505 850.595.3476tor 850.595.3550 • www.mvescambia.com

ACKNOWLEDGMENT

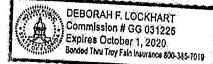
STATE OF FLORIDA COUNTY OF ESCAMBIA

Name of Notary Printed

Andrew D Holmer, who is personally known to me acknowledged the foregoing letter before me this <u>qth</u> day of <u>December</u>2016.

Signature of Notary Public iberat I-Lockhart Lockhart relooral

(Notary Seal)



My Commission Expires: 10-01-242 Commission Number: GG-031225

\*\*This decision DOES NOT determine, imply or confer development rights for any desired use or activity on the specified parcel. Additional review processes and/or permits may be required.\*\*



### DEVELOPMENT SERVICES ADMINISTRATIVE APPEAL WORKSHEET

Board of Adjustment Special Meeting Meeting Date: 12/07/2016

5. A.

I. SUBMISSION DATA: APPLICANT:

William J. Dunaway, Agent for Sean's Outpost, Inc. DATE OF ADMINISTRATIVE 10/12/2016 DECISION: DATE OF APPEAL 10/27/2016 **APPLICATION:** PROJECT ADDRESS: 1999 Massachusetts Avenue PROPERTY REFERENCE NO .: 12-2S-30-7002-000-000 ZONING DISTRICT: HC/LI, Heavy Commercial and Light Industrial district FUTURE LAND USE: MU-U, Mixed-Use Urban

#### **III. REQUESTED APPEAL::**

The Applicant is requesting an appeal of the Development Review Committee's (DRC) denial of project # PSP160400044, Sean's Outpost.

#### III. RELEVANT APPEAL AUTHORITY:

Land Development Code of Escambia County, Florida (Ordinance 96-3 as amended), Section: 2-6.10(b)(3)

Section 2-6-10, Appeal of Administrative Decisions of the Escambia County Land Development Code (Ordinance No. 96-3 as amended), provide the relevant authority for the BOA's review of administrative decisions. (b) Appeal process. Conditions that may justify modification of administrative decisions are evaluated through quasi-judicial public hearing review by the Board of Adjustment (BOA).

(3) Compliance review. The BOA shall conduct the quasi-judicial public hearing to consider the appeal of an administrative decision. The applicant has the burden of presenting competent substantial evidence to the board that establishes each of the following conditions with regard to the decision being appealed:

**a. Arbitrary or capricious.** The decision of the administrative official was neither required nor supported by the Comprehensive Plan or the LDC and was therefore arbitrary or capricious.

**b. LDC noncompliance.** The specific LDC provisions identified in the appeal application are appropriate to the decision and the decision was not in compliance with those provisions.

**c.** Adverse impact. The applicant's property will suffer an adverse impact as a result of the decision if it is not modified.

**d. Protected interest.** The adverse impact is to a specific interest protected or furthered by the LDC or Comprehensive Plan.

e. Greater impact. The adverse impact adversely affects the applicant in a greater degree than any adverse impact shared by the community at large; and, if the applicant is a third party to the decision, the adverse impact peculiar to the applicant differs in kind (as opposed to degree) to any suffered by the community as a whole.

#### **IV. BACKGROUND INFORMATION**

The project in question was submitted to the county DRC for the purpose of obtaining Development Order (DO) approval. As with all projects submitted to the DRC, the assigned reviewers then reviewed the plan for LDC compliance.

Following the reviews it was determined that this submittal did not meet all of the conditions for approval and the project was denied at the October 12, 2016 DRC meeting.

The Applicant met with staff to discuss the option of appeal and the case was submitted on October 27, 2016, meeting the required time frame set

forth in LDC 2-6.10(b)(1).

Staff then scheduled the BOA hearing for Dec. 7, 2016, also meeting the time time frame of LDC 2-6.10(b)(1).

#### V. BOARD DECISION

A motion was made and seconded to deny the appeal request and to uphold the DRC denial of the Sean's Outpost development order. That motion resulted in a 3-3 tied vote. The appeal failed to receive an affirmative majority vote and was denied.

Attachments

<u>AP-2016-01</u>

,

# EXHIBIT 6



William J. Dunaway Direct (850) 208-7020 wdunaway@clarkpartington.com Licensed to Practice in Florida and Mississippi

December 12, 2016

#### <u>VIA U.S. MAIL</u>

Kristin D. Hual Assistant County Attorney 221 Palafox Place, Suite 430 Pensacola, FL 32502

#### RE: Notification of Board of Adjustment (BOA) Action at a Special Meeting held on December 07, 2016, Case #AP-2016-01, Appeal of the Development Review Committee's (DRC) denial of project #PSP160400044, Sean's Outpost, Inc., located at 1999 Massachusetts Avenue

Dear Ms. Hual:

I acknowledge receipt of Mr. Holmer's letter of December 9, 2016 wherein he reports the Board of Adjustment's (BOA) 3-3 tie vote on my client's appeal. Mr. Holmer further states that "[t]he appeal failed to receive an affirmative majority vote and is denied." Mr. Holmer is wrong. Kindly refer him to the requirements of the Land Development Code ("LDC") Section 1-4.5(c)(1) wherein it states:

"Quorum and Vote." At least four of the seven members must be present to hold a meeting, and a majority vote of those present is required for **any official action to be taken** at the meeting. (Emphasis added).

Since a majority vote of those present was not obtained, then no official action was taken at the meeting. Until the BOA, in a properly noticed, public meeting, takes official action on my client's appeal, the appeal remains properly before the BOA for official action. I note that the language from the LDC quoted above is new as of April 16, 2015 when the LDC was amended. I attach the previous language of the LDC. If we were operating under this previous language, we would not have this dilemma. However, under the new LDC language, it takes a majority of the BOA present "for any official action to be taken at the meeting."

As you know, I have a statutory time frame of thirty (30) days after official action is taken in which to appeal the BOA's decision to circuit court. Since there was no "official action" taken by the 3-3 tie vote, then there is nothing for me to appeal. I look forward to hearing from you on how the County intends to proceed. As always, I am available to discuss.



Kristin D. Hual December 12, 2016 Page 2

With kind regards, I remain

Sincerely yours Cr William J. Dunaway

WJD/bfs

Enclosure

cc: Andrew D. Holmer, adholmer@myescambia.com Debbie Lockhart DFLOCKHA@co.escambia.fl.us Michael Kimbrel

A2449292,DOCX



clarkpartington.com

#### PART III - LAND DEVELOPMENT CODE

#### Article 2 ADMINISTRATION

2.04.01. Procedures for the appeal of administrative decisions. To initiate the appeals process, the person appealing the administrative decision must make written application for such appeal on a form(s) provided by the department of planning and zoning department within 15 days of the administrative decision. Said application shall be accompanied by sufficient and adequate information to define and describe the alleged error, the proposed remedies, and any other pertinent information the applicant wishes to have considered during the appeals process.

- A. The BOA is authorized to hear and to rule upon any appeal made by those persons aggrieved by administration of this Code. An administrative decision, or staff interpretation, shall not be reversed, altered, or modified by the BOA unless it finds that:
  - 1. A written application for the appeal was submitted within 15 days of the administrative decision or action indicating the section of this Code under which said appeal applies together with a statement of the grounds on which the appeal is based; and
  - 2. That the person filling said appeal has established that the decision or action of the administrative official was arbitrary and capricious; or
  - 3. An aggrieved party who files an appeal of a decision of the DRC approving or approving with conditions a development plan application, must show, by competent substantial evidence that:
    - (I) The decision of the DRC is not in compliance with the Comprehensive Plan or the Land Development Code;
    - (ii) Their property will suffer an adverse impact as a result of the development approval decision;
    - (iii) The adverse impact must be to a specific interest protected or furthered by the Comprehensive Plan or the Land Development Code; and
    - (iv) It must be greater in degree than any adverse impact shared by the community at large.
  - 4. In the event the owner, developer, or applicant is aggrieved or adversely affected by a denial of a development plan application or the Imposition of conditions, the owner, developer or applicant filing the appeal must show, by competent substantial evidence, that the denial of the development plan or the imposition of conditions is neither required nor supported by the Comprehensive Plan or the Land Development Code or the application of technical design standards and specifications adopted by reference in the Code, or Concurrency Management Procedures and is, therefore, arbitrary and capricious.
  - B. *Hearing of appeal; notice required.* The BOA shall schedule the hearing for the appeal to occur within 30 working days after the filing of the notice of appeal, give due notice to the parties in interest, and decide the same within a reasonable time. Any party may appear at the hearing in person or by agent or attorney. The BOA hearing may be continued or postponed by vote of the BOA or by the property owner, or his [or her] agent or attorney, upon his or her written request.
  - C. Decision of the BOA. In applying the provisions of this Code, said provisions shall be held to be minimum provisions. The BOA may reverse or affirm, wholly or partly, or may modify the order, requirements, decision or determination appealed, but may so modify only to the extent supported by the competent substantial evidence presented, and as necessary to maintain compliance with the requirements of the Code and Comprehensive Plan. To that end only, the BOA shall have the powers of the administrative official(s) to whom the appeal is directed. The BOA shall have no authority to reverse, diminish, or otherwise modify the application of technical design standards and specifications adopted by reference in the Code, or concurrency management procedures therein, or to exempt development from required review and approval. The concurring vote of a majority of the members of the BOA present and voting shall be necessary to reverse any order, requirement, decision, or determination of any such

Page 5

#### Article 2 ADMINISTRATION

administrative official, or to decide in favor of the applicant on any matter upon which it is required to vote. Any party aggrieved by the decision of the BOA on an administrative appeal shall have 30 days to petition the circuit court for judicial review of such order.

2.04.02. Impacts on permitting and owners of property subject to review. Because decisions of the BOA relating to variances, conditional uses, temporary use of a mobile home as a guest residence due to medical hardship, and extension of development order for site plan approval are final, unless overturned by a court of competent jurisdiction, the county may issue development orders and permits for properties in accordance with the decisions of the BOA. However, if a property owner or applicant requests the issuance of any such order or permit and such order or permit is issued, the permittee, and not the county, shall bear any risk that such decision may be set aside, the permit or development order may be revoked, or the development may be otherwise enjoined by the reviewing court.

#### 2.04.03. Reserved.

(Ord. No. 97-51, § 1, 10-2-1997; Ord. No. 99-25, § 1, 5-6-1999; Ord. No. 2001-35, §§ 3--5, 7-5-2001; Ord. No. 2002-45, § 3, 10-17-2002; Ord. No. 2004-9, § 3, 2-5-2004; Ord. No. 2004-21, § 1, 5-6-2004; Ord. No. 2005-45, § 1, 10-6-2005; Ord. No. 2007-15, § 1, 3-5-2007)

# 2.05.00. Variances, conditional uses, extension of a development order for site plan approval, and temporary use of a mobile home as a guest residence due to medical hardship.

The BOA shall hear and decide requests for variances, conditional uses, requests for an extension of a development order for site plan approval, or temporary use of a mobile home as a guest residence due to medical hardship, as hereinafter provided. Pursuant to the provisions of section 2.05.02 of this Code, the director of planning and zoning, or his/her designee, may grant administrative variances. The SRIA board shall act on variance applications on Pensacola Beach in conformance with <u>article 13</u> prior to the quasi-judicial hearing by the BOA.

2.05.01. Procedure for filing applications and notice requirements.

- A. All applications to the BOA for granting of variances, conditional uses, any extension of a development order for site plan approval, or temporary use of a mobile home as a guest residence due to medical hardship shall be filed with the planning and zoning department, at least 30 working days prior to the next scheduled meeting and thereupon the board shall consider such application. At the time of filing such applications, the applicant shall deposit with the department a fee in an amount as prescribed by the board of county commissioners, along with all required forms and attachments. All applications to the director of planning and zoning for administrative variances shall be filed with the planning and zoning department in the form of a letter of request, which outlines in detail the nature of the request, along with a fee in an amount as prescribed by the board of the request, along with a fee in an amount as prescribed by the nature of the request, along with a fee in an amount as prescribed of county commissioners. The planning chief may require the submission of additional documents, plans, and/or information deemed necessary in making a final determination on the request.
- B. For appeals, conditional uses, and/or temporary use of a mobile home as a guest residence due to medical hardship, notices explaining the purpose, time, date, and location of the meeting to be held to consider the matter(s) shall be sent to all owners of property within 500 feet of the subject property. In the case of variances, such notices shall go to all directly abutting owners of property (excluding properties across the street). In the case of conditional uses related to the prohibition of alcohol sales within 1,000 feet of a place of worship, such notices shall be sent to all owners of directly abutting property (excluding properties across the street) and additionally letters shall be sent to any places of worship within 1,000 feet. No such mailings shall be required in the case of an administrative variance. Notices shall be sent by planning staff no later than 15 days prior to said meeting.

ALISON PERDUE ROGERS County Attorney Board Certified City, County, and Local Government Law

CHARLES V. PEPPLER Deputy County Attorney Board Centified Civil Trial Law

STEPHEN G. WEST Senior Assistant County Attorney Board Certified Real Estate Law

KRISTIN D. HUAL Assistant County Attorney Board Certified City, County, and Local Government Law

MEREDITH D. CRAWFORD Assistant County Altornay

BARBARA ELLIS-WIGGINS Assistant County Atlomey BOARD OF COUNTY COMMISSIONERS ESCAMBIA COUNTY, FLORIDA OFFICE OF THE COUNTY ATTORNEY

> 221 PALAFOX PLACE, SUITE 430 PENSACOLA, FLORIDA 32502

TELEPHONE: (850) 595-4970 TELEFAX: (850) 595-4979



December 16, 2016

VIA E-MAIL AND U.S. MAIL

William J. Dunaway Clark, Partington, Attorneys at Law 125 West Romana Street, Suite 800 Pensacola, FL 32502

Re: Notification of Board of Adjustment (BOA) Special Meeting held on December 7, 2016, Case #AP2016-01, Appeal of the Development Review Committee's (DRC) denial of project #PSP160400044, Sean's Outpost, Inc., located at 1999 Massachusetts Avenue

Dear Mr. Dunaway:

In response to your recent correspondence, I respectfully disagree with your interpretation of the requirements of the Land Development Code. As provided in the Code, the BOA shall conduct the quasi-judicial public hearing to consider the appeal of an administrative decision, but the applicant bears the burden to present competent substantial evidence proving the required conditions with regard to the decision on appeal. The only motion presented at the hearing failed to receive a concurring majority vote, which constituted a denial of the appeal, and the burden remains with the applicant to request further consideration of the decision on appeal.

Please feel free to contact me if you wish to further discuss the matter.

Sincerely Krištin D. I Assistant County Attorney

cc: Andrew D. Holmer, via e-mail

#### Sarah Price

From: Sent: To: Cc: Subject: Attachments:	Will Dunaway Tuesday, December 20, 2016 4:18 PM 'Kristin D. Hual' Alison A. Rogers; Wanda M. Pearcey; Sarah Price RE: AP2016-01 Results Letter from Andrew D. Holmer 12.9.16 (A2449285xA3759).pdf; Letter to Mr. Dunaway odf
	Dunaway.pdf

#### Kristin,

Thanks for taking my call this afternoon. While we disagree about the application of the facts to the law in this case, we are in agreement that County staff members are unlikely able to properly convene a BOA meeting to take official action on our appeal before my deadline to file an appeal to circuit court if we assume that your interpretation that the 3-3 vote of the BOA on Dec 7, 2016 as reported by Mr. Holmer's attached letter was "official action" from which an appeal is available. If, however, the order being appealed has not yet been rendered, then staff likely does have time to notice the administrative appeal before the BOA so that "official action" can be taken at its Jan or Feb meeting.

As I explained to you, I do not interpret the 3-3 vote of the BOA to have resulted in any "official action" based on Sec 1-4.5(c)(1) of the LDC (which requires a majority vote of the members present for any "official action" to be taken) and therefore there is no "order" (written or not) to be appealed. In order for me to timely file my client's appeal, I need to know what the County contends is the "rendition" date of the BOA's 3-3 vote. Is it the date of the hearing (Dec 7th), the date of Mr. Holmer's attached letter (Dec 9th), or the date of your attached clarification letter (Dec 16th)? Rule 9.020(i) defines Rendition of an Order as the date "a signed, written order is filed with the clerk of the lower tribunal" (here, the BOA) - as best as I can tell, none of the three choices I list above meets this definition. Therefore, I believe staff has time to notice my administrative appeal again before the BOA.

If the County takes the position that the "order to be reviewed" has been rendered, and since any appeal to circuit court "shall be filed within 30 days of the rendition of the order to be reviewed" and that time period is, per Rule 9.100(c)(2), jurisdictional, I don't want there to be any doubt as to the rendition date or the Order to be reviewed. Will there be "a signed, written order" filed with the clerk of the BOA or do I use the BOA hearing date (Dec 7th), Mr. Holmer's Dec 9, 2016 letter or your Dec 16th letter as the "order being reviewed"?

I appreciate your reply. Thx.

Will

# E WILLIAM J. DUNAWAY

Shareholder • Environmental & Land Use Law

125 W. Romana Street, Suite 800, Pensacola, FL. 32502

O (850) 208.7020 F (850) 456.7890

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From: Kristin D. Hual [mailto:KDHUAL@co.escambia.fl.us]
Sent: Tuesday, December 20, 2016 2:36 PM
To: Will Dunaway
Cc: Alison A. Rogers; Wanda M. Pearcey
Subject: RE: AP2016-01

Will,

I may not advise as to how you wish to proceed with the appeal. I'll be in the office today and tomorrow if you would like to discuss. Thank you-

Kristin D. Hual Assistant County Attorney Escambia County Board of County Commissioners 221 Palafox Place, Suite 430 Pensacola, Florida 32502 Phone: (850) 595-4970 Fax: (850) 595-4979



From: Will Dunaway [mailto:wdunaway@clarkpartington.com]
Sent: Friday, December 16, 2016 5:02 PM
To: Kristin D. Hual
Cc: Barbara F. Sponburgh; Andrew D. Holmer; Wanda M. Pearcey
Subject: RE: AP2016-01

Kristin,

Are we in agreement that Sec 1-4.5(c)(1) controls the quorum and vote of the BOA? If so how do we reconcile the plain language that "a majority vote of those present is required for any official action to be taken at the meeting." In my opinion, bringing the matter back to the BOA so that "official action" can be taken is the only option for the County. I suppose we can take this single issue to the Circuit Court, but I would think that would be a hard one for you to defend, plus I only get what I'm asking for now - the BOA to take "official action" a year from now. Doesn't it make more sense to have the BOA take "official action" before we appeal to Circuit Court? Always willing to discuss.

Will



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From: Wanda M. Pearcey [mailto:wmpearcey@co.escambia.fl.us]
Sent: Friday, December 16, 2016 4:42 PM
To: Will Dunaway
Cc: Barbara F. Sponburgh; Andrew D. Holmer; Kristin D. Hual
Subject: AP2016-01

Mr. Dunaway, feel free to contact our office if you wish to discuss this matter.

Thank you,

Wanda M. Pearcey Administrative Assistant to Kristin D. Hual, Assistant County Attorney County Attorney's Office 221 Palafox Place, Suite 430 Pensacola, Florida 32502 (850) 595-4970

# **EXHIBIT 7**

#### Sec. 1-4.4 Santa Rosa Island Authority.

(a) General. A special act of the 1947 Florida Legislature authorized the BCC to use that portion of Santa Rosa Island owned by Escambia County for purposes the BCC determined to be in the public interest. Additionally, the legislative act authorized and required the BCC to delegate to, and vest certain of its powers and authority in, a separate board - the Santa Rosa Island Authority (SRIA). The SRIA is charged with the general stewardship of Pensacola Beach and to protect the public interest in those resources that are unique to the county, state, and nation. More specifically, and within the scope of the LDC, the SRIA has the authority and duty for

- (1) Land leasing. Lease Santa Rosa Island, in whole or parts, assuring that all such leases executed or renegotiated for the property under its authority are consistent with the Comprehensive Plan and LDC.
- (2) Floodplain administration. Administer and enforce the floodplain management provisions of the LDC through the SRIA general manager as the authorized Floodplain Administrator for Pensacola Beach. As Floodplain Administrator, the general manager is specifically authorized and directed to administer and enforce the floodplain management regulations of the county on Pensacola Beach as prescribed in Chapter 4.
- (3) Development review. Review development proposed on Pensacola Beach for compliance with executed leases and specific provisions of the LDC, authorizing development or providing recommendations to the Planning Official, Board of Adjustment, or Planning Board, as applicable, regarding their final actions on the development proposals.
- (4) Quasi-judicial hearings. Hold quasi-judicial public hearings for Pensacola Beach properties to review established records of evidence in support of LDC criteria, and on the basis of those records to do the following:
  - a. Variances. Grant, grant with conditions, or deny applications for substantial hardship variances to the strict site-specific application of eligible LDC development standards.
  - **b.** Conditional uses. Grant, grant with conditions, or deny applications for conditional uses as identified within applicable zoning or other LDC provisions.
  - **c.** Zoning map amendments. Make recommendations to the BCC regarding approval of requested zoning map amendments (rezoning), particularly as to consistency with the Comprehensive Plan and LDC.

#### Sec. 1-4.5 Board of Adjustment.

(a) Authority and duties. The Board of Adjustment (BOA) is established and authorized by the BCC to review practical difficulties or undue hardships created by the strict application of land use regulations, and to grant relief according to the provisions of the LDC. However, the BOA is not granted legislative authority to substitute its judgment for that of the BCC, nor is it charged with the routine

administration of the LDC. The board shall uphold the meaning and intent of the LDC as enacted by the BCC. Accordingly, BOA members shall be informed and knowledgeable of county land development regulations and the rules of quasijudicial proceedings. The BOA shall take action on all matters according to the requirements of the LDC, and all other applicable county ordinances and state regulations. Except as established for the SRIA, the BOA has the authority and duty to hold quasi-judicial public hearings, to review established records of evidence in support of LDC criteria, and to grant, grant with conditions, or deny applications for all of the following:

- (1) Appeals. Appeals of orders, requirements, decisions, interpretations or determinations of administrative officials, including officials under the authority of the SRIA, regarding LDC compliance.
- (2) Variances. Substantial hardship variances to the strict site-specific application of eligible LDC development standards.
- (3) Conditional uses. Conditional uses as identified within applicable zoning districts or other LDC provisions.
- (4) Extensions. Long-term extensions of LDC standard periods of compliance approval or inactive nonconformance.
- (5) **Temporary medical hardships.** Temporary use of manufactured (mobile) homes or park trailers due to medical hardship.
- (6) Other. Other approvals as may be specified by the LDC.
- (b) Membership.
  - (1) Appointment. Each of the five County Commissioners shall appoint one member and the BCC as a whole shall appoint two "at large" members. All members must be approved by a majority vote of the BCC.
  - (2) Qualification. All appointees must reside within Escambia County and none shall be a paid or elected employee of the county. All persons seeking appointment shall furnish a resume or *curriculum vitae* to the County Administrator and BCC demonstrating their qualifications to serve.
  - (3) Terms of service. Each member appointed by an individual commissioner shall serve a four-year term concurrent with their appointing commissioner, and the two at large members shall serve two-year staggered terms.
  - (4) Removal and replacement. Any member appointed by an individual commissioner may be removed from office during his term by that commissioner, and any at large member may be removed by a majority vote of the BCC. Any member absent from four or more meetings within a 12-month period shall be removed by the BCC unless the absences are reported by the BOA chair as beyond the control of the absentee. Any vacancy occurring during an unexpired term of a member shall be filled for the balance of the term according to the appointment and qualifications provisions applicable to that member.

- (5) Officers. The members shall elect a chair and vice-chair from among themselves. Terms of the offices shall be for two years, with eligibility for reelection.
- (c) Meetings. The board shall hold regular meetings for the consideration of business. Special meetings may also be held as the members may determine necessary, or at the call of the chair or Planning Official. All meetings shall be public and adhere to Florida Sunshine Law requirements.
  - (1) Quorum and vote. At least four of the seven members must be present to hold a meeting, and a majority vote of those present is required for any official action to be taken at the meeting.
  - (2) Records. Minutes will be kept of all proceedings to provide a written record, including the meeting time, date and location, confirmation of public notification, participants, and official actions taken by the board. Minutes will record the vote of each member on each question considered, or the fact of their absence or failure to vote. Minutes and other records of official actions shall be maintained in the offices of the Planning Official.
  - (3) **Procedure.** The BOA shall follow its adopted rules of procedure for quasi-judicial hearings consistent with the application review processes of the LDC and any other applicable county or state requirements.
- (d) Staffing and assistance. County planning staff shall assist in the work of the BOA by preparing agendas, publishing notices, posting signs, arranging meetings, distributing meeting minutes, and similar operational support. The office of the County Attorney shall act as legal advisor to the BOA. Additionally, the BOA is authorized to acquire from any county offices information and advice that it believes will aid its work. However, such requests shall be made through the County Administrator's office to ensure the proper allocation of resources and a timely response.

#### Sec. 2-1.4 General provisions of compliance review.

- (a) General. The LDC establishes compliance review provisions to authorize land uses and development activities that comply with applicable LDC requirements. The procedures vary with the complexity of issues evaluated, but each requires: (1) an application for county approval, (2) an opportunity for public participation, (3) an evaluation of LDC compliance, (4) a final compliance determination, and (5) an opportunity to appeal that determination. The general requirements established in this section shall be combined with the specific requirements prescribed in the remaining articles of this chapter to obtain compliance review appropriate for the uses or activities proposed.
- (b) Application. The applicant requesting approval of a land use or development activity regulated by the LDC shall initiate the appropriate compliance review action prescribed in this chapter by submission of a complete application for review according to the adopted procedures for the application. Those procedures and all necessary application forms, checklists, and schedules shall be available to the public by the reviewing authority. Guidance to assist applicants in meeting application requirements shall also be provided and obtained from the appropriate governing body.
  - (1) Pre-application inquiries. Prior to application for compliance review approval, representatives of the reviewing authority will be available to discuss with applicants any of the processes, regulations, and standards related to development objectives. Anyone unfamiliar with LDC requirements is strongly encouraged to consult the LDC and make sufficient inquiries to the county before submitting an application in order to avoid delays or penalties. As identified in this chapter, a meeting with review personnel is required for certain development review activities but are encouraged for all.

Applicants for any land use or development activity on Pensacola Beach property for which a pre-application meeting is not required shall consult with staff of the SRIA to review for any lease conditions that may affect the proposed use or activity.

- (2) Authority to apply. The applicant for compliance review shall be the owner of the subject land or be appropriately authorized by the landowner to submit an application. Where a proposed use or activity involves multiple parcels, common ownership or similar unified authorization shall be documented. For Pensacola Beach leaseholds the applicant shall be the lessee or authorized by the same. Authority to apply may be confirmed through public records or other means established and appropriate for the specific approval requested. For all applications it remains solely the responsibility of the applicant to obtain valid authorization of the landowner.
- (3) Fees. Where authorized by the BCC, payment of fees shall be required at the time of application or at the time the requested approval or other service is provided, according to the adopted procedures of the reviewing authorities.

- (c) Final determination. The final determination on an application typically follows the applicant's final response to review comments or the conclusion of any required public hearing testimony. The time necessary for an application to conclude with a final determination varies with the reviewing authority and compliance review.
  - (1) Approval. Confirmation that a requested land use or development activity complies with all applicable LDC provisions is the issuance of a written document of final approval. At a minimum, the document shall identify the subject site, the action approved, the approving authority, the date and period of approval, and any site-specific conditions of the approval. Approval authorizes the applicant, subject to the continuing obligation of the approval terms and conditions, to commence the proposed use or activity. Use or activity other than that approved, or failure to comply with approval terms and conditions is a violation of the LDC and is subject to enforcement and the penalties prescribed.
  - (2) Approval conditions. The LDC establishes both general and specific conditions of approval and may authorize other reasonable conditions considered necessary to address impacts of approvals and carry out the purposes of the LDC. After final county approval, no new conditions can be imposed and no existing conditions can be removed except by the established appeal provisions. Additionally, except as required by Florida Statutes for requested zoning changes necessary to properly enact a proposed comprehensive plan amendment, no use or activity may be approved conditional to a proposed change in either the future land use category or zoning district. The following conditions apply to all approvals:
    - a. Substantial conformance. The implementation of an approval shall be in substantial conformance with the terms and conditions of the approval.
    - **b.** Compliance inspections. All approved development is subject to county inspections for compliance with the conditions of its approval, including any approved plan. All engineering designs shall require "as built" certification by a Florida registered professional engineer prior to final inspection.
    - **c. Other approvals.** All applicable state and federal permits shall be obtained before commencement of the approved development.
  - (3) Denial. For each application denied by the reviewing authority, the county shall inform the applicant in writing of the basis of the denial. Unless modified or overturned on appeal, a denial closes the original application. Any subsequent review for approval requires a new application and may incur a waiting period as set by department rules and procedures prior to any reapplication for substantially the same requested approval.
  - (4) Risk in proceeding. The decisions of approving authorities in the LDC compliance review are final unless overturned through a valid appeal process. The county shall issue authorizations for uses and activities according to the

decisions of these authorities. The applicant bears all risk in proceeding with an approved use or activity while the approval remains subject to appeal.

- (5) Modification of approvals. It is unlawful to modify, amend, or otherwise deviate from an approval without first obtaining written authorization from the approving authority. Unless specifically established in the LDC or provided through a successful appeal, modification of an approval including its terms and conditions requires a new application for review. Approved uses or activities modified without authorization are subject to the penalties and increased fees specified by the BCC. No certificate of occupancy or similar acceptance of site conditions by the county shall be issued for any unauthorized land use or development activity. Modifications to approvals may be requested by the applicant as prescribed in this chapter, but requests for modifications to certified engineering designs shall only be accepted from the engineer of record and require approval by the County Engineer.
- (d) Appeal. Any LDC compliance review applicant, or other aggrieved party as defined by Florida law, may appeal the decision of an administrative official or board in their administration of the LDC as prescribed in this chapter. Decisions subject to appeal include formal interpretations of LDC provisions by the Planning Official and the final approvals, conditions of approval, or denials of development applications. However, recommendations of administrative officials or boards in any matter are not subject to appeal. Avenues of appeal are as follows:
  - (1) County officials. A decision of a county official in his administration of the LDC may be appealed by application to the Board of Adjustment (BOA) for review within 15 days after the date of the official's decision according to the provisions for appeal of administrative decisions as prescribed in Article 6. Appeal of decisions made by the Building Official in his administration of the building code shall be according to the provisions of the Escambia County Code of Ordinances, Part I.
  - (2) Board of Adjustment. If the final determination of the BOA is denial, no new application for the same use on the same parcel can be accepted for review until at least 180 days from the date of the denial. A final determination of the BOA may be appealed by petitioning the circuit court for judicial review within 30 days after the date of the board's decision, and providing a copy of the petition to the clerk of the board. Appeal is limited to an applicant or to an adversely affected person who appeared before the BOA in the quasi-judicial hearing and asserted a position on the merits of the application.
  - (3) Santa Rosa Island Authority. The BCC may review and veto within thirty (30) days any substantive action taken by the SRIA involving changes in land use or the making or amending of commercial or developmental leases pursuant to Ch. 79-457, Laws of Florida."
  - (4) **Planning Board.** The recommendations of the Planning Board are not subject to appeal since they are the local planning agency's advice to the BCC.

- (4) Mobility. Internal circulation systems promote both pedestrian and vehicular mobility, especially between residential areas and local public open space, schools, retail sales and services, and employment. Sidewalks are located on at least one side of every street to support safe pedestrian mobility within the development and appropriate access to surrounding uses.
- (5) Efficient land use. An efficient use of land results in smaller networks of streets and utilities. If street rights-of-way are proposed to be less than standard width, easements will provide adequate space to install and maintain utilities.
- (6) **Compatibility.** The development is compatible with surrounding areas and provides stable conditions and character to maintain long-term compatibility.

#### Sec. 2-6.9 Statutory development agreements.

At the request of an applicant or the county, a voluntary development agreement may be entered into that would vest certain conditions agreed to by both parties according to the requirements of Florida Statutes. The form of the development agreement shall be approved through the County Attorney's Office. The Planning Board shall conduct the first of two public hearings required by law. The BCC shall conduct the second public hearing, with final adoption of the development agreement requiring a majority vote of the BCC.

#### Section 2-6.10 Appeal of Administrative Decisions

- (a) Appeal option. Any person whose substantial interests have been adversely affected by an error in the order, requirement, interpretation, or determination of an administrative official regarding compliance with the requirements of the LDC may appeal that decision according to the provisions of this section. The provisions do not apply to decisions regarding administration of the building code, actions of code enforcement officers, or challenges of consistency of LDC regulations with the Comprehensive Plan. A claim to appeal or challenge the consistency of a development order with the adopted Comprehensive Plan must be filed with the Clerk of the Circuit Court of Escambia County pursuant to Florida Statute 163.3215.
- (b) Appeal process. Conditions that may justify modification of administrative decisions are evaluated through quasi-judicial public hearing review by the Board of Adjustment (BOA).
  - (1) Application. Application for appeal of an administrative decision shall be submitted for compliance review within 15 days after the date of the decision being appealed. A quasi-judicial public hearing for the appeal shall be scheduled to occur within 30 business days after receipt of a complete application. The application shall provide information as required by the adopted appeal procedures, including the following:
    - **a. Decision appealed.** A copy of the written administrative decision to be reviewed on appeal.
    - **b.** LDC reference. Identification of the specific LDC provisions for which noncompliance is alleged.

- **c.** Alleged error. A description of how the decision of the administrative official is considered arbitrary or capricious.
- **d. Conditions.** Documentation satisfying the conditions established in the compliance review provisions of this section.
- e. Remedy. A description of the proposed remedy.
- f. Other information. Any other pertinent information the applicant wishes to have considered.

(2) Public participation. Hearings to consider an appeal of administrative decision shall be open to the public. Prior to any hearing to consider an appeal of administrative decision, the county shall provide reasonable notice to the public as required by Florida Statutes. Although the hearing before the BOA is open to the public, only those person or entities with "standing" will be allowed to present testimony or other evidence during the hearing. Persons with standing include:

- **a.** The applicant or other person who received the complained of adversed decision from the county administrative official.
- **b.** Those persons who are third parties to the administrative decision and who suffer an adverse impact that differs in kind (as opposed to degree) to any adverse impact suffered by the community as a whole.

(3) **Compliance review.** The BOA shall conduct the quasi-judicial public hearing to consider the appeal of an administrative decision. The applicant has the burden of presenting competent substantial evidence to the board that establishes each of the following conditions with regard to the decision being appealed:

- **a.** Arbitrary or capricious. The decision of the administrative official was neither required nor supported by the Comprehensive Plan or the LDC and was therefore arbitrary or capricious.
- **b. LDC noncompliance.** The specific LDC provisions identified in the appeal application are appropriate to the decision and the decision was not in compliance with those provisions.
- **c.** Adverse impact. The applicant's property will suffer an adverse impact as a result of the decision if it is not modified.
- **d. Protected interest.** The adverse impact is to a specific interest protected or furthered by the LDC or Comprehensive Plan.
- e. Greater impact. The adverse impact adversely affects the applicant in a greater degree than any adverse impact shared by the community at large; and, if the applicant is a third party to the decision, the adverse impact peculiar to the applicant differs in kind (as opposed to degree) to any suffered by the community as a whole.
- (4) Final determination.

- a. Board finding. If the BOA finds from the record of the hearing that the applicant has presented competent substantial evidence proving the required conditions set out in the compliance review provisions of this section, the board shall find the appealed decision in error. The finding shall state with particularity how the decision of the administrative official was arbitrary or capricious. If the conditions are not proven the board shall affirm the decision.
- b. Board authority. The BOA shall have the same authority and responsibility to change a decision found to be in error as is given by the LDC to the official who made the decision, but no more. The board may act only to the extent supported by the established record of evidence and only as necessary to maintain compliance with the LDC and the Comprehensive Plan. The board cannot offer opinions or interpretations generally. The authority of the board to act as the official does not include any authority to diminish or otherwise change the application of any technical design standard or specification established or referenced in the LDC, to change any concurrency management provisions, or to exempt any development from required compliance review and approval.

Ord. No. 2015-18, § 2, 6-25-15)

# Sec. 1-1.10 Adjustments to LDC provisions.

The provisions of the LDC apply without any exceptions, exemptions, alternatives, waivers, variances or other adjustments unless such adjustments are specifically established within the code. For some unusual or unanticipated circumstances the LDC allows limited criterion-based variances to provide site-specific relief, and may include alternative requirements to provide flexibility or encourage minimum standards to be exceeded. Except for such provisions, only the lawful amendment of the LDC can permit what is not otherwise authorized. Nothing in the LDC shall allow, encourage or require any change to its provisions except through the formal amendment process established within the LDC and Florida Statutes.

# Sec. 1-1.11 Rules for understanding LDC provisions.

- (a) General. The LDC shall be interpreted and administered broadly by the administrative authorities described in this chapter to achieve its declared purposes. In the interpretation and administration of any LDC provisions, they shall be understood to be the minimum requirements adopted by the BCC for the promotion of the public health, safety and general welfare. It is presumed that the intent of the BCC in a particular provision of the code is expressed by the wording of that provision. Further, the BCC is presumed to act intentionally and purposely when it includes language in one section of the code but omits it in another. The rules of interpretation prescribed in this section shall be observed in the implementation of all LDC provisions.
- (b) Confirmation of meaning. The meaning of a provision in the LDC must first be evaluated according to the plain language of the provision. If the meaning is clear, then the remaining administrative function is to enforce it according to its stated terms. If the provision is unclear, its meaning shall be determined in consideration of other LDC provisions on the same subject, giving priority to those closest in context. Individual provisions must be interpreted so as to be internally consistent and not disconnected from the rest of the LDC. Every part of a provision is presumed to have some effect, and must not be treated as having no effect unless absolutely necessary.
- (c) Delegation of authority. When a provision of the LDC authorizes the County Administrator, County Engineer, Planning Official, Building Official, or other county officer or employee to perform some act or duty, the provision also authorizes that individual to delegate the performance of that act or duty to other qualified county employees under his authority, unless the terms of the provision clearly indicate otherwise. Similarly, when a provision authorizes the Santa Rosa Island Authority Board (SRIA) to perform some act or duty, the provision also authorizes the board to delegate the performance of that act or duty to qualified individuals under the board's authority.
- (d) Particular and general. A particular intent expressed in the LDC has authority over a general one, such that when there is a more specific requirement it must be followed in place of a more general one, regardless of whether the general requirement is more lenient or in conflict with the specific one.

- (e) Use of words. The use of words within the LDC shall be understood according to the following rules:
  - Definitions. In addition to the rules of this section and those terms defined where used, definitions of selected terms used within the LDC are provided in Chapter
     Words not defined within the LDC, and not otherwise having acquired a meaning by other applicable regulatory definition or judicial construction, shall be understood according to their usual, ordinary and customary meanings.
  - (2) Tense and form. Words used in one tense or form include other tenses or derivative forms, unless the context clearly indicates otherwise.
  - (3) Singular and plural. Words used in the singular include the plural and words in the plural include the singular, unless the context clearly indicates otherwise.
  - (4) Gender. Words used in the masculine, feminine, or neuter gender include the other genders.
  - (5) Mandatory, permissive, and advisory. The words "shall," "will" and "must" are mandatory in nature and always require compliance where used. The word "may" is permissive, authorizing but not requiring action. The word "should" is advisory only, identifying recommendations provided by the county in the implementation of regulations.
  - (6) Conjunctions. Unless the context clearly indicates otherwise, where a regulation connects items, conditions, provisions or events, the conjunctions shall be interpreted as follows:
    - **a.** And. The word "and" indicates that all the connected terms, conditions, provisions, or events apply.
    - **b.** Or. The word "or" indicates that the connected items, conditions, provisions, or events may apply singly or in any combination.
    - **c.** Either or. The words "either . . . or" indicate that the connected items, conditions, provisions, or events apply singly but not in combination.
  - (7) Written or in writing. The words "written" and "in writing" include any representation of words, letters, diagrams or figures, whether by handwriting, printing or other forms of recording.
  - (8) Used for or as. The words "used for "and "used as" include intended, designed, arranged, occupied and maintained for or as, unless the context clearly indicates otherwise.
  - (9) Including or includes. The words "including" and "includes" do not limit a provision to the specific example or series of examples it contains.
- (f) Computation of time. Unless otherwise specifically provided, a "day" means a calendar day and a "year" means 365 days. In computing any period of time allowed or prescribed by the LDC, the day from which the period begins to run is not included. The day after the act or event that begins the period is day one. The last day of the computed period is included, unless it is a Saturday, Sunday or legal holiday observed by the county. In that case the period will run until the end of the

next day that is not a Saturday, Sunday or observed legal holiday. In computing any period of months, the period ends on the same or closest numbered day of the ending month as the number of the beginning day in the beginning month.

- (g) Controlling text. If there is any inconsistency between the text of the LDC and any picture, illustration, drawing, map, table, or caption within the LDC, the text governs unless otherwise specifically provided.
- (h) Headings and titles. Headings and titles within the chapters of the LDC, typically in boldface or italic type, are only included to indicate content and organization for the convenience of the reader. Such headings are only catchwords and do not by their presence or absence govern, limit, modify, or in any manner affect the scope, meaning, or intent of any provision of the LDC. Accordingly, no provision of the LDC will be held invalid by reason of deficiency in any heading or title of any chapter, article, section or other part.

# Sec. 1-1.12 Appeal of LDC-based determinations.

Those persons whose substantial interests have been adversely affected by an interpretation or other administrative determination of a county official or body exercising authority under the LDC, including the SRIA, have the right to a review of that determination. Review of any such action may be requested following the appealable action as prescribed in Chapter 2.However, review of citations by code enforcement officers shall be as prescribed in Part I of the Escambia County Code of Ordinances. Additionally, any challenge to the consistency of either a development approval or a provision of the LDC with the Comprehensive Plan shall be made in the manner prescribed by Florida Statutes.

# Sec. 1-1.13 Relation of LDC to other authorities.

- (a) Code of Ordinances. The LDC exists as Part III of the Escambia County Code of Ordinances to implement the land use goals, objectives and policies of Part II, the Comprehensive Plan. Except in their administration and enforcement, or where specific references are made to other county ordinances, the Comprehensive Plan, LDC, and the Design Standards Manual (DSM) are to be construed independently of Part I.
- (b) Building Code. The LDC establishes certain land use regulations for buildings and prescribes development standards for sites they occupy, but the construction of buildings and other structures is regulated through the Florida Building Code and other provisions prescribed within Part I of the Code of Ordinances.
- (c) Non-county entities. Non-county entities also regulate, govern, or otherwise influence the use or development of land. However, it is the responsibility of each property owner to determine those entities that have jurisdiction affecting their property, its use, or activities upon it, and to adequately communicate with them. The county may assist in directing the applicant to appropriate agencies or entities, but in doing so the county assumes no responsibility or liability in any way for any owner's failure to adhere to any restrictions or requirements of those or other entities.

commercial or industrial. Rezoning to Commercial is subject to the same location criteria as any new non-residential use proposed within the Commercial district. (Ord. No. 2015-56, § 4, 12-10-2015; Ord. No. 2016-02, § 2, 1-7-2016; 2016-31 § 1, 8-4-2016))

# Sec. 3-2.11 Heavy Commercial and Light Industrial district (HC/LI).

- (a) Purpose. The Heavy Commercial and Light Industrial (HC/LI) district establishes appropriate areas and land use regulations for a complementary mix of industrial uses with a broad range of commercial activities. The primary intent of the district is to allow light manufacturing, large-scale wholesale and retail uses, major services, and other more intense uses than allowed in the Commercial district. The variety and intensity of non-residential uses within the HC/LI district is limited by their compatibility with surrounding uses. All commercial and industrial operations are limited to the confines of buildings and not allowed to produce undesirable effects on other property. To retain adequate area for commercial and industrial activities, other uses within the district are limited.
- (b) Permitted uses. Permitted uses within the HC/LI district are limited to the following:
  - (1) **Residential**. Any residential uses if outside of the Industrial (I) future land use category and part of a predominantly commercial development, excluding new or expanded manufactured (mobile) home parks and subdivisions. See also conditional uses in this district.
  - (2) Retail sales. Retail sales, including sales of alcoholic beverages, sales of automotive fuels, and sales of new and used automobiles, motorcycles, boats, and manufactured (mobile) homes.
  - (3) Retail services.
    - a. Car washes, automatic or manual, full service or self-serve.
    - b. Child care facilities.
    - **c.** Hotels, motels and all other public lodging, including boarding and rooming houses.
    - **d.** Personal services, including those of beauty shops, health clubs, pet groomers, dry cleaners and tattoo parlors.
    - e. Professional services, including those of realtors, bankers, accountants, engineers, architects, dentists, physicians, and attorneys.
    - f. Rental of automobiles, trucks, utility trailers and recreational vehicles.
    - **g.** Repair services, including appliance repair, furniture refinishing and upholstery, watch and jewelry repair, small engine and motor services, and major motor vehicle and boat service and repair, but excluding outdoor work or storage.
    - **h.** Restaurants and brewpubs, including on-premises consumption of alcoholic beverages, drive-in and drive-through service, and brewpubs with the distribution of on-premises produced alcoholic beverages for off-site sales. The parcel boundary of any restaurant or brewpub with drive-in or drive-

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through service shall be at least 200 feet from any LDR or MDR zoning district unless separated by a 50-foot or wider street right-of-way.

i. Taxi and limousine services.

See also conditional uses in this district.

#### (4) Public and civic.

- a. Broadcast stations with satellite dishes and antennas, including towers.
- b. Cemeteries, including family cemeteries.
- **c.** Community service facilities, including auditoriums, libraries, museums, and neighborhood centers.
- **d.** Educational facilities, including preschools, K-12, colleges, and vocational schools.
- e. Emergency service facilities, including law enforcement, fire fighting, and medical assistance.
- f. Funeral establishments.
- g. Homeless shelters.
- h. Hospitals.
- i. Offices for government agencies or public utilities.
- j. Places of worship.
- **k.** Public utility structures, including telecommunications towers, but excluding industrial uses not otherwise permitted.

See also conditional uses in this district.

(Ord. No. 2015-24, § 1, 7-7-15)

#### (5) Recreation and entertainment.

- a. Commercial entertainment facilities, indoor or outdoor, including movie theatres, amusement parks, and stadiums, but excluding motorsports facilities. Carnival-type amusements shall be at least 500 feet from any residential district. Bars, nightclubs, and adult entertainment are prohibited in areas with the zoning designation HC/LI-NA or areas zoned ID-CP or ID-1 prior to adoption of HC/LI zoning.
- **b.** Commercial recreation facilities, passive or active, including those for walking, hiking, bicycling, camping, recreational vehicles, swimming, skateboarding, bowling, court games, field sports, and golf, but excluding off-highway vehicle uses and outdoor shooting ranges. Campgrounds and recreational vehicle parks require a minimum lot area of five acres.
- c. Marinas, private and commercial.
- d. Parks, with or without permanent restrooms or outdoor event lighting.

See also conditional uses in this district.

### (6) Industrial and related.

- **a.** Light industrial uses, including research and development, printing and binding, distribution and wholesale warehousing, and manufacturing, all completely within the confines of buildings and without adverse off-site impacts.
- **b.** Marinas, industrial.
- **c.** Microbreweries, microdistilleries, and microwineries, except in areas with the zoning designation HC/LI-NA or areas zoned ID-CP or ID-1 prior to adoption of HC/LI zoning.

See also conditional uses in this district.

### (7) Agricultural and related.

- **a.** Food produced primarily for personal consumption by the producer, but no farm animals.
- **b.** Nurseries and garden centers, including adjoining outdoor storage or display of plants.
- c. Veterinary clinics, excluding outside kennels.

See also conditional uses in this district.

#### (8) Other uses.

- **a.** Billboards structures, excluding areas zoned ID-CP, GBD, or GID prior to adoption of HC/LI zoning.
- **b.** Building or construction trades shops and warehouses, including on-site outside storage.
- c. Bus leasing and rental facilities.
- **d.** Deposit boxes for donation of used items when placed as an accessory structure on the site of a charitable organization.
- e. Outdoor adjacent display of plants by garden shops and nurseries.
- **f.** Outdoor sales.
- **g.** Outdoor storage of trailered boats and operable recreational vehicles, excluding repair, overhaul or salvage activities.
- h. Parking garages and lots, commercial.
- i. Sales and outdoor display of prefabricated storage sheds.
- j. Self-storage facilities, including vehicle rental as an accessory use.
- (c) Conditional uses. Through the conditional use process prescribed in Chapter 2, the BOA, or the BCC as noted, may conditionally allow the following uses within the HC/LI district:
  - (1) **Residential.** Caretaker residences not among the permitted uses of the district and for permitted non-residential uses.
  - (2) Retail services. Restaurants not among the permitted uses of the district.

(3) Public and civic. Cinerators.

### (4) Recreation and entertainment.

- a. Motorsports facilities on lots 20 acres or larger.
- b. Off-highway vehicle commercial recreation facilities on lots 20 acres or larger.
- c. Shooting ranges, outdoor.

### (5) Industrial and related.

- **a.** Asphalt and concrete batch plants if within the Industrial (I) future land use category and within areas zoned GID prior to adoption of HC/LI zoning.
- b. Borrow pits and reclamation activities 20 acres minimum and (subject to local permit and development review requirements per Escambia County Code of Ordinances, Part I, Chapter 42, article VIII, and land use regulations in Part III, the Land Development Code, chapter 4.) \*Borrow pits are prohibited on land zoned GBD, GID, and WMU prior to the adoption of the HC/LI zoning.
- **c.** Salvage yards not otherwise requiring approval as solid waste processing facilities.
- **d.** Solid waste processing facilities, including solid waste collection points, solid waste transfer facilities, materials recovery facilities, recovered materials processing facilities, recycling facilities and operations, resource recovery facilities and operations, and volume reduction plants.

The conditional use determination for any of these solid waste facilities shall be made by the BCC in lieu of any hearing before the BOA. The applicant shall submit a site boundary survey, development plan, description of anticipated operations, and evidence that establishes each of the following conditions in addition to those prescribed in Chapter 2:

- 1. Trucks have access to and from the site from adequately wide collector or arterial streets and do not use local residential streets.
- 2. The scale, intensity, and operation of the use will not generate unreasonable noise, traffic, objectionable odors, dust, or other potential nuisances or hazards to contiguous properties.
- **3.** The processing of materials will be completely within enclosed buildings unless otherwise approved by the BCC.
- 4. The plan includes appropriate practices to protect adjacent land and resources, minimize erosion, and treat stormwater; landscaping and buffering for adjacent uses; hours of operation; methods to comply with maximum permissible noise levels; means of access control to prevent illegal dumping; and plans for materials storage.
- (6) Agricultural and related. Kennels or animal shelters not interior to veterinary clinics.

# (7) Other uses.

- a. Structures of permitted uses exceeding the district structure height limit.
- **b.** Heliports.
- (d) Site and building requirements. The following site and building requirements apply to uses within the HC/LI district:
  - (1) **Density.** A maximum density of 25 dwelling units per acre. Lodging unit density is not limited by zoning.
  - (2) Floor area ratio. A maximum floor area ratio of 1.0 within the Commercial (C) and Industrial (I) future land use categories, and 2.0 within Mixed-Use Urban (MU-U).
  - (3) Structure height. A maximum structure height of 150 feet above highest adjacent grade.
  - (4) Lot area. No minimum lot area unless prescribed by use.
  - (5) Lot width. No minimum lot width required by zoning.
  - (6) Lot coverage. Minimum pervious lot coverage of 15 percent (85 percent maximum semi-impervious and impervious cover) for all uses. A maximum 75 percent of lot area occupied by principal and accessory buildings on lots of non-residential uses.
  - (7) Structure setbacks. For all principal structures, minimum setbacks are:
    - a. Front and rear. Fifteen feet in both front and rear.
    - **b.** Sides. Ten feet on each side, including any group of attached townhouses. For structures exceeding 35 feet above highest adjacent grade, an additional two feet for each additional 10 feet in height.
    - c. Corner lots. Will have one front setback and one side setback.
  - (8) Other requirements.
    - **a. Access.** For any industrial use south of Well Line Road, site access shall be provided by curb cuts on an arterial or collector street. Alternatively, a private or public street may link the site to an arterial or collector, provided that the private or public street does not traverse a residential subdivision or predominantly residential neighborhood between the site and the arterial or collector street.
    - **b.** Chapters 4 and 5. Refer to chapters 4 and 5 for additional development regulations and standards.
- (e) Location criteria. All new non-residential uses proposed within the HC/LI district that are not part of a planned unit development or not identified as exempt by district regulations shall be on parcels that satisfy at least one of the following location criteria:
  - (1) **Proximity to intersection.** Along an arterial street and within one-quarter mile of its intersection with an arterial street.

- (2) Site design. Along an arterial street, no more than one-half mile from its intersection with an arterial street, and all of the following site design conditions:
  - a. Not abutting a RR, LDR or MDR zoning district
  - **b.** Any intrusion into a recorded residential subdivision is limited to a corner lot
  - **c.** A system of service roads or shared access is provided to the maximum extent feasible given the lot area, lot shape, ownership patterns, and site and street characteristics.
  - **d.** Adverse impacts to any adjoining residential uses are minimized by placing the more intensive elements of the use, such as solid waste dumpsters and truck loading/unloading areas, furthest from the residential uses.
  - e. Location in an area where already established non-residential uses are otherwise consistent with the HC/LI, and where the new use would constitute infill development of similar intensity as the conforming development on surrounding parcels. Additionally, the location would promote compact development and not contribute to or promote strip commercial development.
- (3) Documented compatibility. A compatibility analysis prepared by the applicant provides competent substantial evidence of unique circumstances regarding the parcel or use that were not anticipated by the alternative criteria, and the proposed use will be able to achieve long-term compatibility with existing and potential uses. Additionally, the following conditions exist:
  - **a.** The parcel has not been rezoned by the landowner from the mixed-use, commercial, or industrial zoning assigned by the county.
  - **b.** If the parcel is within a county redevelopment district, the use will be consistent with the district's adopted redevelopment plan, as reviewed and recommended by the Community Redevelopment Agency (CRA).

# (f) Rezoning to HC/LI.

- (1) Generally. Heavy Commercial and Light Industrial zoning may be established only within the Mixed-Use Urban (MU-U), Commercial (C), or Industrial (I) future land use categories. The district is appropriate to provide transitions between areas zoned or used for commercial and areas zoned or used for industrial. The district is suitable for areas able to receive bulk deliveries by truck in locations served by major transportation networks and able to avoid undesirable effects on nearby property and residential uses. Rezoning to HC/LI is subject to the same location criteria as any non-residential use proposed within the HC/LI district.
- (2) HC/LI-NA designation. Any applicant for rezoning to the HC/LI zoning district may request a HC/LI-NA designation prohibiting the subsequent establishment of any microbreweries, microdistilleries, microwineries, bars, nightclubs, or adult entertainment uses on the rezoned property. The request shall be in the form of a notarized affidavit that acknowledges this use restriction and affirms that it is a voluntary request. Once approved according to the rezoning process of Chapter 2, the HC/LI-NA zoning designation and its prohibitions shall apply to the property, regardless of ownership, unless the parcel is rezoned. (Ord. No. 2015-56, § 5, 12-10-2015; Ord. No. 2016-2, § 3, 1-7-2016)

2-2 - Access management.

Vehicular access to public roadways shall be accomplished by means of an improved access facility (i.e., driveway, private road, etc.). Unimproved and/or unrestricted access will not be permitted. All driveways and streets shall be designed and constructed pursuant to the design standards in the most recent edition of the "A Policy on Geometric Design of Highways and Streets" by the American Association of State Highway Transportation Officials" and/or "The Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways," and FDOT.

2-2.1 *Access location.* Unless otherwise approved by the county engineer, in order to reduce turning movements on roadways, new access points to development sites or projects should be as follows:

Posted Speed (mph)	Distance Between Access Points (feet)
> 45	440
36—45	245
35 or less	125

For parcels which front two or more roadways, access shall be permitted onto the higher class roadway if the driveway location can meet the driveway separation standard shown above.

# 2-2.2 Pedestrian access.

- (a) Commercial development. For commercial sites with buildings individually or cumulatively 50,000 GSF or greater, pathways through parking lots and across driveways between buildings and out parcels shall be provided for pedestrians. Such pathways shall be separated from vehicle driveways and shall be clearly identified by curbs, pavement markings, planting areas, fences or similar features designed to promote pedestrian safety.
- (b) *Sidewalks.* Sidewalks are to be constructed along the frontage of a development if any of the following conditions apply:
  - 1. An existing sidewalk abuts the development, or is on one or both sides of an intervening/intersecting street.
  - 2. The need for site specific improvements are identified within an approved Florida/Alabama TPO Bike/Pedestrian Master Plan.
  - 3. When 50 percent or more of any developable portion of the property is within two miles of public school property as measured radially from the school's main front office entrance.

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(c) Motions Not Restricted. This rule does not restrict a party's right to move to file documents under seal.

# RULE 9.100. ORIGINAL PROCEEDINGS

(a) Applicability. This rule applies to those proceedings that invoke the jurisdiction of the courts described in rules 9.030(a)(3), (b)(2), (b)(3), (c)(2), and (c)(3) for the issuance of writs of mandamus, prohibition, quo warranto, certiorari, and habeas corpus, and all writs necessary to the complete exercise of the courts' jurisdiction; and for review of non-final administrative action.

(b) Commencement; Parties. The original jurisdiction of the court shall be invoked by filing a petition, accompanied by any filing fees prescribed by law, with the clerk of the court having jurisdiction. The parties to the proceeding shall be as follows:

(1) If the petition seeks review of an order entered by a lower tribunal, all parties to the proceeding in the lower tribunal who are not named as petitioners shall be named as respondents.

(2) If the original jurisdiction of the court is invoked to enforce a private right, the proceedings shall not be brought on the relation of the state.

(3) The following officials shall not be named as respondents to a petition, but a copy of the petition shall be served on the official who issued the order that is the subject of the petition:

(A) Judges of lower tribunals shall not be named as respondents to petitions for certiorari;

(B) Individual members of agencies, boards, and commissions of local governments shall not be named as respondents to petitions for review of quasi-judicial action; and

(C) Officers presiding over administrative proceedings, such as hearing officers and administrative law judges, shall not be named as respondents to petitions for review of non-final agency action.

December 15, 2016 Florida Rules of Appellate Procedure 25 The Florida Bar (c) Petitions for Certiorari; Review of Non-Final Agency Action; Review of Prisoner Disciplinary Action. The following shall be filed within 30 days of rendition of the order to be reviewed:

(1) A petition for certiorari.

(2) A petition to review quasi-judicial action of agencies, boards, and commissions of local government, which action is not directly appealable under any other provision of general law but may be subject to review by certiorari.

(3) A petition to review non-final agency action under the Administrative Procedure Act.

(4) A petition challenging an order of the Department of Corrections entered in prisoner disciplinary proceedings.

# (d) Orders Excluding or Granting Access to Press or Public.

(1) A petition to review an order excluding the press or public from, or granting the press or public access to, any proceeding, any part of a proceeding, or any records of the judicial branch, shall be filed in the court as soon as practicable following rendition of the order to be reviewed, if written, or announcement of the order to be reviewed, if oral, but no later than 30 days after rendition of the order. A copy of the petition shall be furnished to the person (or chairperson of the collegial administrative agency) issuing the order, the parties to the proceeding, and any affected non-parties, as defined in Florida Rule of Judicial Administration 2.420.

(2) The court shall immediately consider the petition to determine whether a stay of proceedings in the lower tribunal or the order under review is appropriate and, on its own motion or that of any party, the court may order a stay on such conditions as may be appropriate. Any motion to stay an order granting access to a proceeding, any part of a proceeding, or any records of the judicial branch made under this subdivision must include a signed certification by the movant that the motion is made in good faith and is supported by a sound factual

December 15, 2016 Florida Rules of Appellate Procedure 26 The Florida Bar **1996 Amendment.** Rule of Judicial Administration 2.135 now mandates that the Rules of Appellate Procedure control in all appellate proceedings.

# RULE 9.020. DEFINITIONS

The following terms have the meanings shown as used in these rules:

(a) Administrative Action. Administrative action shall include:

(1) final agency action as defined in the Administrative Procedure Act, chapter 120, Florida Statutes;

(2) non-final action by an agency or administrative law judge reviewable under the Administrative Procedure Act;

(3) quasi-judicial decisions by any administrative body, agency, board or commission not subject to the Administrative Procedure Act; and

(4) administrative action for which judicial review is provided by general law.

(b) Clerk. The person or official specifically designated as such for the court or lower tribunal; if no person or official has been specifically so designated, the official or agent who most closely resembles a clerk in the functions performed.

(c) Court. The supreme court; the district courts of appeal; and the circuit courts in the exercise of the jurisdiction described by rule 9.030(c), including the chief justice of the supreme court and the chief judge of a district court of appeal in the exercise of constitutional, administrative, or supervisory powers on behalf of such courts.

(d) Family Law Matter. A matter governed by the Florida Family Law Rules of Procedure.

(e) Lower Tribunal. The court, agency, officer, board, commission, judge of compensation claims, or body whose order is to be reviewed.

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(f) Order. A decision, order, judgment, decree, or rule of a lower tribunal, excluding minutes and minute book entries.

(g) Parties.

(1) Appellant. A party who seeks to invoke the appeal jurisdiction of a court.

(2) Appellee. Every party in the proceeding in the lower tribunal other than an appellant.

(3) **Petitioner.** A party who seeks an order under rule 9.100 or rule 9.120.

(4) **Respondent.** Every other party in a proceeding brought by a petitioner.

(h) Applicability of Florida Rules of Judicial Administration. The Florida Rules of Judicial Administration are applicable in all proceedings governed by these rules, except as otherwise provided in these rules. These rules shall govern where in conflict with the Florida Rules of Judicial Administration.

(i) Rendition (of an Order). An order is rendered when a signed, written order is filed with the clerk of the lower tribunal. However, unless another applicable rule of procedure specifically provides to the contrary, if a final order has been entered and there has been filed in the lower tribunal an authorized and timely motion for new trial, for rehearing, for certification, to alter or amend, for judgment in accordance with prior motion for directed verdict, for arrest of judgment, to challenge the verdict, to correct a sentence or order of probation pursuant to Florida Rule of Criminal Procedure 3.800(b)(1), to withdraw a plea after sentencing pursuant to Florida Rule of Criminal Procedure 3.170(*l*), or to vacate an order based upon the recommendations of a hearing officer in accordance with Florida Family Law Rule of Procedure 12.491, the following exceptions apply: (1) If such a motion or motions have been filed, the final order shall not be deemed rendered as to any existing party until the filing of a signed, written order disposing of the last of such motions.

(2) If such a motion or motions have been filed, a signed, written order granting a new trial shall be deemed rendered when filed with the clerk, notwithstanding that other such motions may remain pending at the time.

(3) If such a motion or motions have been filed and a notice of appeal is filed before the filing of a signed, written order disposing of all such motions, the appeal shall be held in abeyance until the filing of a signed, written order disposing of the last such motion.

(j) Rendition of an Appellate Order. If any timely and authorized motion under rule 9.330 or 9.331 is filed, the order shall not be deemed rendered as to any party until all of the motions are either withdrawn or resolved by the filing of a written order.

(k) Signed. A signed document is one containing a signature as provided by Florida Rule of Judicial Administration 2.515(c).

#### **Committee Notes**

**1977 Amendment.** This rule supersedes former rule 1.3. Throughout these rules the defined terms have been used in their technical sense only, and are not intended to alter substantive law. Instances may arise in which the context of the rule requires a different meaning for a defined term, but these should be rare.

The term "administrative action" is new and has been defined to make clear the application of these rules to judicial review of administrative agency action. This definition was not intended to conflict with the Administrative Procedure Act, chapter 120, Florida Statutes (1975), but was intended to include all administrative agency action as defined in the Administrative Procedure Act. The reference to municipalities is not intended to conflict with article VIII, section 1(a), Florida Constitution, which makes counties the only political subdivisions of the state.

The term "clerk" retains the substance of the term "clerk" defined in the former rules. This term includes the person who in fact maintains records of proceedings in the lower tribunal if no person is specifically and officially given that duty.

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# EXHIBIT 8

### THE OFFICE OF ENVIRONMENTAL CODE ENFOREMENT SPECIAL MAGISTRATE IN AND FOR THE COUNTY OF ESCAMBIA, STATE OF FLORIDA

#### ESCAMBIA COUNTY, FLORIDA

v.

CASE NO.: CE160100023 Location: 1999 Mass. Ave. PR# 122#307002000000

Sean's Outpost Inc. 1999 Massachusetts Ave. Pensacola, FL 32505

#### AMENDED ORDER1

Pursuant to Chapter 30, Article II, Section 30-34, Escambia County Code of Ordinances, this matter, after written notice to all parties, was heard on July 27, 2016, before Robert O. Beasley, Special Magistrate, Office of Environmental Code Enforcement, upon an alleged violation of the Ordinances of Escambia County, State of Florida.

#### I. Statement of the Case

The matter came to hearing upon a Notice of Violation issued June 20, 2016. The alleged violations of the Land Development Code include: Sec. 4-7.13, Article 1, Sec. 1-1.7 and Sec. 2-1.3.

#### II. The Evidence.

For the last two years Sean's Outpost has used its property by allowing members of the homeless population to reside there in temporary structures. The number of campsites have varied but at all times there has existed on the property an average of ten (10) to fifteen (15)

1 Amended in accordance with the Notice of Exceptions and Motion to Amend filed by the Petitioner, Escambia County, Florida. The undersigned has determined that the suggested amendments do not materially or substantially effect the Order and that amendment to reference the current LDC sections is necessary for clarification.

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primitive shelters made of either tent material, canvas or plastic tarps. The only structure on the property is a small storage shed. At some point porta-potties were provided through an area vendor. The testimony is that these facilities are serviced or replaced on a regular basis. In addition, a dumpster provided for trash is also regularly serviced or replaced by a commercial vendor

Mr. Michael Kimberl testified as a representative of Sean's Outpost. He described their mission as providing a safe environment for the area homeless so that their basic needs of shelter and security are met. This admirable effort allows the first step in a progression which leads hopefully to what was described as a "street graduation;" enabling a person to transition into a more permanent and stable living situation. Mr. Kimberl also provided statistics related to the area homeless population. It is clear Sean's Outpost is providing a service to the community as a whole and, if adequately funded and supported, would complement the other community resources for the homeless population. Mr. Kimberl described the original intent of the initiative which was a much larger concept, including bath houses and a dining facility. Funding restrictions have, however, limited the mission to the existing level of service.

Prior to, and at the time of purchase, the subject property was vacant and zoned as HC/LI (Heavy Commercial/Light Industrial). The County position is that the change of use from vacant to the existing use is a "development" pursuant to LDC. The Respondent suggested that because the population of the camps are homeless, making it a homeless camp, there is no specific zoning or regulation of this type of activity Sean's Outpost is admittedly soliciting people to come to its property to set up a primitive camp and receive the benefit of the services and facilities it is providing. It does not matter that the population of its customers is homeless or that that

property owner is electing not to charge for the accommodations.

The Respondent described its efforts to achieve compliance under the LDC. To address the issue of whether the facility is a campground under Florida Statutes an application was made to the Florida Department of Health. A letter of determination was issued which declared that the activity was not a regulated campground. There was no evidence related to the content of the application or the representations made to the Department of Health from which they reached this conclusion. This agency determination relieves the Respondent of the burdens of regulation by the Department of Health but does not prohibit Escambia County from making its own determination as to whether the use is a development and classifying the use under the most appropriate category of the Land Development Code.

#### III. Analysis and Findings.

After a review of the evidence and relevant legal authority the undersigned makes the following findings:

The Notice of Violation dated January 20, 2016, cites the Respondent for violation of LDC sections 4-7.13, 1-1.7, and 2-1.3. The Respondent is in violation of the cited sections. As to 4-7.13, the campsites are temporary in structure and design but the use is of a permanent nature. Mr. Kimberl acknowledged the tents are used for greater than fourteen (14) days in any calendar year, and that there is no limit on the amount of time a person may use a campsite as long as they are complying with the camp rules. In addition, the provision of restroom and garbage facilities by the property owner supports the conclusion that this use is outside the temporary nature contemplated by LDC 4-7.13.

The Respondent is also in violation of LDC Sections 1-1.7 and 2-1.3 for engaging in a

commercial use of the land without having obtained the necessary approvals for the development. I agree with the County that the current use by Sean's Outpost constitutes a development activity and that the property owner must obtain any and all necessary permits to legally conduct this activity. I do not believe the focus is properly on the people using the campsites, homeless or otherwise, but rather on the elected use by the owner as a whole. However, the Respondent is actively engaged in the development review process set forth in Article 4 of the LDC.

Sean's Outpost property is zoned HC/LI (Heavy Commercial/Light Industrial). LDC Section 3-1.4 permits temporary uses and structures as prescribed by the supplemental use regulations of Chapter 4, specifically Section 4-7.13. The evidence, to include Exhibits H, I, M and testimony from both parties, is that the Respondent has participated in multiple rounds of review by the Development Review Committee ("DRC"). Both sides testified or at least implied that progress is being obstructed or delayed by the other. The Respondent has requested two continuances of these proceedings under the representation that the DRC process was progressing to a successful conclusion, yet no Development Order has been issued. The County provided the testimony of Andrew Holmer and Horace Jones, members of the Department of Planning and Zoning, that the applicant has changed the scope of its application causing additional review and has failed to adequately address the staff comments. As of June 29, 2016, consideration of the application was "tabled" at the suggestion of Mr. Jones to allow further comment by the various departments. It is not clear whether the Respondent will be able to provide the infrastructure improvements, like the all weather surfacing required for the improved roadways. However, the Respondent is entitled to complete the DRC process as long as progress is being made. Many developments go through multiple rounds of DRC comment and subsequent adjustment.

On April 22, 2014, Special Magistrate entered an Order in Case # 13-12-00500 regarding the same facts and circumstances ("2014 Order"). As of 2014 the Respondent was using the property in the same manner as presented in the instant case. Magistrate Lander concluded at that time that the tents on the property were temporary structures per Article 3 of the Land Development Code. As of the date of the 2014 Order the Respondent had not yet submitted an application for development review pursuant to the LDC. Magistrate Lander cites to Section 6.05.16, LDC, and determines that the temporary structures, while constituting a development, could exist for a period of up to thirty (30) days without development approval. In the 2014 proceedings there was no evidence as to how long the tents had been in place. Therefore, the 2014 Order concludes that there was a lack of competent and substantial evidence to conclude there was a violation of the LDC. In the present case the evidence is undisputed that the tents have been in place for greater than thirty (30) days. In fact, the use has continued uninterrupted since the 2014 Order.

#### IV. Conclusion.

While it is unclear exactly when the Respondent was in violation of the LDC for exceeding the temporary structure timelines, the evidence supports the conclusion that the violation currently exists. The Respondent continues to participate in the development review process but there must be some limit placed on the amount of time the non-conforming condition should be permitted to exist while the applicant navigates the maze of the DRC. Considering the fact that the property has been in violation since some time in 2014, the Respondent shall be permitted to maintain the current use of the property for a period of up to no more than (90) ninety days from the date the DRC returns its final comments to the current application. The Respondent shall continue to actively participate in the DRC process and shall respond to all comments and inquiries in such a manner to allow the County to either approve or deny the application for a development order. It is anticipated that the County will timely review the application in its amended form and provide final comments and conditions for approval or deny the application. The Respondent should not be penalized by the processing time required by the County. Conversely, the County should be permitted the time it needs to adequately address the application. Ultimately both sides need finality in this process. The Respondent shall have ninety (90) days from the issuance of the County response to either accept the conditions and request the issuance of the development order or pursue its appellate remedies. Compliance with this Order may be achieved by either (1) issuance of a development order; (2) the filing of a timely appeal by the Respondent of an unacceptable condition or denial of the development application (in such case the time does not commence until the resolution of the appeal), or (3) removal of all non-conforming temporary structures from the property.

Failure to achieve compliance within the time set forth herein will result in a fine in the amount of  $\underline{\$20.00}$  per day, which shall commence on the ninety first (91) day following the issuance of the final DRC comments/approval/denial. This daily fine shall continue until this violation is abated and brought into compliance or until as otherwise provided by law. Cost in the amount of  $\underline{\$650.00}$  are awarded to the County for these proceedings. The fines set forth above shall be forwarded to the Board of County Commissioners. Under the authority of

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162.09(1) F.S. and Sec. 30-34(d) of the Code of Ordinances, the Board of County Commissioners will certify to the Special Magistrate all costs imposed pursuant to this order. All Monies owing hereunder shall constitute a lien on ALL YOUR REAL AND PERSONAL PROPERTY including any property involved herein, which lien can be enforced by foreclosure and as provided by law.

You have the right to appeal orders of the Special Magistrate to the Circuit Court of Escambia County. If you wish to appeal, you must give notice of such in writing to both the Environmental Enforcement Division at 3363 W Park Place, Pensacola, Florida 32505 and the Escambia County Circuit Court at the M.C. Blanchard Judicial Building,190 Governmental Center, Pensacola, Florida 32501, no later than thirty (30) days from the date of this Order. Failure to timely file a Written Notice of Appeal will waive your rights to appeal. Jurisdiction is retained to enter such further orders as may be appropriate and necessary.

DONE and ORDERED at Escambia County, Florida on this 7th day of September, 2016.

Robert O. Beasley, Special Magistrate

Robert O. Beasley, Special Magistrate Office of Environmental Code Enforcement

# EXHIBIT 9



Board of County Commissioners • Escambia County, Florida

Horace L. Jones, Department Director Development Services

September 13, 2016

William J. Dunaway, Esq. Clark Partington Hart Larry Bond & Stackhouse 125 West Romana Street, Suite 800 Pensacola, FL 32502

#### Re: Sean's Outpost - Satoshi Forest

Dear Mr. Dunaway:

Pursuant to the Special Magistrate's Code Enforcement Order regarding this matter, a copy of the Development Review Committee's (DRC) final comments, dated July 14, 2016, was filed with the Special Magistrate on August 26, 2016. I have also enclosed a copy for your reference.

Response to these comments and a revised site plan will need to be submitted no later than 12:00 p.m., Wednesday, September 28, 2016.

Also, in accordance with the Special Magistrate's Order, a meeting has been scheduled for 1:00 p.m., Wednesday, October 12, 2016, at the Escambia County Central Office Complex, 3363 West Park Place, Pensacola, FL 32505, for the purpose of determining site plan compliance with the Land Development Code (LDC) for issuance or denial of the Development Order.

If you have any questions, please do not hesitate to contact me at (850) 595-3597.

Sincerely,

Horace L. Jones Development Services Director

Enclosures

cc: Jack R. Brown, County Administrator Alison Rogers, County Attorney Meredith Crawford, Assistant County Attorney Environmental Code Enforcement

> 3363 West Park Place ≫ Pensacola, Florida 32505 850159513475 www.mvescambia.com

# EXHIBIT 10

Agenda

	Return DRAFT
RESUMÉ OF 1	THE MEETING OF THE BOARD OF ADJUSTMENT
	HELD December 7, 2016
2262 \	
3303 V	WEST PARK PLACE, BOARD CHAMBERS PENSACOLA, FLORIDA
	(8:30 A.M. – 12:32 P.M.)
Present:	Auby Smith
	Bill Stromquist
	Jesse Casey Judy Gund
	Frederick J. Gant
	Jennifer Rigby Mark Robinson
Staff Present	: Horace Jones, Director, Development Services
	Andrew Holmer, Division Manager, Planning & Zoning
	Caleb MacCartee, Urban Planner, Planning & Zoning
Attendees:	Debbie Lockhart, Administrative Assistant Kristen Hual, Assistant County Attorney
Attended	
REGULAR BOA AG	ENDA
1.	Call to Order.
2.	New Board Member, Mark Robinson, took the Oath of Office and was sworn in by the Clerk. Staff members were sworn in and accepted as expert witnesses.
3.	The Board accepted the BOA Meeting Package with the Development Services Staff Findings-of-Fact, into evidence.
4.	Proof of Publication was provided by the Clerk and the Board waived the reading of the legal advertisement.
5.	Consideration of the following case:
A. Al-11456	CASE NO.: AP-2016-01         ADDRESS:         1999 Massachusetts Avenue         REQUESTED APPEAL:         Appeal of the Development Review Committee denial of project # PSP160400044, Sean's Outpost
	REQUESTED BY: William J. Dunaway, Agent for Sean's Outpost, Inc.
	<u>No Board member acknowledged any ex parte communication regarding this item.</u> Board Chairman, Auby Smith acknowledged visiting the site.
	Board member, Mark Robinson refrained from voting on this matter due to conflict of interest, and left the meeting at 10:30 P.M.
	Motion by At Large Member Jesse Casey, Seconded by Board Member Judy Gund Motion was made and seconded to deny the appeal request and to uphold the DRC

6.

7.

Agenda

denial of Sean's Outpost development order. That motion resulted in a 3-3 tied vote. The appeal failed to receive an affirmative majority vote and was denied.

Vote: 3 - 3 Failed
Voted Yes: At Large Member Jesse Casey Board Member Judy Gund Board Member Frederick J. Gant
Voted No: Chairman Auby Smith Vice Chairman Bill Stromquist Board Member Jennifer Rigby
Announcement.
The next Board of Adjustment Meeting is scheduled for Wednesday, December 21, 2016 at 8:30 a.m., at the Escambia County Central Office Complex, Room 104, 3363 West Park Place.
Adjournment.

Audio CD of this meeting is available upon request. AgendaQuick©2005 - 2017 Destiny Software Inc., All Rights Reserved

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#### ESCAMBIA COUNTY BOARD OF ADJUSTMENT

#### SPECIAL MEETING

- - -

CASE NO.: AP-2016-01

ADDRESS: 1999 Massachusetts Avenue

REQUESTED APPEAL: Appeal of the Development Review Committee denial of project #PSP160400044, Sean's Outpost

REQUESTED BY: William J. Dunaway, Agent for Sean's Outpost, Inc.

Proceedings held in the above-styled cause before the Escambia County Board of Adjustment on the 7th day of December 2016, commencing at 8:30 a.m., at Escambia County Central Office Complex, 3363 West Park Place, Room 104, Pensacola, Florida, reported by David A. Deik, CP, CPE, Professional Reporter.

	Page 2
1	APPEARANCES
2	
3	BOARD OF ADJUSTMENT MEMBERS:
3	AUBY SMITH, Chairman
4	
	KRISTEN HUAL, ESQ., County Attorney
5	TECCE CACEY
6	JESSE CASEY
	FREDERICK GANT
7	
8	JUDY GUND
0	MARK ROBINSON
9	
10	BILL STROMQUIST
10	JENNIFER RIGBY
11	
12	BOARD STAFF PRESENT:
13	Horace Jones, Department Director Andrew D. Holmer, Development Services Manager
14	
	Debbie Lockhart, Administrative Assistant
15	Development Services, Planning Division
16	
17	FOR APPELLANT SEAN'S OUTPOST:
± /	CLARK PARTINGTON
18	BY: WILLIAM J. DUNAWAY, ESQUIRE
	125 West Romana Street
19	Pensacola, Florida 32502
20	
21	
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Page 4 PROCEEDINGS 1 2 (Board staff members were duly sworn.) THE CHAIRPERSON: Members of the Board, 3 copies of staff resumes have previously been 4 provided and remain on file for reference. 5 The Board has previously recognized staff 6 7 as expert witnesses. Does anyone have any 8 questions regarding their qualifications and abilities to offer expert testimony? 9 10 (No response.) 11 THE CHAIRPERSON: Seeing none, the Board 12 of Adjustment meeting package for December 7, 2016, with development service staff findings of 13 fact has previously been provided to the board 14 members. 15 16 The Chair will entertain a motion to 17 accept the BOA meeting package into evidence. Do we have a motion? 18 19 MR. STROMQUIST: So moved. 20 THE CHAIRPERSON: We have a motion by Bill. 21 22 MS. GUND: Second. 23 THE CHAIRPERSON: We have a second by 24 Judy. 25 Those in favor, signify by raising your

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Page 5 right hand? 1 2 (All board members raised their hand, 3 Mr. Gant not present.) 4 THE CHAIRPERSON: Passing unanimously. 5 Do we have proof of publication? MS. LOCKHART: Yes, sir, we do. 6 7 THE CHAIRPERSON: Did the publication meet 8 all legal requirements? 9 MS. LOCKHART: Yes, it did. THE CHAIRPERSON: The Chair will now 10 11 entertain a motion to waive the reading of the 12 legal advertisement. Do we have a motion? 13 MR. STROMQUIST: So moved. THE CHAIRPERSON: Motion by Bill. 14 MS. GUND: Second. 15 16 THE CHAIRPERSON: Second by Judy. 17 Those in favor, signify by raising your 18 right hand. 19 (All board members raised their hand, 20 Mr. Gant not present.) 21 THE CHAIRPERSON: Passes unanimously. 22 MS. GUND: The Board of Adjustment, the 23 BOA, hears administrative appeals, variances and 24 conditional use requests. These hearings are 25 quasi-judicial in nature. Quasi-judicial

Page 6 hearings are like evidentiary hearings in a 1 court of law but less formal. 2 All public testimony will be taken under 3 oath, and anyone testifying before the BOA may 4 be subject to cross-examination. 5 All documents and exhibits that the BOA 6 7 considers are entered into evidence and made 8 part of the record. 9 (Mr. Gant entered the hearing room.) MS. GUND: The giving of opinion testimony 10 11 will be limited to experts, and closing arguments will be limited to the evidence in the 12 13 record. After hearing the testimony and arguments 14 for and against the proposed action and before 15 16 making its decision, the BOA will consider the 17 relevant testimony, exhibits entered into 18 evidence and the applicable law. 19 Because the decision of the BOA relating 20 to variances, conditional uses and extension of the Development Code order for site plans are 21 22 final, unless overturned by a court of competent 23 jurisdiction, the county may issue development 24 orders and permits for properties in accordance 25 with the decision of the BOA.

However, if an applicant requests the 1 2 issuance of any such order or permit and such order or permit is issued, the applicant and not 3 the county shall bear any risk that such 4 decision may be set aside, the development order or permit may be revoked, or the development may 6 7 be otherwise enjoined by the reviewing court. Any application for relief from the 8 decision of the BOA's said action for any 9 10 aggrieved party, as defined by state law, may be

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reviewed by petition and by filing an appropriate pleading in a court of competent jurisdiction within 30 days of the BOA decision. The date of the BOA decision shall be the date the BOA voted at the conclusion of the hearing.

16 Whenever the BOA denies an application, no 17 new application for identical action on the same 18 parcel shall be accepted for consideration 19 within a period of 180 days of the BOA decision.

20 Any person aggrieved by a decision of the BOA relating to an appeal of an administrative 21 22 decision may within 15 days thereafter apply to the Circuit Court for review. 23

Each individual who wishes to address the 24 25 board regarding a particular issue must complete

#### Page 7

Page 8 a request-to-speak form and submit it to the 1 These forms are located on the back of 2 clerk. the table of the commission chambers. You will 3 not be allowed to speak until we receive one of 4 5 these completed request-to-speak forms. We must have these completed forms for public record. 6 7 THE CHAIRPERSON: They're in the back. 8 They've turned green today, but they're in the back. 9 All written or oral communications at the 10 11 time of this hearing with members of the Board 12 of Adjustment regarding matters under review today are considered ex parte communications. 13 Ex parte communications are presumed 14 prejudicial under Florida law and must be 15 16 disclosed as provided in Board of County 17 Commission Resolution 96-13 before a decision by 18 this board or any administrative appeal variance 19 or conditional use request. 20 The Chair will ask as each case is heard that any board member who has been involved in 21 22 any ex parte communication regarding the respective issue to please identify themselves 23 and describe the communication. 24 25 The case we're addressing today is

Page 9 AP-2016-01, 1999 Massachusetts Avenue. 1 Board members, has there been any ex parte 2 communication regarding this case? 3 4 (No response.) 5 THE CHAIRPERSON: Seeing none, would like for the minutes to reflect that we have a 6 7 seventh member present today, so we have seven 8 board members present. 9 Does any board member intend to refrain 10 from voting due to a voting conflict of 11 interest? 12 MR. ROBINSON: I do. 13 THE CHAIRPERSON: We have one. The new board member, Mark, will abstain from voting. 14 So that will give us six voting present. 15 16 Does anyone have knowledge or information 17 obtained from a site visit or other sources? It should be noted that the Chair visited 18 19 the site. 20 Would the individuals who are a party to this item please come to the podium, identify 21 22 yourself, and by stating your name and address for the record, be sworn in by the clerk. 23 24 MR. DUNAWAY: My name is Will Dunaway, 25 with the law firm of Clark Partington. Ι

Page 10 represent the applicant, Sean's Outpost. 1 THE CHAIRPERSON: Okay. You will not have 2 3 to be sworn, as an attorney. MR. DUNAWAY: The applicant does intend to 4 5 present witnesses and would present our applicant rep, who will be Michael Kimbrel. 6 7 THE CHAIRPERSON: All right, sir. You've 8 been provided with a copy of staff's findings of fact. 9 10 MR. DUNAWAY: We have been provided with a 11 copy of staff's findings. There were no facts, 12 but we anticipate that that was what was part of 13 your board package that you just admitted into evidence. 14 THE CHAIRPERSON: Correct. 15 16 Would you like to go ahead and make a 17 presentation, or . . . 18 MR. DUNAWAY: Mr. Chairman, if you like, I 19 could run through the PowerPoint, just to get 20 everybody acquainted. 21 THE CHAIRPERSON: Is that okay with you, 22 Counsel? MR. DUNAWAY: Mr. Chairman, that will 23 24 be -- I'm not sure if the mic's working, but in 25 any event, if anyone can hear, that would be

fine.

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2	Two procedural points: I would note that,
3	again, Mr. Kimbrel has not yet been sworn but
4	can be sworn prior to him being called as a
5	witness. And I would assume the same thing
б	would be for Mr. Jones, who was not present when
7	staff was sworn.
8	I would like to inquire, if I could, Mr.
9	Chairman. On a matter of voir dire, there was
10	an indication that the Chairman had visited the
11	site. I'd like to inquire as to when that was
12	and in whose presence.
13	THE CHAIRPERSON: That was Let's
14	see. What's today? Today is
15	MR. DUNAWAY: December the 7th.
16	THE CHAIRPERSON: Wednesday, December 7th.
17	That would have been Saturday. And I was alone.
18	MR. DUNAWAY: Yes, sir. Yes, sir. And
19	that was the site at 1999 Massachusetts.
20	THE CHAIRPERSON: Correct.
21	MR. DUNAWAY: Yes, sir.
22	And were you able to fully visit the
23	entire site, the whole eight acres?
24	THE CHAIRPERSON: No, I was not. I didn't
25	transgress anywhere that there was a posted

Page 12 sign. 1 2 MR. DUNAWAY: The posted sign that was on the neighbor's property where the chain was? 3 THE CHAIRPERSON: Yes. 4 5 MR. DUNAWAY: Yes, sir. So you just simply observed it from Massachusetts? 6 7 THE CHAIRPERSON: Yes. 8 MR. DUNAWAY: The public right-of-way? 9 THE CHAIRPERSON: Yes. 10 MR. DUNAWAY: Yes, sir. 11 And at that time, did you see that there 12 was the posted -- or the sign that staff had 13 posted announcing tonight's -- today's meeting? 14 THE CHAIRPERSON: Yes. MR. DUNAWAY: Yes, sir. And a mailbox? 15 THE CHAIRPERSON: I didn't notice a 16 17 mailbox. 18 MR. DUNAWAY: Yes, sir. 19 THE CHAIRPERSON: But I did see the sign. 20 MR. DUNAWAY: Yes, sir. Thank you. And I don't have any further voir dire. 21 22 THE CHAIRPERSON: Sure. 23 MR. DUNAWAY: Nor any challenge. Thank 24 you. 25 THE CHAIRPERSON: Sure. Okay, sir.

Page 13 MR. HOLMER: All right, sir. We'll just 1 2 go through the maps here. This is, once again, Appeal Case 2016-01. 3 This is our location map. This is our 4 500-foot radius map, showing zoning on site. 5 Heavy commercial, light industrial. Our future 6 7 land use on site is mixed-use urban. 8 This is the 2013 aerial map of the site. 9 This is a map indicating the national wetlands inventory layer showing wetlands on site. 10 11 This is a map of the 2500 foot mailing 12 radius the postcards were sent out to. This is the public hearing sign. Original posting, it 13 fell over in the weather. It's telling when --14 it's tied to the street sign to hold it up. 15 16 This is just a photo of the site entrance. 17 And this is another photo looking east on 18 Massachusetts showing the sign, and that's the 19 mailbox that was being referred to. 20 And this is the site plan. This is the one that was involved with the denial. This is 21 22 one that was submitted with a September date that I circled in red. And I have all these --23 24 we can zoom in on on the pdf. 25 And Mr. Dunaway is correct. With an

Page 14 appeal, we don't go ahead and do findings ahead 1 of time. We just basically do a background of 2 the case and the criteria. 3 THE CHAIRPERSON: Is that okay with you, 4 5 Counselor, if we let staff proceed with the --MR. DUNAWAY: Oh, yes, sir. Absolutely. 6 7 We prefer that. 8 THE CHAIRPERSON: Generally we just go ahead with applicant's opening and then --9 Okay. 10 MR. HOLMER: 11 THE CHAIRPERSON: And go from there. 12 THE CHAIRPERSON: Would you like to make an opening statement, then, or your client? 13 MR. DUNAWAY: Yes, sir. No; we'd take 14 that opportunity, if we could. 15 16 If I may ask a note of procedure, Mr. 17 Chairman, does this end the staff's presentation 18 of the evidence on this matter, or would they --19 I mean, do they want to go after we go and call 20 witnesses? How would the board prefer? Because 21 I want to do it the way you --22 MR. HOLMER: I mean, it's a quasi-judicial hearing. It's not as formal. We can follow the 23 usual plaintiff/defendant, et cetera. 24 25 THE CHAIRPERSON: The usual procedure is

Page 15 for y'all to make your -- make your 1 presentation, and then followed by staff's 2 findings, and then there will be discussion and 3 4 questions. 5 MR. DUNAWAY: Yes, sir. Perfectly acceptable. 6 7 If I could, though, before I start with my 8 presentation, because we were provided with the 9 package that is publicly available, but that package is different than just the view of the 10 11 slides, so I would be happy -- I would be -- it 12 would be helpful for me to understand what that 13 was that was included in the evidence that you accepted, the staff report. And would that be 14 different from that that was provided on the 15 16 link that's publicly available? MR. HOLMER: Right. The PowerPoint is 17 18 just a cleaned-up version. There are some documents in there that I was going to show the 19 20 board and zoom in on the criteria. 21 MR. DUNAWAY: Right. 22 MR. HOLMER: That they're going to need. 23 I have the package. Sorry. The mouse doesn't 24 work so good on this. 25 MR. DUNAWAY: Mr. Chairman, I only asked

Page 16 this so that I can understand what my -- how to 1 2 tailor my presentation. 3 THE CHAIRPERSON: Sure. MR. HOLMER: Here we go. This will be the 4 5 link. The web page. Once again, there are the 6 maps. 7 MR. DUNAWAY: Right. 8 MR. HOLMER: Zoom in. There's the letter. 9 MR. DUNAWAY: Okay. Good. And so that's 10 part of the package. 11 MR. HOLMER: Oh, yeah. Yeah. Yeah. 12 Absolutely. MR. DUNAWAY: Okay. Just making sure. 13 14 MR. HOLMER: Here. Let's go through -would you like to -- do you want to go through 15 16 the whole thing? 17 MR. DUNAWAY: If we could, yeah, what the 18 board was presented as a package. 19 MR. HOLMER: Absolutely. 20 MR. DUNAWAY: So we know what's in evidence already. 21 22 MR. HOLMER: Okay. So we have the letter 23 from Mr. Dunaway. We have the proof of 24 ownership. Articles of incorporation. We have 25 the deed.

Page 17 MR. DUNAWAY: So we do have the 1 2 compatibility and locational criteria analysis. 3 MR. HOLMER: Yes, sir. MR. DUNAWAY: 4 Okay. 5 The traffic report. MR. HOLMER: Traffic report. 6 7 This is the receipt. 8 MR. DUNAWAY: Right. This was the payment of the \$682.60 appeal fee. 9 MR. HOLMER: Yes, sir. 10 11 MR. DUNAWAY: Following the \$859 12 application fee. 13 MR. HOLMER: Oh, the DRC, yeah. 14 MR. DUNAWAY: Right. MR. HOLMER: This isn't the best version 15 16 of Adobe to work with. Do you want to . . . 17 Okay. This is -- what we're working with here 18 is the site plan that was submitted. It's going to be a little bit difficult to see on 19 20 eight-and-a-half by eleven paper. That's what I said: We've got the digital version we can work 21 22 through. 23 MR. DUNAWAY: Right. 24 MR. HOLMER: And this has all the pages, 25 the plan.

Page 18 MR. DUNAWAY: So just for clarity, those 1 2 pages are the scanned versions of the full-size plan that we submitted to the staff as part of 3 the Landmark Engineering site plan. 4 5 MR. HOLMER: Yes, sir. MR. DUNAWAY: All right. 6 7 MR. HOLMER: Those are the ones that are 8 on the county files, once again the September --9 MR. DUNAWAY: Right. 10 MR. HOLMER: -- plan. 11 MR. DUNAWAY: With the notes and the 12 information there. MR. HOLMER: 13 Yes. 14 MR. DUNAWAY: So that -- and that's everything? 15 16 MR. HOLMER: That should be the last page. 17 It is. Yeah. The last document is going to be 18 the page after this, which is going to be . . . 19 MR. DUNAWAY: Okay. That's fine. This 20 is --MR. HOLMER: C-1, I think. 21 22 MR. DUNAWAY: This would be a good 23 place -- if we could keep this on the screen 24 with this as the -- with the site plan that 25 we've drawn up, that's -- no. That other one.

Page 19 MR. HOLMER: The next one? 1 2 MR. DUNAWAY: Yeah, the next one. It 3 should have . . . 4 MR. HOLMER: Computer's running a little slow. 5 MR. DUNAWAY: Yeah. Understood. 6 7 It's actually the first one. I mean, well, that's the first one. Then there's -- it 8 would be the one that shows the location of the 9 10 site. That's okay. It's going to be that one. 11 This is going to be the last. I think this is 12 it. Nope. 13 MR. HOLMER: Oh. 14 MR. DUNAWAY: Go up. That's it. That's 15 it. 16 Mr. Chairman, with your permission, may I 17 address the board from my seated position at table or would you prefer that I address from 18 the podium? 19 THE CHAIRPERSON: I believe if we don't 20 21 have you at the podium, it won't record. 22 MR. HOLMER: He has a microphone. 23 THE CHAIRPERSON: Oh. That will work. 24 MR. DUNAWAY: And we have a court 25 reporter.

	Page 20
1	MR. HOLMER: Button's on the bottom.
2	MR. DUNAWAY: Okay. So we have a
3	microphone that's on.
4	So with your permission, Mr. Chairman
5	THE CHAIRPERSON: Please.
6	MR. DUNAWAY: Thank you, Mr. Chairman.
7	Mr. Chairman, as is indicated, and members of
8	the board, we're here on an appeal of the staff
9	decision of a denial of the DRC for a permit
10	essentially to have a use of this HCLI, heavy
11	commercial, light industrial property,
12	approximately a little over eight acres.
13	And the use that we are asking was simply
14	so that it be residential. And those
15	residential are housed in temporary structures.
16	This is a homeless area. Let's make no
17	bones about what we are and what Sean's Outpost
18	has been doing for the last three to four years.
19	Let's just start, go back to the beginning
20	of the acquisition of this property by Sean's
21	Outpost, my client. This is an enterprising
22	group of people who came into the opportunity to
23	purchase this heavy commercial, light industrial
24	zoned area, which, as the Chairman knows, having
25	visited, and as you've seen from the aerials, is

Page 21 at the bottom of Massachusetts, the lowest 1 point, as the -- essentially, the series of 2 drainage canals that connect with old burrow 3 pits, come through that area draining out, 4 essentially, everything north from Marcus Pointe 5 6 all the way down. 7 So a large percentage of the property --8 and you can see from the aerial almost half of it, that is the easternmost half, is underwater. 9 10 I mean, it's a swamp. It's wetlands. And it's 11 actually active standing water. 12 And so the upland area is a smaller area. 13 Now, you have seen and you will note that from your -- the aerials, that the property is an odd 14 shape. It would have been a nice -- I don't 15 16 know that it's a square, but let's call it a four-sided parallelogram, so it would have 17 18 evened up, but you see this odd thing that 19 sticks out of it. 20 This was formerly ECUA property. There is an ECUA former -- an old lift station here, that 21 22 as you can imagine in -- it's a low area. 23 Gravity works. You have to move things uphill. There was a lift station here. 24 25 That was replaced. There's a large -- and

you'll see that it's transecting across the property. It's a large easement area that runs across, and there's a main ECUA access to keep that pipe flowing. Yeah, Mr. Holmer's got it, or whoever's operating that is showing that correctly.

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7 So ECUA owned that odd piece, that you see 8 that it juts out on the western side. And 9 there's been past uses of the property, but 10 mainly there was -- there's an old pad. There 11 were several trailers, and there were some folks 12 that -- that lived out there, but mainly the 13 purpose of it was as an ECUA.

From Massachusetts on that western side -and you'll see this area. And if I may, I'm referring -- Y'all are not going to be able to see this, but if you're talking about the westernmost -- you'll look at your -- at your drawing, you'll see what looks like a road.

20 That connected back. It was a dirt road, 21 and it was the access that ECUA used off of, and 22 you could go both from Massachusetts, and you 23 could go all the way into -- and it connected to 24 what was the backside of the neighborhood there. 25 I don't know if that -- it actually comes

Page 23 out -- I believe that to be Amazon Drive, but 1 that was a routine dirt road and -- where you 2 came and accessed it. 3 So Sitocia acquired this property, had 4 5 plans for development and for improvements. And in the meantime, as those plans were being 6 7 formulated and funds being raised, started to allow people who were being run out -- who had 8 been run out, trespassed off of other areas of 9 either private property or public right-of-ways. 10 11 If you're not familiar with the process, 12 the last count in Escambia County was about 859 active persons who are living on the street. 13 Now, you probably would be surprised to 14 know that in Escambia County School District, 15 16 the school district indicates and counts 2,000

18 homeless.

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19Their definition of homeless is different20than the homeless count. Their definition of21homeless is those who don't have a more22permanent structure. They could be23couch-surfing or living with aunts or uncles or24friends. But when I talk about the count that25the Escambia Coalition does of homeless, we're

school-age children who are classified as

talking about actual people on the street.

So we know in Escambia County we don't have enough beds for people who do not have permanent shelter. And so, nevertheless they exist.

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You probably don't often see those camps but they exist. And when I talk about a camp, I'm talking about a structure: A tent, a tarp, a lean-to, a shelter, a bridge, those kinds of things that provide some temporary shelter.

So Sean's Outpost began to allow, when they were called -- and they would get calls from either the Sheriff's Department or the emergency rooms or other emergency-type situations, crisis shelters, and there would be someone who had no place to go.

So Sean's Outpost had eight acres of commercial -- heavy commercial, light industrial zoned property. And they said, "Well, you can be here because we won't run you off. You can stay here."

And so over the years, and we -- Sean's Outpost has been operating this for -- well, certainly for the last three years. This process started, and it allowed for a central

Page 25 location which someone could stay who would not 1 be violated. They couldn't -- the sheriffs 2 wouldn't be rousting them because, of course, 3 they had permission to be on the property. 4 5 Then the question became: Well, what is the status of persons who are living on property 6 7 with permission in temporary structures? And in 2014 the county decided, through 8 Code Enforcement, that the status was a status 9 10 that they would not permit, and there was a code 11 violation for temporary shelters. 12 That process went through the special 13 magistrate process. The special magistrate found that there was not a violation. That code 14 violation was dismissed, and the process went 15 16 even -- and was upheld. So the process -- the use of the property 17 18 continued its conforming way, with a shelter 19 Again, tents, tarps, temporary shelters area: 20 for a small number of people that Sean's Outpost gave permission and allowed to be there. 21 22 Now, this population is not static. There 23 are people who come. They're in crises. They 24 spend some time at Sean's Outpost. They find 25 other places, whether that's permanent or

whether they move out. Some work. Some do not work. Some have

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3 medical issues. Some don't. The process is a fluid process. Sean's Outpost, essentially 4 5 through Michael Kimbrel, who is sitting here to my left, manages that. It's an active 6 7 management. 8 The county has been provided, and I hope that you have had -- and if you don't, at the 9 10 end I'll make sure that you get -- we admit into 11 evidence a detailed operating manual. The 12 county asked for, and we provided that, a detailed operating manual of how this process 13 works. We provided that. 14

15 It's an active process. The Sheriff's 16 Office knows -- they know who to contact. They 17 know how to get in touch with Michael to respond 18 very, very quickly.

19The Health Department early on in the20process with the 2014 violation was very much21involved in this process because, as you may not22know, camping . . . that is what this most23resembles. It most resembles a campsite, a24camping area.

25 Camping in the State of Florida is

Page 27 permitted not by the county but by the State 1 Department of Health. They issue permits for 2 camping and for RV sites. 3 As you know, an RV site is also an area 4 5 which has some level of improvements which allows both temporary structures, in the form of 6 7 motor homes or pull trailers or tents. Most RV sites do have tent facilities. 8 And so this facility, as we started 9 10 looking at what we needed or might need to do 11 from county permission to continue, we looked at 12 the concept of camping. 13 We applied. And when I say "we," I'm talking about Sean's Outpost. I've been 14 representing them since this started, pro bono 15 16 to try to help them get through this process. 17 We submitted an application for a camping 18 permit, a campsite permit to the State 19 Department of Health. That process goes through 20 a local -- there's a local county department, 21 and then it goes on up to the state. 22 After years of evaluation back and forth, meetings, discussions, trying to figure out is a 23 24 homeless camp camping, is camping regulated, how 25 are we going to do it, the State Department of

Page 28 Health ultimately ruled -- and this is in a 1 letter of March 22, 2016, a copy of which I'm 2 going to submit to you in evidence, which 3 indicated -- and you'll have a copy, but I'm 4 5 going to just read. "Your client does not need a license from 6 the Florida Department of Health to continue 7 operating as is currently occurring. Our 8 inspections have not discovered any insanitary 9 [sic] conditions." 10 11 That was a concern, obviously, when you 12 have a group of people who are living outside, what are the sanitary conditions, a legitimate 13 concern for both Sean's Outpost, the residents, 14 and of course the county. 15 16 And so as part of this process, we had 17 actually contracted and we were paying for the 18 County Health Department to date -- actually, it 19 started as weekly inspections and moved on to 20 monthly, and then they got progressively more time in-between because they were coming out and 21 22 inspecting the property and making sure and 23 pointing out and helping us as we first started 24 up, on what the sanitary conditions were. 25 And ultimately what the stable condition

is and has been for many years is that there are
three portable pot -- portalets that you see,
like at parades, and those kinds of things, and
a washing station, a hand-washing station that
are there.

Those are serviced by Sean's Outpost, weekly service, and taking care of them. They're sanitary. And that process was part of that inspection with the Health Department.

10 So that, again, the letter states, "As 11 currently operated, Sean's Outpost is not 12 included in the facilities that the Florida 13 Department of Health licenses."

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14 That is, they determined it was not, in 15 fact, a recreational camping. And that became 16 an important concept. I won't go into the whole 17 thing. We spent a year talking and debating and 18 agonizing over what is a recreational camp.

19Ultimately it came down to because we20weren't a facility, that if you drove in off the21street pulling a camper and paid us \$14, you22could stay there because that's not how Sean's23Outpost operated, so the State Department of24Health said, "It's not camping, recreational25that we license. What you're doing there is

Page 30 fine, and it's not something that we license." 1 2 So that put us back into the county process. And we had I don't know how many 3 meetings, so we had a lot of meetings with the 4 5 county. And the ultimate question was: What is it? What do you want us to do? What -- help us 6 7 craft an application for the use that we are 8 doing that you can evaluate under the Land Development Code and get to an ultimate position 9 of permitting. 10 11 And then they said to us, "Well" -- and rightly so -- "Well, what do you want to do?" 12 And we said, "Just what we're doing. And 13 we just want to keep doing what we're doing." 14 15 Because in the ensuing years, the ideas 16 that -- and, of course, these ideas are not --17 are not gone, but they're not in a position --18 Sean's Outpost is not in a position to execute 19 on it. The ideas of building a grand, you know, 20 bathhouse with a commercial kitchen facility and an enclosed area, I mean all of those are plans 21 22 that we would love to bring forward and go 23 through that process. 24 And that process is very well understood. 25 If you're building a building and you're going

Page 31 to execute and put some real permanent 1 improvements on it, everybody knows how to 2 evaluate that. The county knows how to 3 evaluate. We know how to do it. The engineers 4 know how to do it. 5 But that's not what the plan is. What the 6 7 plan is, is simply allow the continued 8 residential use in the way that we have been doing it compatibly for these last many years. 9 And the county said, "Well, you got to 10 11 tell us what that is because we can't evaluate a 12 concept." We said, "Okay. And we'll pay the 13 application fee, \$859, and we'll write down on 14 it what it is that we want to do." And 15 16 essentially it is we want to do the same thing 17 that we've been doing. And they said, "Well, show us what that 18 19 looks like." 20 And we said, "Well, you know, there's some areas out in the uplands where people reside. 21 22 Sometimes they reside where that -- one of those boxes are, and, you know, sometimes the wind --23 24 we have a storm like we just had, and, you know, 25 that blows down.

"And so when they set it up, it's five 1 2 feet over to the other side or sometimes it's, 3 you know, around the corner. But it generally is an area in which someone puts up a tarp 4 5 and/or a tent, and they end up being a resident there for a period of time." That's what it is. 6 7 That's the use. It's nothing more complicated than that. 8

So then the question: Well, how do you 9 get to it? Well, again, as you saw, this 10 11 odd-shaped process, it looks like that you 12 can't, but you -- and this took another six months to figure out, but finally realized that 13 you'll see that what looks like -- it's actually 14 a spike strip, but you see that strip that goes 15 16 off? There was a drainage. It's in the top right corner. You know what I'm talking about? 17 18 Yeah, right there.

19So that strip -- run that up and down.20That connects the larger square. That goes --21juts out towards Massachusetts. Yeah.

22 So that actually is a part of the ECUA --23 the former ECUA parcel, but Sean's Outpost, the 24 property owner of the larger parcel, has an 25 easement across that as part of its deed;

Page 33 therefore, has access across it, on it and 1 2 through it for its use. 3 So what you see as labeled on your document as the "dirt road," that quite 4 literally is a road that was created when Sean's 5 Outpost lost the use of the ECUA parcel. 6 7 And so how that came about was, after, 8 again, endless discussions and negotiations with the ECUA, I finally convinced them to excess 9 10 that property because it is the good upland 11 property for this parcel. It's where the 12 majority of the good high ground is in this 13 parcel. ECUA wasn't really using it, and so they 14 said, "Okay, we'll excess the property." And so 15 16 it went through the public process of excessing 17 property. And at the bidding, Sean's Outpost 18 was outbid and someone else bought the property. 19 You know, there's only so much money that 20 nonprofits have. And that process ended up 21 going -- and that property went to someone else. 22 So when that -- when that was cut off, when we 23 were not able to utilize that property -- if 24 you'll show the members, you'll see along the 25 western property line, our -- Sean's Outpost

Page 34 property line, as part of the attempt to be, you 1 2 know, good neighbors here, there was a board fence. It's just inside the line. 3 It's the zeros and the tacks. You'll see 4 5 that's the fence. So there is a -- there is a board fence that was installed and paid for, 6 7 permitted and built along that boundary that 8 separates the road, the access road, from it, from the property. 9 10 And so from that, once we couldn't enter, 11 which was where you entered the property, was 12 about right there where that wooden gate was, 13 that's where you entered the property from the former ECUA access road. 14 Once that was -- we didn't have access, as 15 16 the Chairman correctly pointed out, the posted 17 signs on the gate there along Massachusetts, if 18 you go back up, we had to have a new way to get 19 into the property. 20 So if you'll go up just a little bit. 21 Yeah. Right there. Stop. So that's where you come in. It's about -- it's near where the 22 23 mailbox is. You just come onto the property. 24 The property is -- it landlocks the 25 property that was the former ECUA. There's no

access to the former ECUA property right now, except that you go through someone else's property.

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So you can't access that property from 4 5 either Massachusetts, nor can you actually really legally access it from the south, so you 6 7 can, of course, because Mr. Grimes, who you probably will hear from a little bit later. 8 Since he is one of the property owners, he can 9 access it from his lot because he abuts it from 10 11 the back side.

But in any event, it doesn't have public street access that wouldn't go through either a developed lot or someone else's property, like, for instance, Massachusetts through either ours, or potentially the county owns a park there just to the left, and I use that word loosely.

18 It's a triangle strip of property, which 19 mainly is used for a sheriff car, you know, just 20 monitoring Massachusetts, so it's not -- it's 21 not actually a developed part.

The point being is that, as you can see, we do have access, and that is the dirt road, so what we ended up starting to do is to get back there and to, you know, get food and stuff. We

just drive down this little dirt road.

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And when I say "dirt road," I refer to 2 what I would call, you know, a pig trail. I 3 4 mean, that's how it started. Started as a path, and then it's a dirt road. But it crosses the 5 6 easement area. 7 You'll note that that easement area 8 doesn't go to -- all the way to the end of our property boundary, so there is a -- you could go 9

10 around it, but that's underwater. I mean, 11 that's -- that's out into -- into the water area 12 there. Okay.

13 So that's the process, and that was the 14 background on that acquisition. Obviously that 15 acquisition made the plans for development and 16 everything change in a big way, as did the issue 17 of money.

And so, again, we were back to the county. And we started in earnest earlier this year, the first of this year. And the reason we started in earnest is because the county issued another notice of violation on a code enforcement.

And they said once again, essentially,
your use is unpermitted. It's an unpermitted
use.

Page 37 And so we started meeting with them. 1 We 2 met with staff here at this level, all the way up to the administrator level. 3 And I want to thank the staff. We worked 4 5 very closely because we recognize what we were doing is different. I mean, I assure you there 6 7 is no permitted homeless camp in the county. Ιt 8 doesn't exist. 9 There's not another similarly situated 10 property that is not an RV park, a camping 11 facility. The closest thing would be the Alfred 12 Washburn Center, but there's no residential 13 overnighting there. And then, of course, the next closest, 14 which is not really comparable, but would be 15 16 like a Waterfront Mission, a fully developed 17 site in which there is overnight dormitories. 18 But the Waterfront Mission looks more like 19 a UWF dormitory than it does a homeless shelter 20 in the -- in the nature of what Sean's Outpost 21 is. Sean's Outpost is actually -- would be more 22 comparable to, you know, the camps either on -on the scenic bluffs or the old Trillium site 23 24 before that was developed and those folks were 25 run out, or along the Gullian Yard FDOT

right-of-ways, and endless numbers of camps that I could mention to you that we don't in public forums.

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The point is that we worked very closely to try to figure out what it is that we are trying to do. And we finally settled in on the situation that we have and the presentation that we made ultimately to the DRC.

9 And that was, we simply want to exist. We 10 simply want you to permit the existing use. 11 We're not building anything. We're not making 12 any alterations to the property. We're not 13 putting in any improvements to the property, 14 that is, structural improvements.

15 It simply is property that Sean's Outpost 16 owns that Sean's Outpost has graciously given 17 permission to a handful of folks who don't have 18 other permanent locations to be, so that they 19 can exist in this county without getting run 20 off, trespassed in the middle of the night or 21 rousted out.

22 So the application. Let's focus on that 23 and what we were looking at. The application 24 that was submitted, and it -- Mr. Holmer, was 25 the application the April 5, 2016? Was that

Page 39 part of the board package? That would have been 1 my letter of April, along with the development 2 review application package. 3 Mr. Chairman, while Mr. Holmer is looking 4 5 for that, I'll just briefly go through. Essentially what we applied for and what ended 6 up being agreed to, was we would submit a site 7 8 plan, a minor site plan application for approval. 9 10 Yeah, that's the October 27th. 11 And so on April 5, 2016, we submitted that 12 application under my two-page cover letter. And the full project information form filled out was 13 attached, and all of the criteria that was 14 stated in the development review application, 15 16 certification process, along with site plans was 17 submitted to staff. 18 And as Mr. Holmer correctly pointed out, there was a back and forth. And you're familiar 19 20 with that back and forth with an applicant and the staff, on trying to get a plan. 21 The staff said there was some details that 22 23 we needed. That resulted in the operating 24 agreement being -- the staff was concerned 25 about. How are you going to operate it? And so

Page 40 there would be -- operating plan was submitted. 1 2 There was -- You know, what about compatibility? That's why the compatibility 3 analysis -- that is part of your package. 4 5 That's why we had that. Compatibility analysis. 6 We got that. 7 We went through the process with all of 8 the staff members at the DRC. Joe Quinn testified from fire safety. Pointed out there 9 10 was some minor issues, including some signage 11 and the need to have some fire -- fire 12 extinguishers. No problem there. Rosa Stephanel testified, and she talked 13 about the need for stormwater ponds, if you had 14 any impervious surfaces that were going to be 15 16 out there. And in that regard, the only 17 requirement for stormwater would be is if there 18 were a requirement for a paved access road. 19 We weren't proposing a paved access road. 20 We get down there fine with the dirt road. The 21 service -- the only actual truck that actually 22 has to go down there, large truck, is the truck 23 that services the porta-potties, and it's been 24 going down there for years. Every week it goes 25 down there. It has no problem.

Page 41 And we submitted a letter from the 1 2 Containers, Inc. that we pay every month for them to service the porta-potties that stated 3 that. We get down there fine. 4 And as I mentioned, Mr. Williams testified 5 and he said the analysis compatibility and 6 7 locational criteria needed to be submitted, 8 which we did. And we met that. 9 So the final thing was Mr. Jason Waters 10 who testified -- and he was with the county 11 access management. And he opined at the very --12 at the DRC that an access -- a paved -- no. An 13 improved access road would be required to be built from Massachusetts all the way back to the 14 porta-potties. 15 16 We said, "Well, why? Because we don't 17 need a road. And the cost of paving a road back 18 there is prohibitive because we don't have any 19 money, and we won't be able to meet that 20 criteria." 21 And so this was -- we had gone back and 22 forth over the summer. We thought we had 23 actually reached an agreement with the county by 24 which they said, "Okay. Well, if you'll just 25 improve the apron because we don't want to bust

up Massachusetts when you pull over -- off on Massachusetts, which is actually in the county right-of-way.

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And actually, the bigger trucks -- the trucks that pull off and on there are, you know, both -- as I said, the sheriff's car that parks there in the park area, and -- and any ECUA trucks that pick up the garbage because, of course, we have garbage collection.

But in any event, we said, "Yeah. Absolutely. We'll make an apron," you know, like you do with a driveway coming onto a road. But really, we don't need the road all the way back there.

But at the DRC, Mr. Walters, Jason, said,
"No. Per our design standard manual, 2.2, we
believe a road is required. Road's required."

18 And I cross-examined him. And I -- I 19 appreciated his candor. And in any event, he 20 said, "It's required." And so at the DRC we 21 said, "You know, okay. I mean, you know, you're 22 the one to tell us what are the requirements." We asked -- we said, "Well, issue the 23 24 permit with the condition that we have to build 25 a road," and then -- and the point being is

1 that -- because, as you know, we're not 2 operating -- we're not doing this process in a 3 vacuum; right? 4 We have already had the code enforcement

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magistrate hearing, at which point we went to the code and magistrate this time, and we said, "We're -- Absolutely. I mean, we do not have county permission to do this use. We don't have that permit. If a permit is required, we don't have it."

11 And the magistrate said, "Well, what are 12 you doing about that?"

And I said, "You know, well, we've been working with the county for years to try to get that. And we've had the application already submitted, and we're going through the process."

17 And the magistrate said, "Okay. Well, 18 that's what I would require you to do anyway, to 19 go get it. And so keep working. Get the 20 process. And if you get the permit, great. 21 This is all over. And you pay the \$600 that, 22 you know, cost to do the hearing. And if you 23 don't get it, then -- and all your appeals run 24 out, well, then, you know, 90 days after that, 25 you're just going to have to get off."

Page 44 And so that's where we are. 1 I mean, 2 that's the process we are. We went to the DRC. 3 They said "No." We're appealing to you. Now, to the issue of the appeal. Why are 4 5 we appealing? Well, we're appealing to you because, one, we want permission to do what 6 7 we're doing. That's the main thing. 8 Two, what are the reasons, the legal 9 reasons we're appealing? Well, we believe 10 because the county hadn't -- that the staff 11 should have, under the criteria, issued the 12 permit, because, as you know, for a permit to issue, well, the applicant simply must meet the 13 14 objective criteria laid out in the Land Development Code. 15 The objective criteria in the Land 16 17 Development Code for residential use are very 18 easy. I mean, that's not -- it is not a 19 difficult process. 20 We met and went through every objective 21 criteria that the county asked us to do: Made 22 the application, submitted the information, provided the site plan. In fact, a minor site 23 24 plan, as you know -- you've probably seen some 25 on appeal -- I mean, all you have to do is

Page 45 actually really just do a kind of a neat sketch 1 2 on a notebook paper. 3 I mean, you don't have to go through all this process for -- Again, this is a minor site 4 5 plan. We're not asking to build anything, and 6 no engineering. 7 But we went through that process: 8 Engineering drawings, legal surveys, wetlands evaluation. We did a -- Wetlands Sciences did a 9 10 pull-up wetlands evaluation, a protective tree 11 protection. We went through all of those -- all 12 of those points. And we submitted all of that information. 13 And in the end, it came down to, we think, but 14 that's what I'm hoping we'll get some clarity 15 16 today, we think that it was down to the DSM 2.2 17 on the road. 18 And yet we said, "Okay, Jason. You say a 19 road's required. Well, then issue the permit 20 conditioned on us building the road." I mean, staff issues permits with 21 22 conditions all of the time. Conditional permits 23 are issued all the time. I mean, I dare say no 24 permit gets issued or very few permits get 25 issued without some condition. So we simply

asked them to do that.

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And then, of course, obviously that would 2 allow us to, one, continue; two, get out from 3 under the code enforcement magistrate's 4 5 situation; and also then go raise money, so potentially build the road. I mean, you know --6 7 and we'd have that time. As you know, when a 8 permit's issued, you have a certain amount of time to build it. So that was the plan. That's 9 10 what we would do. 11 In fact, after the hearing, Mike received 12 several calls from folks that go, "I got gravel." I mean, maybe we can actually do this. 13 Maybe we can pull it off. It will be amazing. 14 But we said, "Listen, just issue it so we 15 16 can get moving and we can do it." 17 But the county said -- and Mr. Jones is 18 here. He will be able to testify to that. But 19 he said no because it wasn't on your site plan. 20 We can't approve it. Well, again, members of the board, we 21 22 didn't want to build a road. You know, the 23 road, if we were required to build it, it would be built where the dirt road is. There isn't 24 25 any other place to build it. There's no other

way to get around.

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2 We don't own the property to the west. There's water to the east. And the road's where 3 the road -- the only place a road can be. 4 5 So, you know, but for the fact that that says "dirt road," as opposed to gravel road or 6 7 asphalt road, or whatever else, the road is on 8 the site plan. It's right there before you. So that's where it would have to be. 9 10 In any event, if the county wanted it 11 somewhere else, issue the permit and say, "Build the road -- you know, conditioned on the 12 building of a road, you know, a permanent road 13 in some other fashion." 14 So that's where we are. We believe under 15 16 the standard that you have here that -- and 17 permit to be issued, the applicant must have met 18 the objective criteria of the Land Development 19 Code for the issuance of a permit. 20 We believe we met that. We believe, then also, under the Irving standard of the Supreme 21 22 Court, that once we've met that burden, it is 23 incumbent upon staff and/or those who oppose the 24 issuing of the permit to prove that, in fact, 25 the issuance of the permit would be adverse to

Page 48 the public. Adverse to the public. And that's 1 a very detailed description, and we will go over 2 3 that in summary. But in any event, there has been no 4 indication -- then the best indication of the 5 fact that it's not adverse is we've been doing 6 7 it for four years. We've been out there. We 8 are peaceably coexisting with the neighbors. 9 Now, I know because I have been at every 10 hearing and I have -- there are diligent, good, 11 hardworking citizens who live in the Mayfair 12 neighborhood who oppose a homeless camp next to their residential neighborhood. I get that. 13 Ι understand the argument. I understand the 14 concern, and I understand their frustrations 15 16 with the fact that this process has taken a long 17 time. 18 But I tell you, board members, there is no 19 other group, no other homeless shelter camp 20 process that's been doing as hard a work as 21 Sean's Outpost has been and has gone through the 22 county approval process more diligently than 23 this group. We have been re -- turning every possible 24 25 way of moving this process forward. And if it

is that we cannot have a piece of property in Escambia County in which an owner can say to an individual, "Hey, you can stay on my piece of property," and the county says, "No, you can't," then we are in a bad situation as far as the county goes.

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Now, I acknowledge and understand that the county staff has indicated and will say it's not about the status of the people who are on the property. It's not that we're opposed to homeless people. We're not opposed to homeless people. You just have to follow the code.

Well, members of the board, we believe we have in every way fulfilled the objective criteria presented throughout this process to have and issue -- to have the county, the staff, issue us a permit.

And if that permit must have conditions based on criteria which they believe to be controlling, with all due respect, they should issue it in that regard. They should issue it conditioned on whatever those conditions and requirements are.

24They ought not just say "permit denied,"25and say "because you didn't put it on the site

Page 50 plan," because again, this has been a fluid 1 process. This has been a fluid process. 2 This site plan hadn't looked -- didn't 3 look this way when we first submitted it. 4 It 5 went through several iterations. I drew it with pdf for a while, and then I would move the boxes 6 7 around, and then I would try to -- and then we'd move the trees around. And then finally we got 8 a real engineer who did it. And we finally got 9 the whole thing. And we submitted it. And we 10 11 believe we've met it. 12 So we're here for you, as a board, a 13 citizen-appointed board in this county, to look at this and say, "Did they meet the objective 14 criteria for issuance of a permit?" 15 And if that's -- if a road is required, 16 17 then with conditions. I mean, we would love for you to issue the permit without the condition 18 because building a road's going to be expensive, 19 20 not necessary, invasive, mess up the -- but if that's what it takes, issue the permit with 21 22 condition of the road. Issue the permit. Because we believe we've met that 23 24 criteria. We believe we've met our burden. And 25 then we believe now that the burden shifts to

Page 51 the county and those opposed to prove that in 1 fact the issuance of this permit would be 2 adverse to the public. 3 I would like to -- Mr. Chairman, that 4 would be concluding my statement and background. 5 I would like to have the opportunity to have 6 staff present their case, and then have an 7 8 opportunity to rebut, and then would reserve 9 some time for closing. THE CHAIRPERSON: 10 That would be the 11 standard operating. 12 And excellent presentation, Mr. Dunaway. 13 MR. DUNAWAY: Thank you, sir. THE CHAIRPERSON: Board, any questions of 14 the applicants at this time? 15 16 MR. STROMQUIST: I'm going to question. The access that you have now coming in, the 17 18 picture that we saw of it was dirt, a dirt road 19 access. How far does that dirt road access go? 20 MR. DUNAWAY: It's all dirt, sir. 21 MR. STROMQUIST: But does it go all the 22 way through the camp? MR. DUNAWAY: Yes, sir. Yes, sir. 23 24 If you're -- and if --25 MR. STROMQUIST: Well, looking at it on

Page 52 this diagram, comes in and curves and then goes 1 2 down . . . 3 MR. DUNAWAY: Yes, sir. MR. STROMQUIST: . . . to the bottom of 4 5 the property? MR. DUNAWAY: Yes, sir. 6 7 MR. STROMQUIST: That is all dirt road 8 access? 9 MR. DUNAWAY: Yes, sir. Yes, sir. 10 MR. STROMQUIST: And it is there. 11 MR. DUNAWAY: Oh, yes, sir. Yes, sir. 12 There was -- there is a -- yes, sir. And I will 13 tell you that as you come around this corner and this -- right in here, it literally -- it really 14 kind of peters out here. 15 16 This is kind of a plane of grass because 17 there's -- anyone that comes down, there's 18 only -- then the only -- the only access, really 19 truck that goes here, this is where the 20 portalets are, if you're following me. 21 You see? These are the three portalets. 22 And then the hand-washing station. This is 23 where they are. And so the truck, you know, 24 comes there, and he services the portalets. 25 And so, yes. And again, I don't want to

Page 53 mischaracterize this road. I grew up on a farm, 1 2 and we call them turn rows, but a pig trail, turn row, dirt road, tracks for two vehicles. 3 I mean, the track for a vehicle, you know, either 4 5 side, two tread going through the -- going through the woods. 6 7 This is a -- if you can't tell from the --8 from the aerial, this is a heavily wooded, beautiful heritage oaks in this area. Some of 9 the prettiest trees, I think, probably in 10 11 Escambia County. 12 MS. RIGBY: I've got a question. Actually, I've got two questions. First, we'll 13 stick with the road for a minute. When the 14 county indicated that they needed you to build a 15 16 road to meet the criteria, was there any 17 specificity as to how the road's to be built? 18 How wide the road is? What material is to be 19 used? Just you need a road? 20 MR. DUNAWAY: In fairness to staff, I 21 think they would probably say, you know, we rely 22 on the applicants to tell us about what they want to do and build. 23 24 When we -- because we weren't trying to 25 build a road, we hadn't researched roads. But

Page 54 they did indicate that it didn't have to be 1 paved. It could be rock and/or gravel. 2 3 MS. RIGBY: Right. MR. DUNAWAY: And I'm fairly confident 4 5 that the design standard manual will indicate, you know, what are the criteria and what are the 6 7 standards for building a road. I can't 8 articulate those. What we were told is -- and I think that I 9 10 can quickly turn to it, but that . . . Okay. 11 All right. I can see -- I have staff reviewed 12 comments. I was going to pull out the staff review, but here on the access manual . . . 13 In the earlier comments, there was no road 14 15 required. The road became a late-coming -- a 16 late requirement as we got closer to . . . 17 So what Mr. Holmer's has -- what Mr. 18 Holmer's has is the standard DSM 2.2, but what I 19 was going to say to you, I think it was 20 actually -- but I don't -- if the staff 21 entered -- do you have the staff comments that would have been the last one which would have 22 had . . . 23 24 MR. HOLMER: The last access the one's I 25 just handed you.

MR. DUNAWAY: Oh, that was --1 2 MR. HOLMER: E-mailed to the engineer. That was Mr. Walter's final comments concerning 3 4 access. 5 MR. DUNAWAY: Okay. And so I'm quoting for you -- this was Mr. Walters. He says, "An 6 7 all-weather surface will be required from the 8 south right-of-way on Massachusetts to the proposed location of the portable toilets." 9 10 And then he also -- I actually, quite 11 frankly, hadn't realized this. He also says, 12 "Construct a five-foot concrete sidewalk along Massachusetts." I don't remember that. 13 But -- I didn't know that, but in any 14 event, it was -- we understood it to be an 15 16 all-weather. It's not in the land -- I mean --17 well, it's in the design standard manual, but I never found it in the Land Development Code, but 18 19 I'll let staff work on that. 20 MS. RIGBY: And not -- not knowing the particulars as far as the width of the road or 21 22 what have you, you agreed to putting a road in. 23 MR. DUNAWAY: I quess the simple answer to 24 that is yes. You know, it -- it -- it's a 25 challenge that we'll have to overcome, but to

Page 56 1 not say yes would be -- I mean, we'd be over. 2 And we don't want to be -- we don't want it to be over. 3 We want to do whatever we can to make this 4 work. If it -- if it is that absolutely a road 5 is required, you know, and they say -- they say 6 7 it is now. Again, I want to point out that it 8 wasn't required when we first started this process. April comments from staff didn't 9 10 require a road. It only -- we only had to 11 require -- they started requiring the road very 12 late in this process. MS. RIGBY: And by "requiring the road," 13 it does not further require other things, such 14 as retention ponds or --15 16 MR. DUNAWAY: Yes, ma'am. 17 MS. RIGBY: -- striping or --18 MR. DUNAWAY: Yes, ma'am. 19 MS. RIGBY: -- or --20 MR. DUNAWAY: As I indicated, Ms. Rosa 21 stated that -- and again this is why the road 22 was important and critical for us, you know, not 23 to have to do it, because if you put a pervious 24 surface on the property -- on the property, then 25 you have to account for stormwater runoff.

Of course, right now you have a dirt road. 1 2 There's no stormwater. Presumably gravel would be . . . But what Ms. Rosa testified to was 3 that if a road is required -- and she did not 4 5 opine whether it was or not, but that if it were required, there would be stormwater retention 6 7 and stormwater work that would have to be done, 8 again, something that is expense, engineering, and further complicates the process. 9 10 And again, as I pointed out, road wasn't 11 requested. I don't think we need a road. We're 12 not doing anything other than what we're doing, having folks who are down there. 13 The only truck that has to get down there 14 is the portalet truck. Containers, Inc. has 15 16 already submitted a letter that says, "We don't 17 need a gravel road to get down there. We're 18 doing fine. We're doing fine."

19MS. RIGBY: And there was no discussion20from, like, the fire department or the police21department or emergency.

22 MR. DUNAWAY: Mr. Joe Quinn testified. He 23 was fire safety. And in his comments, the road 24 was not premised on the requirement of fire 25 safety, so Mr. Quinn gave us requirements for

Page 58 what was needed. As I indicated, some signage, 1 some fire extinguishers, those kinds of fire 2 3 safety. But he did not indicate on testimony with 4 5 the DRC that it was him who was requiring the road. Mr. -- Jason testified that it was the 6 7 planning director who had directed the road. 8 MS. RIGBY: Okay. 9 MR. DUNAWAY: Per the Land Development Code. 10 MS. RIGBY: Okay. Moving off the road for 11 12 just a minute, in order to understand the use of the property, you had put together a detailed 13 operating manual. 14 Can you give us kind of a summary as to 15 16 how this operates, how . . . how does one -- how 17 are they allowed to live there? Is there a --18 certain constraints that you can live there if 19 you do this, that and the other, or you can live 20 there so long, or you have to report in so we know that you're there, or . . . Can you kind of 21 22 give us a summary as to how this operation 23 works? 24 MR. DUNAWAY: Yes, ma'am. Absolutely. Be 25 happy to do so. And, in fact, would like it,

Page 59 with permission, to provide the clerk . . . So 1 2 what I've handed to the clerk to be admitted 3 into evidence, and without objection, I'd like that to be part of it, is the operating manual 4 5 for the Sitocia Forest and how the process works. And this was submitted to staff. 6 7 But if I may, if I could have Mr. Kimbrel 8 sworn and have him respond to your question, he's in a better position to do that because 9 10 he's the one that they call, so if you'll swear 11 Mr. Kimbrel. 12 THE CHAIRPERSON: Mr. Kimbrel, if you'll 13 step to the mic and be sworn. 14 MICHAEL KIMBREL 15 upon being duly sworn, was examined and 16 testified as follows: 17 18 19 THE CHAIRPERSON: For the record, state 20 your name and address. 21 MR. KIMBREL: My name is Michael Kimbrel, 22 and I reside at 212 Frisco Road. 23 THE CHAIRPERSON: Thank you. All right. 24 If you would synopsize the operating procedures 25 for the area.

Page 60 MR. KIMBREL: Okay. So anyone wishing to 1 2 reside on our property, we have an interview process that they go through with me. And I 3 find out a little bit of their background. 4 5 I do a -- you know, a criminal background check on them. And some of the criteria I look 6 for is people over the age of 50, women, members 7 of the LGBT community, and people that are 8 physically disabled. 9 10 Those four segments tend to be the most 11 underserviced in our community. And since 12 I've -- you know, we self-regulate at 15 residents currently, we are able to -- we choose 13 to assist those in most need. 14 And then once they get through the 15 16 interview process, and we find them a spot to set up a campsite out at the property, they have 17 18 30 days of a trial period because there is a 19 potential that you can get past my interview and 20 then start acting a fool out at the property or 21 not get along with the other residents. We have a handful of rules. The basic 22 23 rules are to keep your area clean. Since we 24 provide portalets and garbage pickup, there's no 25 reason for there to be garbage laying around, so

we do not tolerate that. There's absolutely no violence. There's no drugs. All of those are grounds for immediate termination off of the property.

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5 We do allow drinking, but we have a 6 no-belligerency policy, so, you know, if someone 7 has a couple of beers when they get back to the 8 camp, that's not a problem. But if they get 9 drunk and start acting up and causing problems 10 out there, they will be asked to leave.

11 So we ask that they, you know, respect one 12 another. We ask that if there's any issues, 13 that they try to resolve them themselves, but if it cannot be resolved, I mediate the -- I come 14 out and mediate the situation. 15 Then . . . Ι mean, that basically sums -- sums it up. Do you 16 17 have any other . . .

MS. RIGBY: No. Whenever -- whenever they choose to leave, do they tell you that they're gone or do they come and go sporadically or once there, do they stay a while? I mean . . .

22 MR. KIMBREL: Yes to all of the above. So 23 it varies. People experiencing homelessness all 24 experience it for different reasons. And what 25 it takes to get them out of homelessness is

Page 62 also -- requires different amounts of time. 1 2 So we don't put a set time limit on 3 people, but we do -- we are constantly 4 encouraging them to work on getting out of the 5 situation that they're in. Permanency is not what we look for. 6 7 But we have had people that have waited over a year to get their Social Security 8 benefits so they can get into housing. And 9 sometimes you have to, you know, apply for a 10 11 birth certificate to then apply for Social 12 Security to then get a Florida ID before you can 13 get a job. And so sometimes there's a lot of hoops to jump through before you can get 14 yourself off the streets. 15 16 We've also had people that have stayed out 17 there a week and gotten back on their feet 18 because they just needed a temporary respite. 19 MS. RIGBY: Right. 20 So . . . And then I've had MR. KIMBREL: 21 people that have left and stayed in contact with 22 me, so I get to get follow-ups on how they're 23 doing. And then I've had people that have left 24 in the middle of the night without telling me 25 and I've never heard from them again, so, I

Page 63 mean -- so that's why I say yes to all of the 1 2 above. MS. RIGBY: And then do y'all assist them 3 with getting back on their feet or do you give 4 5 them some direction? You know, go talk to these people or go see these people, as far as 6 7 assisting them? 8 MR. KIMBREL: Yes. Yes, ma'am. 9 So we -- we depend greatly on other 10 organizations that focus on assisting in certain 11 areas. So if someone's needing Social Security 12 benefits, we help point them in the direction of who they need to go talk to and -- and tell them 13 what they need, so that's part of the interview 14 15 process that I have, is assessing what their needs are, and -- you know, and then point them 16 17 in the directions. 18 I sometimes help out with giving people rides to doctors' appointments or, you know, 19 20 meetings with attorneys. You know, whatever it is their need is, I try to help facilitate that 21 22 for them. But there's a fine line between assistance 23 24 and enablement, so, like, we try to keep a good 25 balance there of -- of not enabling people to,

Page 64 you know . . . to get -- get lazy with it. 1 2 Like, we -- we want them to continue motivation. 3 We want them to be empowered to get themselves out of homelessness, not have me get them out of 4 homelessness. 5 MS. RIGBY: Right. And apparently you've 6 7 been, if you will, manager of the site for a couple of years? 8 9 MR. KIMBREL: Since its inception. 10 MS. RIGBY: Since its inception. Okay. 11 MR. KIMBREL: Yes, ma'am. 12 MS. RIGBY: And . . . I guess that's all. 13 That's all my questions right now. Thank you. MR. KIMBREL: You're very welcome. 14 15 MS. GUND: I've got a question. So the 16 little rectangular piece that's jutting out that 17 you don't own, you've got permission to build a 18 road through there? 19 MR. DUNAWAY: Yes, ma'am. We have legal 20 access across and through that property in the 21 deed, so we have an easement over that entire 22 strip from the -- if you were to square it off 23 at the -- you know, right there. 24 If you were to square off here, all that 25 whole strip, we have an easement over that

entire strip, so we just simply -- the road is 1 2 where it is because it's the first turn past --3 there's a -- there was an old fence. Most of the fence is still there. It's kind of fenced 4 off. But it's heavily bambooed and heavily 5 vegetated. But, yes, we have -- we have access 6 7 over that. Now, the property owner is -- has cleared 8 9 some of that strip because, you know, it's --10 again, it's a nice wooded area, and that strip takes you down to the water, the literal water, 11 12 not just the -- you can see where the wetland marsh is at the very end of it, so. Fishing 13 14 path. THE CHAIRPERSON: Any other questions of 15 the applicant? 16 17 MR. CASEY: I'm just curious. Does the services that are provided, does that require a 18 business license? 19 20 THE CHAIRPERSON: You're directing it to 21 counsel? 22 MR. CASEY: To whoever. 23 THE CHAIRPERSON: Mr. Kimbrel, does it 24 require any licensing, I believe, is the 25 question?

Page 66 1 MR. KIMBREL: Not -- not to my knowledge. 2 I don't believe so. And . . . I guess I need to be mic'd. 3 Not to my knowledge. I believe the reason 4 5 it doesn't require licensing is because there's no commerce taking place. I'm not charging any 6 7 of the residents to stay there, so because 8 there -- I'm not having them work for their stay or pay me any money. There's no business 9 10 transaction. 11 MR. DUNAWAY: And Mr. Casey, if I could 12 clarify, was the question to the services of 13 providing rides and directing to Social Security or was it directed to the issue the operating of 14 the camp? 15 16 MR. CASEY: Just in general. 17 MR. DUNAWAY: Yes, sir. And that was --18 goes to the issue of what I was saying, that we 19 went through the licensing process through the 20 State of Florida. And that was the letter, 21 again, that we got that indicated that a license 22 was not required for that, that we were doing. 23 And, in fact, that's exactly what the -what the letter says. And if I could -- and I 24 25 made copies. I'll provide a copy. Of course,

Page 67 the staff has a copy of that. 1 But Mr. Chairman, with your permission, 2 I'll provide -- this is the letter that we 3 received. And I have a copy for Mr. Casey. 4 5 MR. CASEY: Thank you, sir. MR. DUNAWAY: And that is the letter about 6 the license that -- permission that the State of 7 8 Florida says. And the indication was from the Florida Department of Health, is that we did not 9 need a license. 10 11 THE CHAIRPERSON: Thank you. Is that it, 12 Jesse? MR. CASEY: Yes, sir. 13 THE CHAIRPERSON: Are you okay? 14 Any other questions from the board? Any 15 16 question from staff of the applicant? 17 I'm sorry, Fred. 18 MR. GANT: Procedure -- procedurally, can 19 we -- can we call major hearsay -- hearsay at an 20 informal -- informal hearing -- hearsay accepted 21 in these proceedings? MS. HUAL: It is at their discretion. 22 Τf 23 you wish to entertain the testimony and how you 24 want to deal with it, whether you want to accept 25 it as evidence is up to you. And you'll judge

Page 68 their credibility. 1 2 MR. GANT: Thank you. THE CHAIRPERSON: Staff, any questions of 3 the applicant at this point? 4 5 MR. HOLMER: No. I was just going to proceed with staff's opening. 6 7 THE CHAIRPERSON: If you'd like to make 8 your presentation, please. 9 MR. HOLMER: Sure. 10 MR. ROBINSON: Even though I'm abstaining 11 from the vote, can I ask questions? I have a 12 couple of questions. 13 MS. HUAL: You may participate. However, you should disclose your conflict. 14 MR. ROBINSON: Okay. My conflict here, 15 16 why I'm not -- or why I will be abstaining has 17 to do with where I work. 18 We potentially have a relationship with 19 Sean's Outpost, so I have to abstain from voting 20 for that reason. With regards to the road and cutting 21 22 through the easement, paving that road, will 23 that cause -- is that something that is going to 24 cause -- I mean, obviously it's an undue 25 hardship, paving the entire road.

But cutting through that other person's 1 2 property, is that something that's going to be able to be done or does that open up a whole new 3 4 permitting and requesting and hearing process for you? 5 MR. DUNAWAY: Mr. Robinson, in answer to 6 7 your question, I don't know what the engineering 8 difficulties will be. There will be engineering challenges. 9 10 As you can see, that -- you know, that 11 road is running alongside that -- close to that 12 wetland line, so I don't know the engineering. 13 But I can address the legal issues, and that is, we legally have permission across that entire 14 strip for access, for use. 15 16 We couldn't -- we couldn't -- we couldn't 17 do anything that would infringe on the use and 18 enjoyment of the strip for its property owner. 19 We do not own the fee, but it is burdened by an 20 access, by -- by an easement, which is the 21 entire -- that entire strip. 22 MR. ROBINSON: Okay. 23 MR. DUNAWAY: So we legally can build a 24 road over it. We're legally using it now, and 25 it wouldn't -- it would require coordination,

Page 70 but it would not require another, I would hope, 1 2 lawsuit. 3 MR. ROBINSON: Okay. THE CHAIRPERSON: All right. Staff's 4 5 presentation, please. MR. HOLMER: Yes, sir. Thank you. Can we 6 7 swear in Mr. Jones, please. 8 9 HORACE JONES upon being duly affirmed, was examined and 10 11 testified as follows: 12 13 MR. HOLMER: All right. Andrew Holmer, Development Services Department. 14 So we're here today with an administrative 15 16 appeal. It's a unique thing that comes to this 17 board. Doesn't happen very often. The standards that need to be met are 18 19 different from those that you see every month 20 with a variance or conditional use. Something else I need to -- unusual. You 21 22 know, your normal variance case, you basically 23 have two sides. You have the county and you 24 have the applicant. 25 An appeal like this is unusual, in that

Page 71 you essentially have three sides, if I can try 1 to make sense of that. We have an applicant. 2 We have an applicant that is seeking to find a 3 way to help an underserved part of our 4 5 community. And he's trying to do it in a way that he feels will provide the most help without 6 7 providing harm to the neighboring properties. 8 Yes, the state is -- they license campgrounds. Okay. Our Land Development Code 9 also has criteria for campgrounds. 10 This 11 property is zoned HCL, heavy commercial, light industrial. 12 13 It's an allowed use. Campgrounds are an allowed use. But with any change of use, you 14 15 need to go through DRC. And I'll go into that 16 process. 17 The other side here is the neighbors. And 18 we have quite a few who have shown up. Excuse 19 I'm assuming a number of these are the me. 20 neighbors. They're in a position of having no 21 Look: 22 guarantees that this camp will have no adverse 23 impact on their property, their way of life, 24 property values. I mean, for most folks, your 25 home is your biggest investment. That's --

Page 72 There's some strong emotions involved on that 1 2 side. 3 Same with the applicant. Here's -- he wants to do -- to help, so obviously there's 4 emotion on that side as well. 5 But the third side in this case is the 6 7 county. We're the reviewing agency. Okay. We 8 issue permits for a change of use. We issue permits based on a development order. 9 10 We, the county staff, in our review we 11 have to distance ourselves from any sort of 12 emotional appeal. You know, we have to be the black and white, rather like our Land 13 14 Development Code. As I tell this board all the time, our 15 Land Development Code is black and white. 16 17 There's no shade of gray for the staff. It 18 either meets the requirements or it doesn't. 19 We have a -- Mr. Robinson, you had 20 mentioned in your comments the paving being an 21 undue hardship. We have -- we have kind of a 22 philosophy here we follow at the county, where 23 there's one set of rules that applies to 24 everyone every time. Black and white. Doesn't 25 mean yes or no.

Does everyone have to go through this? 1 2 You know, everybody goes through this, the same requirements. And the requirements in this, our 3 code does give us conditions that have to be 4 followed. 5 And they're in your package. Let me pull 6 that package. So we have -- we have a section 7 8 from the code in here. And it goes through those specific requirements, if you will go to 9 the first couple pages there. Of the -- You 10 11 know, what we've got them on there, if you can 12 go to the next -- come on down. Come on down. 13 Up, up, up. Compliance review. Okay. This is what's 14 in your package. This is what -- this is the 15 16 code that was taken -- the section that was 17 taken out of the code that refers to 18 administrative appeals. 19 So with a variance, you know, you have 20 your criteria based on unique physical hardship on the land, et cetera. 21 22 So for this one, as it says there, straight from the code, BOA shall conduct this 23 24 quasi-judicial public hearing to consider the 25 appeal.

Applicant has the burden of presenting competent substantial evidence to you that establishes each of the following conditions.

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First one being, arbitrary or capricious. At previous hearings, I gave you the state definition. I'll do that again, if you'll go to the next slide.

Essentially, with their needing to prove on this case is that the staff's denial -- the staff decision to deny was either arbitrary or capricious, essentially saying that there was no -- no logic behind it, there was no -- no basis in the code for our -- the denial.

14If you'll scroll down. Next one being15Land Development Code noncompliance. And once16again, the burden is on the applicant. You17know, the county did what it did. They're18appealing the decision of the county.

19 So essentially, was the -- was the county 20 appropriate in their decision? What -- did it 21 follow the LDC? Is there an adverse impact to 22 this applicant by the way of the county 23 following the LDC, like we do for everyone else? 24 Look: Our process is very simple. You come for 25 your development review. You meet the code.

Page 75 Development order's issued. You proceed. 1 2 Protected interest. Again, all interests are protected the same, whether comp plan, LDC. 3 Individual property owners, we use the same 4 standards for all every time. 5 Greater impact. This last one -- it kind 6 7 of filters into situations where we've had --8 the county approved the development order, and a neighbor or someone will come up to object to 9 the approval. 10 11 It keeps bringing us back to the same thing, one set of rules, and the black and white 12 reality of if a project comes through 13 development review, it meets all the 14 requirements, hey, we issue the development 15 16 order. If it doesn't meet all the requirements, 17 it results in a denial. 18 Now, you know, as I said, staff is outside 19 the emotional realm on this. The denial is not 20 based on the idea. It's based on the submitted 21 plan. It wasn't denied by the staff saying, 22 "Well, this could meet the code," or the 23 applicant saying, "Look: Well, we could do this." 24 25 It's what was done. Did that submission

Page 76 meet the code as it was submitted? Yes or no. 1 2 You know, the idea of a campground, yes, we -we're fitting this there. 3 It's not a residential use. The way our 4 code defines a residential use, it falls under 5 campground. Therefore, it's reviewed that way. 6 7 Is there an option? Mr. Dunaway brought up the idea of conditional conditions added to 8 approvals. You do see conditions added to 9 10 approvals quite often. You do on a development 11 order. 12 But when you see a condition for approval, it's along the lines of "wetlands to remain 13 undisturbed." For whatever reason, this site, 14 your special condition, you're limited to X 15 16 amount of signage; you are required to have 17 certain hours or something. It's not a condition -- something that 18 19 would need to be on the face of the site plan. 20 The all-weather surface. And the county looks 21 at an all-weather surface as saying, "Hey, it's a hard-driving surface." Okay. It's an 22 improved surface. 23 24 It's not just dirt: asphalt, concrete, 25 gravel, shell. It's something designed to

Page 77 ensure that adequate runoff is taken care of 1 2 through stormwater provision under normal rainfall. You know, it's not going to erode 3 away without -- you know, it's the kind of 4 surface that's not going to deteriorate under 5 your average rainfall, like a dirt road would. 6 7 The problem we on the staff side would 8 have making something like that a special condition, where the development order would 9 say, "Okay. It's approved, with the condition 10 11 that you then come back and make this an all-weather surface." We can't do that. 12 An all-weather surface brings in at that 13 point runoff. When you get runoff, now we're 14 going into the stormwater issues. There has to 15 16 be a separate technical review on that. 17 The plan submitted on the first page of 18 the plan, there are no calculations at all for 19 stormwater runoff. 20 The DRC can't approve a plan saying, 21 "Well, eventually you're going to put something 22 on there. It's going to cause stormwater. We 23 don't know how much, but we're going to sign off 24 anyway." The county cannot do that. 25 Something else that comes in. Once you

Page 78 start looking in that direction . . . just do 1 the regular site plan, if you would. 2 Mr. Walter's comments did reflect that, 3 Okay. If . . . you know, he did mention the 4 idea that an all-weather surface, the width of 5 it may be reduced to 16 feet. That was approved 6 7 through -- by our fire safety folks. They 8 wanted to make sure they could get in there. Ιf it's an all-weather surface, they wanted 16 9 feet. 10 11 There is a fire hydrant at a nearby 12 corner, so they weren't worried about having to 13 get water. They knew they had the hydrant. But the idea of going -- as a condition, an 14 all-weather surface besides stormwater, it kicks 15 16 in some other things. 17 Mr. Walter's last comment on there was to 18 please on the site plan delineate the area of 19 the access easement. It's right here on the 20 deed for Sean's Outpost. And it delineates that area, if you would, that Mr. Dunaway was 21 22 referring to. 23 I plat out the legal description. That's 24 it. Okay. That is that 25-foot access easement 25 granted to the Sean's Outpost property. They

Page 79 have the right to access that. They have the 1 2 right to cross it. That needs to be shown on our development 3 4 record plan. It was not. We cannot grant a 5 development order saying, "Well, sure. Everything's good." You know, anybody else 6 7 would tell them to follow the procedure and 8 label that, but "we're not going to do that in this case." 9 We don't do that. One set of rules for 10 11 everybody every time. The easement? There may 12 be issues there with paving that. The deed for 13 the Sean's Outpost property clearly says "permanent access easement." Doesn't say 14 anything about an all-weather surface. 15 16 The county would have issues at that point of saying, "Well, you have an easement. You 17 18 have the right to cross. We're going to want 19 you to develop on someone else's property." The 20 other folks own the piece of property. 21 The county cannot say to an owner, "Well, 22 you have an easement across someone's property. 23 We're going to demand you develop that 24 property." We have to have -- the other folks 25 have to sign off on that being done. So these

Page 80 are other issues that start kicking in when we 1 start looking at an all-weather surface. 2 You know, other things on the plan. At 3 the DRC meeting, all the focus was on the 4 5 roadway and the fact that it wasn't shown on the 6 plan. 7 There's other things that weren't shown on 8 the plan that had been discussed through the various times of the submittal. Buffering 9 10 requirements. Heavy commercial, light 11 industrial. We require a buffer between that 12 and residential uses. On the plan, it's shown as a 10-foot 13 buffer. Just says, "10-foot buffer." 14 Land Development Code calls for a 20-foot 15 16 buffer, with a Schedule C planting. That's a 17 specific delineation of, say, for every hundred 18 feet you need to put this number, this type of 19 tree, this type of bush, et cetera. It's very 20 specific. We require these things to be on a 21 plan for everybody. 22 On here it's just shown as 10 foot. 23 There's a note on there that says to look at 24 page C-3 for the buffer requirements. Page C-3 25 of the plan shows the driveway at Massachusetts.

It shows the requirements for that.

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And it's got two sketches off to the side showing the requirements for planting -- for planting a bush or for planting a tree, not a -okay -- like we require with everyone else, a full listing: We're going to use Schedule C. Here's what it entails.

We ask everyone to put these things on a site plan. It's not -- we're not calling out on one project. We go this way with everything.

11 You know, our . . . our staff, the 12 county -- our point here is pretty basic. If a 13 project comes in and meets the requirements, 14 we're going to approve it. If it doesn't, it's 15 going to be denied.

16 The conditions that we're allowed to 17 approve with conditions are not going to be 18 things that kick in other technical reviews 19 because we have no certainty on that.

We have no certainty that if the all-weather surface, when that goes in, is the stormwater -- what are the calculations? We don't know. Our engineer hasn't gone through that. We don't have anything given to us to move with that.

Is that going to affect the wetland area? 1 Is there additional environmental review? 2 We don't know. There is a lot of uncertainty 3 there. We cannot approve a development order 4 with that level of uncertainty, not with 5 something that is required to be shown on the 6 7 plan. It keeps coming back to one rule, one 8 rule for everybody. 9 So the applicant is seeking to overturn that denial. This board -- this board has some 10 11 powers when it comes to administrative appeal. 12 This board has the power of essentially the official that approved or denied the plan that's 13 out there. 14 Part of that, though, is the idea that 15 16 while you have the power to overturn, this board 17 does not have the power to come through and 18 say -- in fact, I'll read it here from the code. 19 "The BOA shall have the same authority and responsibility to change a decision found to be 20 in error as is given by the LDC to the official 21 who made the decision, but no more. 22 "The board may act only to the extent 23 supported by the established record of evidence 24 25 and only as necessary to maintain compliance

Page 83 with the LDC and Comprehensive Plan. The board 1 can not offer opinions or interpretations 2 3 generally. "The authority of the board to act as the 4 official does not -- does not -- include any 5 authority to diminish or otherwise change the 6 7 application of any -- any -- technical design 8 standard or specification established or referenced in the LDC." 9 You have the power of the person signing 10 11 the development order. You do not have the power to say, "Hey, let's just go ahead. Let's 12 13 approve it as is," because we don't know what the technical specifications are. 14 Y'all are a varied group. You have a 15 16 varied amount of experience. You do not have 17 the power of our stormwater engineer to review 18 something that there's no calculations for. 19 So what we're asking, the county, is we're 20 asking you to look at this in sort of a 21 dispassionate sort of way. Black and white. Did it meet the code? Yes or no. Was the 22 23 county decision to deny correct or not? The denial is based on deficiencies in the 24 25 submitted plan, the sort of deficiencies that

Page 84 would have resulted in a denial for any other 1 2 project that came through developer review. It comes down to: Hey, could this meet? 3 But what was submitted that day? Did it meet 4 5 it? Yes or no. And that -- that's the county's stand on this. 6 7 We don't have a lot of leeway here. 8 There's no gray area for the staff. What was submitted that day, the decision was made. 9 Did it meet the code? Yes or no. It did not. 10 Ιt 11 was denied. 12 That's the staff's opening. 13 We'll move on from there, if you have questions. 14 MR. STROMQUIST: I've got a couple of 15 16 questions for you. 17 MR. HOLMER: Yes, sir. 18 MR. STROMQUIST: When I'm looking at this 19 whole project, are you telling us that we as the board could not say the initial submission 20 without a paved road is approvable or do we have 21 to include a condition of a paved road into 22 23 anything that we would yea or nay? 24 MR. HOLMER: You can only act to the 25 extent for compliance with the LDC.

Page 85 MR. STROMQUIST: What I'm saying is, 1 2 initially they put in an application that didn't have a paved road; right? 3 MR. HOLMER: There were multiple site plan 4 submittals. Let me -- You know what I should 5 do? I should tell how the DRC works. 6 I'm 7 sorry. 8 Development Review Committee. Here's how 9 this works: Someone turns in a site plan. It gets reviewed by the various disciplines that 10 11 look at a site plan for approval. 12 Yes, you have planning. You have access, 13 fire department, stormwater, environmental, health department. Anybody that needs to review 14 it does so. 15 16 When those reviewers look at it, they 17 generate a list of comments. They say, "Here's 18 what the LDC says about what you want to do. 19 Please show this. Please provide this, " et 20 cetera, et cetera, on your drawing. The first submittal usually doesn't have 21 22 everything on it, and it didn't in this case. 23 The second plan submitted didn't have 24 everything on it. In fact, it didn't have some 25 of the things that were first requested.

The third submittal. They're coming in 1 for their final. They want to get their 2 development order. That's the end game here of 3 development review is, you turn in your plan 4 that meets all those conditions that were 5 requested. You get a development order that 6 7 allows you to pull permits, and move on. 8 The final submittal was missing a number of these things that had been mentioned all 9 10 along. Some of them, sure, it may sound petty. 11 You know, hatching the easement or describe --12 you know, labeling that buffer, giving us on the sheet exactly what the plan schedule is for that 13 20-foot buffer, not 10. Those may seem like 14 nitpicky things compared to the idea of the road 15 16 and everything that it would kick in. 17 We require those of everyone, though. We 18 ask the same of every single applicant. Those 19 things were not shown on the site plan. That

20 gets us to this point.

21 It's: Did the plan that comes in that --22 came in meet the requirements of the LDC? 23 This board is being asked: Does this --

24 did the denial, was it based in fact on the 25 code?

Page 87 Here's what the reviewer said. Here's 1 2 their -- they give their references to the code sections. Were those things on there? No. 3 А number of these weren't. That's what this board 4 is left with. Did it meet it? Yes or no. 5 6 MR. STROMQUIST: And I guess my question: 7 You talk about stormwater runoff, but there 8 wouldn't be a problem unless you put a paved 9 road in there. 10 So at current conditions, the way they're 11 using this, there is no stormwater runoff 12 problem? 13 MR. HOLMER: There might be. We don't know. 14 MR. STROMOUIST: But there hasn't been one 15 16 indicated is what I'm getting at. 17 MR. HOLMER: Once again, we don't know. 18 The reviewer mentioned, you know, in his 19 comments the all-weather surface for the trucks 20 going in and out to access the portalets. MR. STROMQUIST: They do that now; right? 21 22 MR. HOLMER: Yes. Yes. But to come in 23 for -- to come in through development review, 24 once again, it's not could it meet it or is 25 what's currently going on there.

They're requesting a change of use. 1 Ιf 2 you're requesting a change of use, you're going from what you're doing to what is approved by 3 the Land Development Code. 4 If the code is requiring you to meet a 5 certain condition, like in this case an 6 7 all-weather surface, that's what we're dealing 8 with. Yes, the all-weather surface then kicks in all these other reviews. 9 10 Once again, those -- there's no stormwater 11 calculation. The road is labeled as a dirt road. What's required and what was provided 12 that they needed to require is not on the plan. 13 That's why it was denied. 14 MR. STROMQUIST: So you're telling me that 15 16 no matter what our decision is, this still has 17 got more hoops to jump through? 18 The hoops were not all jumped MR. HOLMER: 19 through at the time that this was presented for 20 development order approval. Because the hoops were not jumped through, it was denied. 21 22 This board can overturn a denial of any official action that falls under your --23 24 MR. STROMQUIST: Right. 25 MR. HOLMER: Requirements. But the

	Page 89
1	section is telling you you cannot overturn some
2	sort of technical specification.
3	You cannot say, "Well, we don't think this
4	should follow the code."
5	It's down to, really, an appeal. It's
6	not: Let's argue about these performance
7	standards. It comes down to: Was the county's
8	denial arbitrary and capricious, really?
9	That's that's really what it comes down to at
10	the end of the day.
11	Was the denial just pulled out of thin air
12	or does that denial did that denial have
13	basis in the Land Development Code? That's
14	really what we're talking about today, not the
15	two emotional sides.
16	I mean, I understand that, but we have no
17	option to go there. We don't want to go there.
18	It's not our business, the emotional side of
19	things. We're black and white. Did it meet it?
20	Yes or no.
21	Board, here's what's being appealed.
22	Based on the code, was the decision just
23	arbitrary? Because if it was, sure, it could be
24	overturned easily. But it was not. It was
25	based on the code. We don't the staff does

Page 90 not have wiggle room to make judgment calls on 1 this. It's black and white. 2 MS. RIGBY: Okay. I want to say 3 something. I've been -- I've done construction 4 5 plans, been a land developer 15 years. I've been through the DRC process. It is a tedious 6 7 process. 8 My concern right now is that I don't think that the board is getting the full understanding 9 10 of the DRC process. And it may be that y'all 11 can help us clarify this. 12 When you submit a site plan, which 13 whenever I submitted one, it was usually for a subdivision, regular subdivision. Had roads, 14 had stormwater. We had footprints of houses, 15 16 covenants, all that kind of stuff. 17 And the first submittal -- we would have a 18 preapplication. The first submittal, we would 19 get a lot of comments back, and they were 20 standard comments that everybody gets. And as -- as we submit or we discuss or we 21 22 adjust the comments based on our subdivision, we 23 work with the county saying, "Well, you know, you said 10 feet. Could we have 7 feet, or the 24 25 stormwater you wanted here, can we put it more

Page 91 to the north or to the south?" We are in 1 constant conversation with the staff and their 2 different departments, if you will. 3 And then we get to the final. And we 4 5 label everything that they wanted us to label. And sometimes we bend over backwards, that some 6 7 of the items are what I would consider 8 rudimentary. 9 It sounds to me like maybe what was in the beginning in the first plan switched to what it 10 11 is today, what was submitted in the final, as far -- as I don't know if it's use. I don't 12 know if it's -- what you call it. Not a 13 residential area but now a campground. 14 Therefore, it's reviewed differently. 15 16 What I would like to know is -- because 17 this road, did it come in the last minute 18 saying, "Oh, by the way, we need a road"? Was 19 it in the beginning? Was it discussed in the 20 beginning, which is where it should have been, that this will need to be an all-weather road, 21 22 and you will need to show it as a all-weather surface that needs to be 16 feet wide, so forth, 23 24 and so on? 25 We have engineering plans from -- I think

Page 92 it's Landmark, well-known engineering survey 1 firm in the area. This isn't done on a piece of 2 paper. This is done by, I'm assuming, an 3 engineer and survey work who had probably gone 4 5 through the DRC process before. So this isn't something that -- wasn't just drawn on a piece 6 7 of paper. 8 It was probably given to these engineers, and they probably went step by step because it's 9 time-consuming and it's tedious, and it can get 10 11 very expensive. 12 I guess what we need to know is, what were the beginning comments? What changed? When did 13 the road come into play? When was it an 14 all-weather surface that was 16 feet wide? 15 When 16 did that come into play? 17 MR. JONES: That came into play -- Horace 18 Jones, Director for Development. 19 The chronological order is -- and Mr. 20 Dunaway stated -- is very, very long. It's been 21 a very, very lengthy process. 22 If my memory serves me correctly now, Mr. 23 Will Dunaway -- they were aware of this 24 all-weather surface requirement earlier in the 25 stages, and I think he can state that.

Page 93 MS. RIGBY: For the application process, 1 2 or review? MR. JONES: During -- during our 3 initial -- during our initial going back and 4 5 forth with the reviews. And they were aware of the issue, going back and forth with that issue. 6 7 Before we got to this point, we were -- they were aware of it. 8 9 Now -- now, there was some -- there was 10 some going back and forth trying to -- trying to 11 expert -- we were trying to help them out because of the financial concerns, but the code 12 still spoke so heavily. 13 The requirements of the Land Development 14 Code must be met. During all of this process, 15 16 there was a special magistrate hearing in the 17 middle of this process. 18 And Mr. Will Dunaway can attest to that. 19 And at that special magistrate hearing, the 20 direction was with staff to furnish them all of the necessary comments again. And they'll be 21 22 working -- and we did that. 23 As a matter of fact, we sent the comments to Mr. Dunaway again. And to -- and at the time 24 25 that they submitted, they were given a certain

Page 94 date to -- to submit to try to bring closure to 1 2 this to the special magistrate. I don't know if you got a copy of that, but stated that we need 3 to bring closure to this with the DRC process. 4 5 So . . . and that helped us all. So when that special magistrate order was 6 7 made -- to try to get those comments to Mr. 8 Dunaway and his client. That was submitted -- I believe I'm saying this correctly. I think the 9 record shows it was Mark Spitznagle, Landmark. 10 11 Staff again -- they determined --12 submitted the comments to him because in the letter that Mr. Will Dunaway submitted, the day 13 he submitted the plan stated that. Mr. -- On 14 the letter, that Mr. Mark Spitznagle -- can we 15 16 see all of the comments? 17 And we did. And we submitted that. So 18 during the initial stage -- like you said, it 19 was pre-op. But during the initial stage, it 20 takes -- we go back and forth, back and forth to 21 try to make sure we get the Land Development 22 viewpoint. And the many -- many times special 23 magistrate order, that helped us to really, 24 really direct them to get to a landing point and 25 staff to get to a landing point.

Page 95 So -- so -- so they were aware of the 1 2 comments on all-weather surface. They were aware of that -- of that being -- of that -- and 3 I think Mr. -- he stated that fact, that they 4 5 were aware of it. But the issue for them is we do not -- we 6 7 asked staff and Mr. -- you stated very 8 eloquently and very, very, very, very, very professional that we have to separate ourselves 9 from the emotional side of it. 10 11 But their problem is, "Mr. Jones," he told 12 me many times -- talking about Mr. Kimbrel --"We don't have the funds." But the code does 13 not look at that. The code looks at the 14 letter -- of what the letter of the code 15 16 requires. 17 And access management -- stormwater. And 18 when they submitted those plans, there's 19 nothing -- we saw what the plans, the dirt --20 dirt-dry was wet. You need to try to -- let's go back and forth, see if we can -- again, you 21 22 can try to get that worked out. 23 But the day of when it came closer and 24 closer to the BOA or to the -- to the step 28, I 25 believe that was the DRC denial, my memory. I

Page 96 think that was the submitted -- October was when 1 2 I think was one of them. They still wasn't there until the last minute I heard again in Mr. 3 Dunaway on -- on this particular issue. And 4 that's why it was denied. 5 Yes, this has been a very lengthy process 6 7 to try to bring closure to this point. The 8 use -- and I think Mr. -- the use has -- was already basically classified an order through 9 with the help of the special magistrate, that, 10 11 yes, this is a commercial review. It's not 12 residential. It's not -- it's not normal. But as he 13 stated as a matter of factly, that it's not a 14 residential use. That use was already -- that's 15 16 what we require for any commercial development. Requires a site plan review process. And that's 17 18 why they are in this process, trying to go 19 through it. 20 And we -- we work and try to get to the point where at least give the staff all the 21 information to review. And the road was not 22 23 there, which, as you know, trigger stormwater. 24 And all those comments were mentioned, 25 but -- and I think he stated for the record that

Page 97 we just didn't have the funds. But we cannot 1 2 look at that, regardless of how much it -passionate they may be about it. 3 And I think we stated this board have to 4 5 look at: Was the decision to deny it, was it based on requirements of the design study 6 7 manual, which is definitely part of the Land 8 Development Code? 9 And that's the reason why it was denied, 10 based upon those status. Yes, very lengthy, 11 very long, but we had to get to this point for 12 closure. 13 And that is where we are at this point today, from the direction of the special 14 magistrate trying to comply with that special 15 16 magistrate order, and trying to follow through 17 so that they'll know to bring closure to this 18 issue from the site plan review site. 19 MR. STROMQUIST: Horace, what would happen 20 if we agree that they had to put in the 21 all-purpose road and you guys have denied their 22 permit? 23 Where do they go from here? I mean, 24 there's a -- I don't want something that all of 25 a sudden they have no place to go and the site

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closes down.

MR. HOLMER: Okay. There's two avenues: 2 One, as with any decision of this board, there's 3 30 days to appeal that to Circuit Court. 4 5 Two, they have indicated, "Hey, we could meet these requirements." 6 7 Okay. If you can meet the requirements, 8 turn in a plan showing that, and then we'll go to the DO stage. I do not have the -- all the 9 10 information from the special magistrate's last 11 ruling. I'm not sure . . . There was something about time kicking in, but I wasn't the person 12 13 arguing that case. I don't have the magistrate's ruling, so 14 there may be some things there that need to be 15 16 followed in that direction. I believe Mr. 17 Dunaway can address that part. 18 MR. DUNAWAY: Sure. 19 MR. HOLMER: If someone turns in a 20 development order, it doesn't meet the requirements, it gets denied. That doesn't mean 21 22 they can't resubmit meeting the requirements. 23 MR. JONES: And I would add to that, and 24 even if they did, the requirement's still going 25 to be the same. It's still -- See, that's the

Page 98

Page 99 thing also, too. Once you start -- you know, 1 2 once you start looking at road access, whether it's gravel, dirt -- it cannot be dirt. It got 3 to be semi-impervious surface, whatever the 4 5 requirements is in whatever it is. Definitely stormwater. And then -- and it 6 7 could -- has the potential of triggering another fire review by fire safety to make sure that 8 whatever that surface is -- this is my 9 understanding, that whatever that surface 10 material is, got to be able to withstand a 11 12 truck. 13 I'm not the expert. I know Mr. Will is going to say there's a possibility. So 14 whatever -- if they -- if there's a decision by 15 16 this board to remand it back, I don't know if 17 I -- I don't know if that's possible. 18 They're requiring -- the code still going 19 to stand as it stands. And it may require 20 engineering plans from a -- to do all the stormwater calculations, but that's a fairly 21 22 lengthy road, as you can see. 23 So -- so -- so -- and that's what --24 that's why it was denied, based upon -- if -- if 25 there is -- if -- if they feel like that with

Page 100 the whole process was flawed, the courts can 1 2 decide that, whether or not there was some 3 discrepancy in the Land Development Code. The 4 courts can -- can -- can -- can -- can work on what else will we need to do -- what we 5 need to do from that point. 6 7 But the -- the -- the requirements of the 8 Land Development Code still going to speak for itself, even though it may be remanded back, if 9 that's the decision. 10 11 We still going to -- we still going to 12 have -- meet the same standard. And it may trigger other reviews. We just cannot say at 13 that point -- at this point. 14 What's the time frame? 15 MR. STROMOUIST: 16 Say they resubmit it with what you're asking 17 In the meantime, we don't have somebody for. 18 coming in and kicking everybody out. I mean, 19 what's going on? 20 MR. HOLMER: I'm sorry, Mr. Stromquist, but that is where the other side of the house, 21 22 not the planning development side of the house. That's for the code enforcement side and special 23 24 magistrate come in. 25 Once again, not having a copy of that

Page 101 ruling, I'd kind of defer that to Mr. Dunaway, 1 if he would like to address how that would 2 factor in. 3 MR. STROMQUIST: I mean, is it 90-day time 4 frame? Is it six months? 5 MR. HOLMER: We -- we don't have one. 6 Oh, 7 oh. I think I know where you're going. Ιf 8 someone's denied a variance, they can't come back for 180 days. This isn't like that. 9 10 MR. STROMQUIST: That's why I wanted to 11 make sure we weren't putting them in limbo for 12 six months. MR. HOLMER: This doesn't have the same 13 requirement, but I know there was something in 14 15 that magistrate's ruling that we know is going 16 to play a part. I just -- I just wasn't a part 17 of that. 18 MR. DUNAWAY: Mr. Chairman, may I -- may I 19 address and respond to Ms. Rigby's question? 20 THE CHAIRPERSON: Absolutely. 21 MR. JONES: For the special magistrate, I 22 have a copy of the order -- of the signed order. 23 If you want to submit that in evidence, I do 24 have a copy of the signed special magistrate 25 order.

Page 102 And -- and -- and I am not -- I am not no 1 2 lawyer, but I think it's -- it gives three 3 statements on page six, if you want to . . . Mr. Dunaway, which is part of the packet. I 4 would like to submit -- if possible, I would 5 like to submit a copy of the signed order from 6 7 Mr. Robert Beasley, special magistrate. 8 (Mr. Robinson left the hearing.) 9 MR. DUNAWAY: Mr. Chairman, for the 10 record, that's dated 10 August 2016. 11 THE CHAIRPERSON: Okay. 12 MR. DUNAWAY: A seven-page document. 13 THE CHAIRPERSON: We need a motion from 14 the board to accept this. 15 MR. STROMQUIST: Make a motion to accept 16 the document. 17 THE CHAIRPERSON: Got a motion from Bill. 18 MR. DUNAWAY: No objection. 19 MS. GUND: Second. 20 THE CHAIRPERSON: We have a second. 21 Those in favor, signify by raising your 22 right hand. 23 (All board members hands raised.) 24 THE CHAIRPERSON: Passes unanimously. 25 Let the minutes reflect that Mark

Page 103 Robinson, board member, was excused to depart. 1 2 We maintain a quorum. MR. HOLMER: And we're going to label this 3 as -- we'll call it Staff Exhibit 1, for 4 5 purposes of adding it. THE CHAIRPERSON: That's fine. 6 7 MR. GANT: Question, Mr. Chairman. 8 Essentially, are we allowed to supplement the record? Can we submit an exhibit? Can our 9 10 staff do that? The plaintiff? Or does it --11 that procedure -- showing that -- submit the exhibit into evidence? 12 THE CHAIRPERSON: I think the motion 13 covered that. 14 15 MR. GANT: Okay. 16 MR. JONES: But I -- I want to -- I want 17 to clarify for the record, to preserve the 18 record, the order was October -- August. 19 MR. DUNAWAY: August 10th. 20 MR. JONES: August 10, 2016. That's 21 the -- and there was an amended order with some 22 changes, minor changes -- minor submissions. 23 That was September 7, 2016. So I would like to 24 submit both of these orders, both the special 25 magistrate order and the amended order, as is

Page 104 evidenced in the record. 1 2 MR. GANT: Mr. Chairman, Mr. Dunaway 3 being -- as submitted is correct. MR. DUNAWAY: No objection. Thank you, 4 Mr. Chairman record. 5 MR. GANT: Reflect that also. 6 7 THE CHAIRPERSON: Yeah. 8 MR. DUNAWAY: Mr. Chairman, may I 9 address --10 THE CHAIRPERSON: Yes. 11 MR. DUNAWAY: Ms. Rigby really did cut 12 through the three years of my life very 13 succinctly in that process. If we were developing a subdivision, we'd 14 be done, you know, except for the fact that, you 15 16 know, I'd be working for a developer that 17 doesn't have any money. 18 But beyond that, we understand that. We 19 know how to build roads, put in infrastructure, 20 build a house at the end of it. We know how to 21 do that. We know what the code says on that. 22 Staff knows what the code -- what the code says on that. 23 24 Staff does not know what the code says 25 about doing nothing. That is, we came to them

and said, "We don't want to do anything. 1 We're not building anything. We're not going to do 2 anything. It's -- it's our property." 3 We just want people -- people wander up. 4 5 They go through the process that Mr. Kimbrel just explained to you. We'd like to have them 6 7 to say, "You may stay here. It's our property. 8 You may -- you may have a safe place to be." 9 That's what we're doing. That's the thing 10 we were doing. And we went through just endless 11 discussion about, well, what does that mean? Is that a land use change? Ms. Rigby knows this. 12 We're not building anything. If we're 13 building a building back there, we'd have to get 14 access back to it. We know how to do that. 15 We 16 were trying to simply get a use. 17 Importantly -- and this is important. 18 You've already heard staff admit and say that 19 this is an allowed use. The code allows this 20 use. This is an allowed use on this particular 21 zoning area. 22 Now the question is, now what? And this 23 is the concern. And there is the process. And 24 this is why you have pointed out we didn't 25 submit for anything.

Page 106 We -- in fact, we argued for a year Ms. 1 2 Rigby, and Mr. Chairman, and this board -- we 3 argued for a year with the county that we don't need a permit. We're simply there. 4 It's our 5 property, and people are there. What is that? And I will -- I will say -- and I'm going 6 7 to submit this -- but this was -- Mr. Jones 8 provided this to you because I -- you know, I asked him, and he'd hopefully provide it. And 9 he signed it on July 6, 2016, the summer, 10 11 because by that time we were under the gun with 12 the code enforcement because we had to get something going. 13 14 We didn't have the time that you -- you know, going back and forth in some form of 15 substance, label it, and do the trees, and then 16 17 hashmark it. We were done. Magistrate said, 18 "Do it. You got to be done." 19 But here's the document. I'm going to 20 present the whole document, but I -- I want to 21 just read for you what gets to the point that 22 you're saying. In the second paragraph, it says, "Given 23 24 that an application is a request to obtain 25 required county approval of a regulated land

use, your letter -- and it says "the letter."
He was referring to my letter. I had actually
sent a letter, out of frustration to the county
administrator and said, "I'm not doing anything.
We're not trying -- we're not asking permission
to do anything. What is it we're supposed to
do?"

8 And he said, "Your letter's assertion of a 9 request to do nothing" -- because I had said, 10 "We're not doing anything."

"Your assertion of a request to do nothing and not develop is contrary to the submission of an application to permit a regulated use." No; I know. I agree with Mr. Jones. It was a catch-22.

16 If truly nothing is proposed, then nothing 17 requires review and approval. But the "nothing" 18 in quotes that is proposed to be done is the 19 something that has already been done.

20 That is the doing of something prior to 21 approval does not make a subsequent request to 22 obtain approval a request to do nothing. At a 23 minimum, such a request is to approve what has 24 been done.

25 I mean, that's what I'm trying to get

Page 108 through. That's what we're trying to say. Is a 1 2 road required? Yes. 3 If we're going to put back a -- and our original fault was, we were going to build a 4 5 shelter down there. It was going to be a large area. We would have a kitchen facility, 6 7 bathrooms, place -- we -- we were -- that was 8 going to require a road. Everybody knew that. We knew that. 9 10 But we don't have any money. We ran out of money. That wasn't the process. So we came 11 12 back to the county. We said, "That isn't going to work." 13 And they -- and they go, "Well . . . " and 14 we said, "We just want to do what we're doing." 15 16 And you say we have to get permission, so we're 17 going to ask you for permission. 18 And they said, "Well, you got to do a site 19 plan, and you got to pay \$859 to submit the site 20 plan." And we said, "Well, what do we put on the 21 22 site plan? 23 "Well, you know, you gotta get -- you have 24 to get a survey, a wetlands survey. You know, 25 you gotta, you know, show us where the tents are

Page 109 going to be." 1 2 Well, the tents move. 3 "Like, give us an idea. You know, I mean, just tell us something." 4 And then finally -- finally -- and again, 5 you can go to the staff. They're in a catch-22. 6 7 They said over and over to you, "Black and 8 white. We follow the code. Black and white. We follow the code." 9 10 I get it. But you're the shades of gray. 11 You're -- you've the opportunity to say --12 because they're under the gun, because the 13 magistrate hearing -- because the county put code enforcement saying, "Hey, you don't have 14 permission to be here." 15 16 Of course we said we didn't need to, but 17 in any event, the special magistrate said, 18 "Look, y'all got to do something. You gotta be 19 done. Submit the thing and make it -- get our 20 approval, don't get our approval. Follow the appeal process if you have to, but come back to 21 me at 90 days afterwards and tell me what's 22 going on." 23 24 That's why the process ended. Otherwise, 25 we would be, just like you, Mr. -- we'd still be

Page 110 working with staff. And -- and again, Mr. Jones 1 is right. We said -- they said, "You know, 2 look. Have to build a road back there." 3 Well, we can't do it. I mean, we can't 4 5 build a road. Is that really required?" "Well . . . " and we went, again, back and 6 7 forth. I had hope and I still hope, because I 8 want to hear, that we're going to hear this, "It's not arbitrary and capricious that we 9 require a road because if you're not -- it is 10 11 arbitrary and capricious to require something 12 that's not required." So I want to get to an issue of exploring that. 13 But if it is that -- if that is the case, 14 then you can condition it. I know what Mr. 15 16 Holmer and Mr. Jones are saying. They're 17 saying, "We can't because we're staff." 18 And again, I understand the position 19 they're in. They -- they can't bear the burden 20 of signing off on the first homeless shelter in Escambia County to be permitted. I get that. 21 22 But you can. The board -- this board is 23 seven. You can tell the county, "Hey, you know 24 what? Under the circumstances, Mr. Kimbrel's 25 explained, and the document that he submitted,

Page 111 and the good work that you've done, and the fact 1 2 that you've been doing it for three years, and it's a compatible process, and the land use 3 shows that it's an allowable use, and you're not 4 doing anything differently than you've been 5 doing for the last couple of years, absolutely, 6 7 we're going to check that in the block, and 8 we're going to allow that. 9 You can do that. That's not a -- that's 10 not beyond your purview. That's why we're here. 11 That's why there's an appeal process. 12 If it turns out that it's not, then the next step is, I'm going to have to appeal it to 13 the Circuit Court, and we're going to ask a 14 judge to do exactly that. 15 16 And we're going to say, "Your Honor, we 17 met every objective criteria of the Land 18 Development Code." 19 And he's going to say, "What were you 20 trying to do?" "Nothing." 21 "Really?" 22 23 And then he's going to say, "Well, why did they deny it?" 24 25 "Because we didn't hashmark the X, the

access area, and -- and we didn't have -- we 1 2 didn't show an all-purpose road on the plan because we didn't want to build an all-purpose 3 road." 4 5 And we're going to -- He's going to say -then he's going to follow the criteria of urban, 6 7 and he's going to go, "Hmm. Looks like you met 8 the requirements for the issuance. Was it

adverse to the public?"

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10 And he's going to find it's not. He's 11 going to find that it's not because the staff 12 has already told you it's not. They've already 13 told you that it's not about the homelessness. 14 It's not about a nuisance. It's not about a 15 problem. If you -- if it were, we would have 16 already heard that.

17 Then the neighbors are not -- they don't 18 want this there. I get that. I understand 19 NIMBY. I understand "not in my back yard," but 20 that's -- that's different.

21 So what you've asked and what Mr. Holmer 22 has said is that we didn't meet the technical 23 requirement.

We did. In fact, look at the -- Mr.
Holmer, where is the board's -- the DRC denial?

Page 113 That's before them, right, in their package? 1 The three-page denial? The four-page denial? 2 MR. HOLMER: I've got -- I've got a hard 3 4 copy right here. 5 MR. DUNAWAY: Okay. MR. HOLMER: I'll put it up on the screen. 6 7 MR. DUNAWAY: We'll want to make sure that that thing -- let's look at the DRC denial. 8 There's a -- it's a four-page document, and 9 10 the -- the first standard project conditions --11 the first seven are just standard project 12 conditions. 13 The second are special project conditions. And -- and they're -- they're listed. And 14 that's fine. That's -- you know, again, they're 15 16 always conditions. 17 It could have been -- you can tell that on 18 page three, if we get it up -- okay. So -- so 19 this is the -- that's the standard project 20 conditions. They're always project conditions. These are the standard ones. 21 22 Go to page three, three of four. Special 23 project conditions. There are three special 24 project conditions. You can tell that number 25 three was -- the first two are always there.

Number three was added. Any further 1 2 development within the parcel boundaries will require review for compliance with stormwater. 3 Okay. That's a conditional requirement. 4 5 So if you find that you need a road, put it as number four. But look on page four. Go 6 7 to page four, the denial. It was not approved. It was denied. 8 The development plan is denied for the 9 10 reasons noted below. Well, note those below. 11 Keep scrolling down. Exactly. Exactly. There 12 isn't any. 13 What's the denial? And the denial is, 14 well, because we don't want a homeless shelter. 15 We don't want -- we don't want people living in 16 tents out on Sean's Outpost. 17 I don't know. We've met the objective criteria. The burden shifts. 18 19 MR. JONES: I -- I would like -- I would 20 like to -- I would like to -- we do understand 21 that Mr. Dunaway is applicating for his client. 22 And we're advocating for what was done for the 23 process and the LDC. 24 And again, I believe that this board --25 Mr. Drew stated very, very, very good. Was my

Page 115 decision. What's the Escambia County decision? 1 2 To deny the development order. 3 Was it arbitrary and capricious? And I still stand by it. No, it was not. This are 4 5 Land Development Code requirements that were required per the Land Development Code. 6 Black 7 and white. Those were not submitted. And no, we cannot approve special project 8 conditions of that magnitude because of the 9 extensive review that is required with 10 stormwater, and for the road, and for access. 11 12 Yes, we do minor -- very, very minor 13 special project conditions, as we stated, for signs, and then very, very minor, but this Land 14 Development Code of Escambia County, that's not 15 16 authorized me to. Those requirements must be reviewed by staff, must be on the site plan, 17 18 must be reviewed by staff, must be reviewed, and 19 they must meet the Land Development Code 20 before -- and we keep on saying a permit. This is a development order, which is distinct and 21 22 different from a permit. 23 In the special -- in the special 24 magistrate hearing -- Again, I know we're 25 arguing over whether or not that letter, which

Page 116 I -- I will like to see that letter, Mr. 1 2 Dunaway, that -- that -- with my signature. 3 (Mr. Dunaway hands a document to Mr. 4 Jones.) MR. DUNAWAY: And I would ask -- I have 5 the original, so they can --6 7 MR. JONES: This -- this -- this is not a 8 letter from me. This is not a signed letter. 9 Again, I would like to say -- say for the record -- be noted, it was noted that it was a 10 11 signed letter by me. It is not a signed letter 12 by me at all. I can -- this was -- this is one of my 13 staff members who put together some things to 14 help facilitate this process. This process. 15 16 And what was signed was stated that, yes, 17 we gave him -- we gave them some information, 18 information only to help them proceed with the 19 process. 20 I did not write that information. It was 21 a staff member who I -- I trust emphatically. 22 It was based on internal -- and I guess going back and forth to help you, especially with your 23 24 location criteria. This can help you do this. 25 So -- so -- so that's -- and I date the

Page 117 date that I gave it to him. 1 2 MR. DUNAWAY: And you signed it. MR. JONES: Yes. I -- I dated it and I 3 signed it to make sure that he got this, but as 4 5 far as me stating that, I did not write the content of that. I did not write the content of 6 7 that at all. 8 It's just -- yes, I -- I gave the date --I want to make sure I document that you got 9 10 this. So -- so -- so -- so I want to 11 clarify that for the record. 12 Now -- now -- now, during the special magistrate hearing, Mr. Will, he made those same 13 remarks and comments because the use. It shall 14 be here, whatever. 15 16 The special magistrate stated 17 emphatically -- and it's stated it's on page 18 four, which y'all have a copy. I would like to 19 read it for the record, Mr. Dunaway. 20 It says, "I agree with the county that the 21 current use by Sean's Outpost constitute a 22 development activity." So that that same 23 argument that he's been making for many, many, 24 many -- with County Attorneys' Office, with the 25 County Administrator, that -- that it would

Page 118 not -- we're not doing anything. 1 2 According to the code, you are. So that's 3 why we got you in this process. And we had -- we had had no one, as far as 4 my staff -- we do not go in with the intention 5 of automatically saying no, unless the code says 6 7 completely no with the zoning. 8 But with the process, we always like to give people the opportunity, but we had to bring 9 10 closure from the special magistrate hearing. 11 And this . . . we cannot do this. We cannot do this. 12 This board -- this process requires you to 13 make a decision. Was the denial of the permit 14 and -- denial of the development order to -- for 15 sake of clarity, as a development order, was 16 17 that arbitrary? Did I -- did we have the 18 grounds to make that denial? And the code gave 19 us the grounds to make that denial. 20 If they make -- if -- if they want to -if -- whatever their decision is, it will go 21 22 before a court. It will be up to the court to 23 make those same assertions and argue that with 24 special magistrate. 25 But the special magistrate hearing is sort

Page 119 of cut and dry. That they discuss uses. 1 And -and -- and -- and we cannot -- so are we 2 authorized the -- the -- the -- the staff to 3 make those special project conditions and 4 what's -- the Land Development Code is not 5 giving you the right to do that. It does not 6 7 give them the right to do that. 8 That's why we be careful, with the understanding of this board, with your duties 9 and your responsibilities, to make sure that 10 11 what's my -- it was a decision to deny it. Was 12 it based upon facts or was it based upon fiction? 13 The requirement is there. It speaks for 14 itself. And regrettably, their -- their 15 16 circumstances, I have -- we have to separate 17 ourselves from that issue. 18 MS. RIGBY: So based on -- based on the 19 letter that we just saw, the denial letter, what 20 is the basis for the denial? MR. JONES: The basis for the denial, 21 22 which is -- which is -- Mr. Dunaway was at the hearing. And it was clear, for the record. 23 24 That's why I say we could verify the tape for 25 the record. It was clear. Mr. Dunaway was

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there.

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2	And the same thing that I said at that
3	meeting I'm saying again. If you want to put up
4	for the record was clear that it was because
5	of the requirements of the Land Development
6	Code. They were not met.
7	They did not meet the access requirement.
8	They did not what what trigger a
9	stormwater review. None of that was shown.
10	None none of that was reviewed by staff.
11	None of that.
12	So, therefore, it had to be the plans that
13	they submit that my staff reviewed. They were
14	not there. So so so based upon my duties
15	as the as the planning director, I
16	recommended to the Chair at the time that this
17	development order be denied based upon those
18	facts, which they are governed. You can hear
19	the same facts.
20	And Mr. Will Dunaway was present, and so
21	able, so eloquent today to present why it was
22	denied. Not that he said that he doesn't know,
23	because he already made the case why it was
24	denied. So he heard that at that meeting.
25	MS. RIGBY: So based on this letter

Page 121 MR. JONES: What? 1 MS. RIGBY: Based on the denial letter it 2 says, "See below." But there's nothing below. 3 What should have been below is a reason for the 4 5 access requirement and stormwater requirements 6 were not met. 7 MR. JONES: Mm-hmm. 8 MS. RIGBY: That's what it should say. 9 Okay. 10 Let me back up here. Let me try to 11 understand this whole thing. In the beginning, 12 when the DRC reviewed the project, what was the 13 DRC reviewing? MR. JONES: We was reviewing the site 14 15 plan. 16 MS. RIGBY: Was it -- was it a 17 commercial --18 MR. JONES: It was reviewing --19 MS. RIGBY: -- site? Was it a 20 residential --MR. JONES: To answer your question --21 22 MS. RIGBY: -- site? 23 MR. JONES: -- Ms. Rigby, this was a 24 commercial activity. We reviewed this per -- as 25 a commercial development activity that requires

Page 122 site plan review, yes, ma'am. 1 MS. RIGBY: Okay. So it was reviewed as a 2 commercial site. 3 MR. JONES: Yes. 4 5 MR. HOLMER: The property use is listed as vacant commercial. Going to a campground is a 6 7 change of use. Change of use on commercial 8 sites requires development reviews. 9 MR. JONES: Yes, it does. 10 MR. HOLMER: The magistrate, of course, 11 kicking all of us back into this situation, we 12 had to figure out where we were going. MS. RIGBY: So it started out as 13 commercial use, but because it's a vacant site, 14 15 you can't have a vacant commercial use, I guess, 16 so then it went to a campground use? 17 MR. HOLMER: That was -- the developer 18 review was the change of use of the activity on 19 that site. 20 MR. JONES: Mm-hmm. 21 MR. HOLMER: That hasn't changed. The 22 development order was denied. It remains vacant 23 commercial. To change that to anything else 24 does require the DRC, along with the order we 25 got from the magistrate that put all of us into

Page 123 the DRC position. 1 MS. RIGBY: So was it reviewed as a 2 campground or was it reviewed as a commercial 3 vacant land? 4 MR. HOLMER: All right. It was reviewed 5 as a vacant commercial site going to campground. 6 7 MS. RIGBY: Okay. 8 MR. HOLMER: That's the use change. 9 MS. RIGBY: Going to a campground. 10 MR. HOLMER: Yes. 11 MS. RIGBY: So those performance standards 12 or design standards were then in a campground standard, if you will. 13 MR. HOLMER: If you will, yes. There's --14 there's -- there's generic, you know, change of 15 16 use, commercial piece of property. There's 17 generic ones that go along with that. And I know we're -- everybody's gotten 18 19 wrapped up in the idea of the roadway. Ι 20 understand that. That would kick in these other reviews. Let's not overlook the fact -- I mean, 21 22 it got overlooked in all the discussion at the 23 DRC. There are other deficiencies in this site 24 25 plan that would have ended in a denial for any

Page 124 other plan. It's not just that road. You know, 1 2 standards and things required on the plan that would hold everybody to . . . 3 MR. JONES: Yes. 4 5 MR. HOLMER: . . . simply weren't done. MS. RIGBY: But the denial said "see 6 7 below," and there was nothing below. That 8 concerns me, that if you can't tell me why I was denied, then I can't tell you how to fix it. 9 10 MR. JONES: I understand -- I -- I 11 understand -- I understand what you're saying, 12 but -- but as I stated before, Mr. Will Dunaway, 13 he was present at the meeting wholeheartedly -there's -- there's a record, and he -- and he --14 15 that's why we're here today. 16 After -- after that happened, that same 17 meeting, the same meeting is what -- he want --"I want to file -- I want to file for the 18 19 appeal." 20 We went back and forth on. We went back 21 and forth on whether he should have to pay the 22 funds. And we made the decision, well, he got 23 to pay for the appeal. 24 So -- so the issue for the denial, yes, 25 Mr. -- Mr. Jewel [sic] is absolutely correct.

Page 125 There were other issues that were -- that --1 2 that are germane to the site plan that were not 3 present. That were not present. 4 MS. RIGBY: But you're --5 MR. JONES: The primary -- the primary 6 issue that was present that was presented at 7 that site plan review hearing -- Mr. Will 8 Dunaway was present. And I know -- I know this young lady -- maybe there was something that we 9 10 may not have done by putting that before him, 11 but that's why we're here today. 12 It was denied primarily for the focus if 13 there was a oversight on someone's part. That's why we are here today. It was done primarily --14 that's why we're here, for the appeal for the 15 16 issuance of the -- because of those requirements 17 had not been met. And if he comes back and still cannot meet them, it will still be the 18 19 same thing. 20 MS. RIGBY: I guess -- I guess my concern 21 as a board member is, we are here today to say 22 whether or not the denial was arbitrary or 23 capricious. 24 I can't tell you because I don't have the 25 facts as to what, in fact, or why, in fact, it

Page 126 was denied. And that's what I can't wrap my 1 2 hands around. I don't have -- I don't have 3 punch lists. I don't have the -- you know, the review of the DRC to say, "Okay. This was 4 required. You didn't do this." 5 I mean, we talked about roads, sort of. 6 7 We talked about the four corners, sort of, but I 8 don't have any -- something concrete that says, you know, the denial was based on A, B, C and D, 9 and Mr. Applicant will not do A, B, C and D. 10 And obviously, then, yes, I can understand it. 11 12 It was denied. And the applicant doesn't want 13 to do it. Do you see what I'm saying? THE CHAIRPERSON: I agree 100 percent. 14 15 Let me ask counselor a question. Based on 16 what Ms. Rigby just said -- and we know that 17 this is -- this is tough for this board to make a decision. 18 19 If we remand this back to staff and charge 20 them with the task of gathering with the applicant, what is the consequence of that? 21 And 22 if there is a consequence, why can't we do that? 23 MS. HUAL: I'm not sure I know what you 24 mean by "consequence." Yes, you have the 25 authority to approve or disapprove or modify the

Page 127 decision of staff, and that could include a 1 2 remand with instruction, so . . . 3 THE CHAIRPERSON: That answers my 4 question. We have a couple of other speakers. 5 MR. GANT: I have a question. How -- To 6 7 the attorney: How are we tied to our -- how do 8 we consider the order to bring order from the DRC in terms of our -- the order eventually and 9 10 went against the staff presentation and -- and 11 the like? 12 Is there any kind of process you must 13 consider, or does one trump the other? I'm just trying to determine is -- the overall fact to 14 the board today, staff comments, the DRC order, 15 16 Dunaway presentation. MS. HUAL: Again, it's in your discretion 17 18 to weigh the evidence as presented. It's all 19 considered evidence. 20 MR. GANT: Did you -- so -- so the -- so 21 the DRC is not -- not the -- the only thing. We 22 need to consider everything else. MS. HUAL: No. 23 24 Okay. You want to instruct us MR. GANT: 25 on the -- we're not struck -- we're not stuck on

Page 128 the one document. 1 MS. HUAL: No. 2 3 THE CHAIRPERSON: There will be a chance to ask further questions for the staff from the 4 5 board, from the applicant. I'd like to call on a speaker. I believe 6 7 it's Richard Grimes. And if you'll step to the 8 podium, sir, and give your name and address and 9 be sworn in. 10 11 RICHARD PIERCE GRIMES, III 12 upon being duly sworn, was examined and 13 testified as follows: 14 MR. GRIMES: Richard Pierce Grimes, III, 15 16 254 Fennel Street, Pensacola, Florida 32505. 17 If you can pull the map up, you'll see the 18 house that says "Grimes." That's my house. 19 All the property that was purchased from 20 ECUA, half of it belongs to me, half of it belongs to my son-in-law's father. He lives one 21 house down from me. 22 23 Yeah, we purchased that property to keep 24 them from coming any closer. I've heard all 25 this about them. Them. Them.

Page 129 What about us? What about the people that 1 2 live in the neighborhood that are here to support me? What about our rights? 3 They burn constantly. How would you like 4 5 to open the windows at your house every night and have it filled with smoke and fire? 6 7 The portajohns are two feet off the 8 privacy fence that they put up. Mr. Dunaway said they put up for the neighborhood. 9 They put it up because code 10 No. 11 enforcement was allowed to come on the ECUA 12 property and take pictures. They put the privacy fence up so they couldn't take pictures 13 no more. 14 What about the property where there is no 15 16 privacy fence around on Cleo, where all those 17 people see this? There's nothing blocking it 18 from their houses. What about, you know, you 19 see everybody -- borrow pits? 20 The residents have something to say about a borrow pit being put in their neighborhood. 21 22 When they wanted to put probation and parole 23 downtown in the Coca-Cola building, they didn't 24 want it there because of the undue foot traffic. 25 Well, what about the undue foot traffic in

Page 130 our neighborhood? Yes, I'm not saying all these 1 2 people are bad or mean or going to do anything damaging. It's only going to take one. 3 I have a seven-year-old son. When this 4 all started, I had him and two of my grandsons 5 in the back yard look out the window. 6 There's 7 two men sitting on the ground at the fence with 8 a puppy talking to my children. 9 Now, they deny that. They say that other 10 people were out there and present, and that I'm 11 telling a lie. But I know what I saw. I know 12 what I read in the newspaper. Mr. Dunaway, the very first meeting three 13 years ago, they knew they had to have a road in 14 there that supported a 44-ton fire truck. 15 It's 16 in the Pensacola News Journal. It's not -- I'm 17 not just talking off my head. So they knew all 18 this three years ago. 19 They said these people are here 20 temporarily. There's two been back there. 21 One's been back there almost two years. Another 22 one's been back there a year and a half. How is 23 that temporary? 24 Some of those structures -- and I call 25 them structures -- they're tied between trees

Page 131 and Gulf Power -- are as big as my -- almost as 1 2 big as my house. Come on. So we do not -- the neighborhood should 3 have the right. We do not need this in the 4 5 neighborhood. And yes, this will be the first homeless campground permitted anywhere in the 6 United States. 7 8 If this gets permitted here, y'all could wind up having them behind your house because 9 10 you set a precedent at that point. 11 VOICE IN THE AUDIENCE: That's right. 12 MR. GRIMES: They brought in -- When Mr. King started all this, he put in the newspaper 13 that he did us a favor: He bought land in a 14 blighted neighborhood. I don't consider my 15 16 neighborhood blighted. But he did us a favor. 17 I've had one Realtor tell me that we could 18 expect a 10 to 25 percent drop in our property 19 values over the next two years if this gets 20 permitted. 21 But another one says, "Oh, it's 22 commercial. You can expect your property value 23 to go up." 24 When you look out my kitchen window and 25 see the top of three portajohns and all these

Page 132 tents, I really don't see my property value 1 2 going up any time soon. So I'm here to request that you deny this, 3 that you stand behind the county and deny this. 4 5 You know, it's one thing to want to help people, but you can't destroy somebody else at the exact 6 7 same time. 8 This doesn't need to be in a residential area. If this was a KOA or a Good Sam's, I'd 9 still be standing right here fighting it, so it 10 11 has nothing -- it has to do with the use, not 12 the people that are using it. And that's -that's really all I have to say. 13 14 THE CHAIRPERSON: Okay. Board, any questions of the speaker? 15 16 MS. GUND: I do. So you purchased the 17 rectangular property? 18 MR. GRIMES: No. You see where it's 19 L-shaped there? 20 MS. GUND: Mm-hmm. MR. GRIMES: On the -- be the south end 21 22 where Gulf Power is? That easement -- there's 23 an easement on the south end there that belongs 24 to Escambia County. It's going -- it's a 25 permanent easement. The sewer line runs through

1

there and all.

2 From that point, 272 feet is my property. From that point on over belongs to my 3 son-in-law's father, Mr. Biles. And he had to 4 leave. He had a doctor's appointment. He was 5 here, and he had to leave. So that's -- Yeah. 6 7 MS. GUND: That other one. 8 MR. GRIMES: No. That's my son-in-law's. 9 That belongs to Mr. Biles. They knew that. 10 They had it on one of their site plans, labeled it in our names, but for some reason it's not on 11 12 this site plan. Labeled it that way. 13 They tried to use it as a buffer. They had it labeled as a buffer on one of their site 14 plans. No one -- It didn't belong to them then, 15 16 but, you know, they listed it as a buffer. 17 MS. GUND: So that is this rectangular 18 piece. 19 MR. GRIMES: That's me right there, yes, 20 ma'am. MS. GUND: Okay. Parcel of land, but you 21 22 don't own that other rectangular piece? 23 MR. GRIMES: No. That belongs to Tony Biles, my son-in-law's father. So it's in the 24 25 family.

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Page 134 MS. GUND: He agreed that they can build a 1 2 road across it. 3 MR. GRIMES: Not a road. We bought it, and we -- we were under the impression they had 4 the right to cross it. I don't know . . . 5 nobody said they that could go in there and 6 build any of that. We were told they couldn't 7 8 build anything on it or, you know, occupy it in any way, shape or form. They just had the 9 ability to cross over it, is what ECUA informed 10 11 us when we bought the property. 12 MS. GUND: Thank you. 13 MR. GRIMES: Okay. THE CHAIRPERSON: Any other questions? 14 Staff, do you have questions? 15 16 MS. HUAL: Board members, I just wanted to caution you to follow up on your questions. 17 18 Your decision, whatever it may be, must be 19 supported by competent, substantial evidence. 20 So as you hear the testimony of lay witnesses, their testimony should be limited 21 22 strictly to facts of which they have personal 23 knowledge, unless you wish to qualify an 24 individual as an expert. Any other testimony is 25 considered pure speculation.

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1	THE CHAIRPERSON: Correct.
2	MS. HUAL: So May I ask the
3	witness
4	THE CHAIRPERSON: Yes.
5	MS. HUAL: And, yes, please refrain from
6	making assertions about property values unless
7	you're qualified as an expert on that. I've got
8	in the PowerPoint could you switch to that?
9	This all the way. All the way down to the
10	very last one.
11	Mr. Grimes, I'm going to show you it's
12	not in that one. Okay. Never mind. Go back to
13	the second one, if you would, please.
14	On that site plan on that site plan,
15	the long parcel on the west side that we're
16	talking about, on the site plan it's shown as a
17	single parcel of land running all the way from
18	the easement that's at the south end all the way
19	up through to the top and including the leg, so
20	to speak, that has the easement across it, on
21	the site plan that's all shown as ECUA parcel of
22	land that has one property reference number, you
23	purchased this property. It's no longer ECUA
24	property; is that correct?
25	MR. GRIMES: Hadn't been for two years.

Page 136 MS. HUAL: Okay. The lower half of it 1 2 belongs to you. 3 MR. GRIMES: Mm-hmm. Yes. MS. HUAL: The upper half to the Biles. 4 5 MR. GRIMES: Mm-hmm. MS. HUAL: Okay. And you've already 6 7 testified they're not here to -- they're not going to ask any questions about that. 8 9 MR. GRIMES: Right. Right. 10 MS. HUAL: That is important for the 11 staff, this issue of ownership. You know. 12 MR. GRIMES: Okay. I --13 MS. HUAL: The county --14 MR. GRIMES: Can I walk up there? 15 MS. HUAL: Sure. Sure. I will have to show it with the mouse, but --16 17 MR. GRIMES: Right here, if you take this 18 line right here and you draw it across, 19 everything this way is legally registered in my 20 name and deeded to me. Everything that way 21 belongs to Mr. Biles. 22 MS. HUAL: Okay. 23 MR. GRIMES: And it's legally deeded on 24 the county -- if you went to the county plan, 25 you'd see the division.

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1	MS. HUAL: It's like Sean's Outpost has on
2	their easement, the right to cross that.
3	MR. GRIMES: To cross it, yes.
4	MS. HUAL: Thank you.
5	Just wanted to the county has an issue
6	here, once again, with any site plan, treating
7	this as we would anyone else. If we're
8	approving a site plan that does involve someone
9	else's property, this involves yes, there's
10	an easement across it, but the ownership is in
11	the Biles. It's not ECUA. We want our plan to
12	be accurate. We want the plan to reflect that
13	there's an easement across that, and the
14	ownership.
15	MR. GRIMES: Sure.
16	MS. HUAL: Parcel numbers change when it's
17	submitted. We need to have that reflected on
18	the plan. We ask that of anyone. That's one of
19	those things that was not shown on this, the
20	requirement for that easement to be same sort
21	of I know it sounds nitpicky, but if we're
22	involving someone else's property they own, we
23	have requirements that we expect to be shown on
24	the plan. Thank you.
25	THE CHAIRPERSON: Thank you, sir.

Page 138 Any questions? Counselor. 1 2 MR. DUNAWAY: I actually thought Mr. Holmer was asking him a question. Was he making 3 4 argument? I wasn't sure. 5 MR. HOLMER: I asked a question and explained why. 6 7 MR. DUNAWAY: Okay. Understood. 8 Before I did cross-examine, I appreciate 9 the board attorney clarifying that. And I would just make that as a standard objection, that is, 10 11 that nonexpert testimony be not considered. This is a lay witness, so that testimony 12 13 regarding these other issues would be ignored. 14 CROSS-EXAMINATION 15 16 \_ \_ \_ 17 BY MR. DUNAWAY: 18 Mr. Grimes, you have complained to the Q. 19 Board of County Commissioners about the use of the 20 property by Sean's Outpost, have you not? 21 Α. Yes. 22 How many times have you appeared before 0. the Board of County Commissioners to complain about this 23 24 use? 25 A. I believe I spoke twice.

Page 139 And you've been -- you were present at the 1 Q. 2 DRC to object at that board; is that correct? 3 I've been to every DRC county -- you know, Α. every meeting about this, yes. 4 5 Including every special magistrate Q. meeting? 6 7 Α. Yes. 8 Q. Every opportunity you've been here to object to this use by Sean's Outpost; correct? 9 10 Α. Yes. 11 And you would consider that their use of Ο. the property to be, from your standpoint, a problem? 12 13 Α. Yes. And were you the one that helped in 14 Q. getting the word out to area neighbors about this issue? 15 16 Α. Yes, sir. I was the number one person. Ι mean, I'm at ground zero, yes. 17 18 Right. Your property actually abuts to Q. 19 the west; correct? 20 Yes. Α. And you have a house that is in lot six 21 Ο. that's labeled on --22 23 Α. Yes. 24 Ο. That's where you reside. 25 That's my homestead, yes. Α.

Page 140 And then all the ways behind you was the 1 Ο. 2 ECUA property before you and your son-in-law's father, who is Mr. Biles, is one lot north of you? 3 4 Α. Yes. 5 And y'all bought it at auction. Q. 6 Α. Right. 7 Ο. And y'all own the property. 8 You knew that its prior use, right -- you 9 were familiar with its prior use? 10 Yes. It was a gentleman to be -- I hope Α. 11 this is admissible. Freckles the Clown originally owned 12 it. When he passed away, his son lived on it on two 13 trailers. And they grew some trees and stuff back there. They had a little greenhouse at one time. 14 I know that -- for a fact that the county 15 16 during one hurricane, he allowed them to dump a lot of 17 debris on there. The county went in there and had them cleared up, and put -- he lost the property to back 18 19 taxes, and then they bought it from the gentleman that 20 bought it on the back taxes. So the prior use was a residential use in 21 Ο. 22 a temporary structure, and then it had code violations 23 because it was used for dumping; is that correct? 24 Α. No. I believe it -- they had two trailers 25 on it that he lived in, but it was more commercial, used

Page 141 for, you know, flower -- I don't know what the word for 1 it -- landscaping business, something like that, yes. 2 3 MR. DUNAWAY: I have no further questions. THE CHAIRPERSON: Board have any questions 4 5 of the speaker? Thank you, sir. 6 7 MR. GRIMES: Thank you. 8 THE CHAIRPERSON: Ivan -- Alvin Kelly. 9 MS. KELLY: Should be Catherine Kelly. My husband's not going to speak. 10 THE CHAIRPERSON: That will be fine. 11 12 State your name and address and be sworn in. 13 MS. KELLY: I'm Catherine B. Kelly. I reside at 4335 Bridgedale Road, which is three 14 blocks west. 15 16 17 CATHERINE B. KELLY 18 upon being duly sworn, was examined and 19 testified as follows: 20 21 THE CHAIRPERSON: Go ahead. 22 MS. KELLY: As I stated, I reside -- my husband and I reside three blocks west of the 23 24 Sean's Outpost. We resided there for 37 years. 25 And since Sean's Outpost has been there

Page 142 for the last three years, they have been allowed 1 to cut trees, burn wood, leaves, and other 2 3 trees. If I cut a tree in my yard, I have to get 4 5 permission to do it, to cut it down. Now, there is a no-burn ordinance that has been constantly 6 7 ignored. 8 And Sean's Outpost for the last three years, since they've been allowed to cut and 9 10 burn constantly, almost daily, I have not been 11 able to enjoy sitting on my front porch because of the smoke in the air. It's very difficult 12 13 for me to breathe because I have asthma, and it's a health issue for me. 14 There is also a safety issue for me 15 16 because there are a lot of strange people coming 17 through the neighborhood and Sean's post has 18 been three blocks away from our home. 19 Sean's Outpost is illegally on this site 20 because we do -- they do not have access to come in there because of the burning that they do. 21 22 The trucks -- the fire trucks can't go in and out of there. 23 24 And I know all of you have viewed and 25 looked at the local news and the national news

Page 143 as to what happened in Tennessee last week. 1 The 2 possibility exists that the same thing can happen to our neighborhood. 3 I can't burn leaves in my yard. Why 4 should they be able to do all the burning that 5 they do on their property? There shouldn't be a 6 7 double standard. 8 And for safety reasons, I am requesting this board to deny them access to -- well, I 9 10 can't -- you can't deny them access to their 11 property, but to please side against them being 12 on this property and doing the things that they are doing, for my personal reasons, and as well 13 as a lot of other people that live in the 14 neighborhood that are here and present today. 15 16 And I'm just asking you to consider my 17 objection because of health reasons, safety 18 reasons. 19 The trucks -- fire trucks can't go in 20 They say they have fire extinguishers. there. Fire extinguishers they don't always stop. 21 22 There's eight -- eight acres out there. And they have been allowed to cut and burn. 23 And I 24 don't think it's right. 25 If I burn leaves in my yard, Code

Page 144 Enforcement will do something about it. And I 1 2 don't think it's right that they are allowed 3 because the air should be for everyone. And they allowing me not to enjoy my personal 4 property because of the smoke in the air. 5 Please consider my objections. 6 7 THE CHAIRPERSON: Thank you. 8 Board, any questions of Mrs. Kelly? 9 (No response.) 10 THE CHAIRPERSON: Staff? 11 (No response.) 12 THE CHAIRPERSON: Mr. Dunaway. 13 14 CROSS-EXAMINATION 15 BY MR. DUNAWAY: 16 17 Q. Ms. Kelly, if I'm not mistaken, this is the first time that you've voiced an objection to this 18 19 process in an open public hearing; is that correct? 20 Yes, open public. Α. 21 Q. Yes, ma'am. 22 Α. But I have talked to Mr. Kimbrel personally . . . 23 24 Q. Yes, ma'am. 25 . . . down at the county commissioners' Α.

Page 145 meeting. 1 2 Q. Yes, ma'am. We appreciate that. And I expressed my concern. 3 Α. Your concern. Yes, ma'am. We appreciate 4 0. 5 that. 6 With regard to the allegations of cutting 7 and burning, were you familiar with the -- aware of the 8 fact that the county code enforcement apparatus has been -- well, I don't think it to be wrong to say 9 "vigilant" over the Sean's Outpost for the last several 10 11 years? Were you aware that code enforcement --I have -- I don't know what the Code 12 Α. Enforcement's have done. 13 Yes, ma'am. 14 Q. But when I smell the smoke, I get in my 15 Α. 16 car and go and look and see that the smoke -- it goes up in the air, in the atmosphere. 17 18 Yes, ma'am. Q. 19 And it spreads all the way over three Α. 20 blocks from there. And I'm sure it extends further. And you've made that complaint to Code 21 Ο. Enforcement? 22 23 I have called. Α. 24 Ο. To Code Enforcement? 25 I have called. Α.

Page 146 1 Q. Yes, ma'am. Yes, ma'am. 2 With regard to the illegal cutting, have you seen trees being felled on the property? 3 4 Α. No, I have not seen any trees being felled, but I can see smoke. 5 6 Q. Yes. 7 And it's coming from someplace. Α. 8 Q. Yes, ma'am. Α. Sand don't burn. 9 And you were talking about the cutting of 10 Ο. 11 trees, specifically is what I was referring to. 12 Α. Whatever is on their property that they are getting rid of, they have been burning it. 13 And you've seen trees being cut? 14 Q. I've seen the smoke. And you can look 15 Α. 16 straight through there and see that it's clearer than 17 what it was. 18 Yes, ma'am. Q. 19 Α. Over the years. I've stayed here at my --20 at our address for 37 years. 21 Ο. Yes, ma'am. Yes, ma'am. 22 And I never been able to look through that Α. 23 property and see through there. The water that's down in the drainage, I've never been able to see that. 24 25 Yes, ma'am. And you live to the west; Q.

Page 147 1 correct? A. Yes, I do. 2 3 Q. So between you and Sean's Outpost is Mr. Grimes' and Mr. Biles' property. 4 5 A. Yes, it is. MR. DUNAWAY: Yes, ma'am. No further 6 7 questions. 8 THE CHAIRPERSON: Any other questions from 9 the board? 10 (No response.) 11 THE CHAIRPERSON: Thank you very much. 12 MS. KELLY: Thank you. THE CHAIRPERSON: Staff, would you like to 13 14 make a closing statement? MR. HOLMER: I'll be happy to speak. 15 16 MR. DUNAWAY: Mr. Chairman, just a point 17 of procedure. I would request an opportunity to have rebuttal. 18 19 THE CHAIRPERSON: Yes. 20 MR. DUNAWAY: I'd like to call Mr. Kimbrel. I'd call Mr. Kimbrel. 21 22 \_ \_ \_ 23 MICHAEL KIMBREL 24 having been previously duly sworn, was examined 25 and testified further as follows:

Page 148 MR. DUNAWAY: Mr. Chairman, may I ask the 1 2 questions from here to facilitate that process? 3 THE CHAIRPERSON: Yes. 4 5 DIRECT EXAMINATION 6 7 BY MR. DUNAWAY: Mr. Kimbrel, earlier, in questions of one 8 Q. of the board members you provided some background and 9 10 details of the operation of the facility out there. 11 What I'd like to now ask you some 12 questions about, the actually -- the actual permitting process that got us here, and --13 14 MS. HUAL: Would you mind using the 15 microphone? MR. DUNAWAY: Oh. Well, I regret that it 16 17 appears that the battery -- maybe I've got -maybe it will. Does that work? 18 BY MR. DUNAWAY: 19 So Mr. Kimbrel, you've been involved in 20 0. 21 this process from its origination; is that correct? 22 Α. Yes, sir, that is correct. 23 And Sean's Outpost purchased this Ο. property. And what were your plans initially for the 24 25 property?

Page 149 Our plans initially were to build a 1 Α. bathhouse with shower facilities and restrooms, a 2 washroom for laundry purposes, as well as having a 3 series of tiny homes that people would graduate up to 4 5 from initially a campground area to a graduation into tiny homes. 6 7 Ο. And you knew and understood that that 8 process would have required an access road; correct? 9 Yes, sir. Α. 10 And then, when we first started going Ο. 11 through the process with the county, when all of those 12 kind of larger plans went by the wayside, what was the process by which we got to where we finally decided that 13 it looks like we're going to have to make an application 14 simply to do what we're doing? What was that process 15 16 when we finally made that decision? 17 Not quite sure if I understand your Α. question. 18 19 So basically, we -- from the initial 20 plans, massively changed once we were outbid for the ECUA property. And then from that, we started bit --21 22 our main source of funding ended up . . . 23 Donations that were coming in? Ο. 24 Yeah, yeah. Donations started drying up, Α. 25 and so we didn't have the funding that we initially had

Page 150 thought that we were going to have. And so it -- the 1 2 process slowly started getting whittled down to what you're currently seeing on the screen today. 3 And just to clarify, what you're currently 4 Ο. 5 seeing on the screen is essentially what is the present operation, with just a few more tent sites; is that 6 7 correct? 8 Α. Yes, sir, that is correct. Ο. And that is the current operation, is 9 10 simply people with permission can pitch a tent and go 11 through the process as is outlined in the . . . 12 Α. Yes, sir, that is correct. 13 Ο. What trees and clearing have you done on the properties illegally? 14 15 Α. None. 16 Q. Has there been any other commercial activity or any other unpermitted activity out there, 17 18 other than what -- the idea that people are just 19 referring there? 20 No, sir. Α. So you heard Ms. Kelly just state that the 21 Ο. 22 area is cleared. That area that was -- is the strip, 23 that area has been cleared, hasn't it, that you cross 24 over that's owned by Mr. Biles? 25 Yes, sir, that -- that -- that area has Α.

Page 151 been cleared, minus -- minus the trees. 1 Who cleared that? 2 Q. I believe Mr. Biles did. 3 Α. Because he owns that property; right? 4 Q. Yes, sir. 5 Α. Okay. What area of Sean's Outpost has 6 Q. 7 been cleared? 8 Α. Other than, like, basic landscape 9 maintenancing [sic] --So y'all removed all --10 Ο. 11 Weeds. Α. 12 Q. -- of the junk that you found out there. Yes, sir. 13 Α. And what was that? What did you find out 14 Q. on the property? 15 16 Α. Out on the property when we first initially bought the property, it ranged from -- there 17 was a series of flower pots to a jet ski, huge piles of 18 19 rubble from -- which looks like construction debris. There was some playground equipment. It -- it -- it 20 basically looked like a dump site. 21 22 And what improvements did y'all make in Ο. 23 that? 24 Α. We -- we removed all of the debris. 25 The -- some of the construction debris, like huge pieces

Page 152 of concrete we used to outline trails and what is called 1 the road or the dirt path, the dirt road. 2 3 And even Code Enforcement commended us on a good job of cleaning it up and a good use of the 4 5 construction debris that had been on property. Explain to the board the process that 6 Ο. 7 you're working with, the State Department of Health and 8 local health officials and those inspection processes 9 that were occurring on the site. So we initiated weekly inspections with 10 Α. 11 the Escambia County Health Department at a fee of \$50 12 per inspection. 13 And they would come out once a week basically unannounced. They would call me 30 minutes 14 ahead of time, saying, "We're on our way out there." 15 16 And I would -- sometimes was able to meet 17 them; sometimes was unable to, to escort them through 18 the property. And they would walk around, if I was with 19 them, point out, you know, this is going to be a 20 problem. This isn't a problem. These are things you want to look for that 21 22 are going to be health violations. And these are things that we look for when, you know, we're inspecting 23 24 trailer parks or RV campgrounds. 25 And in some cases, if things that they had

Page 153 pointed out to me existed during one of the inspections, 1 2 they would note it in the inspection, and then it had to be corrected by the next inspection, so when they'd come 3 back out, they would notate that it -- you know, the 4 5 previous violation was corrected. And over time, they started requesting 6 7 that we do less and less inspections. If I'm correct, 8 they currently do one inspection a year for most permitted facilities. 9 And so, after, I believe it was, six to 10 11 eight months of weekly inspections, we dropped bimonthly to eventually monthly, to where now they -- they do not 12 come out and inspect. And I believe that they've even 13 stated that our campground is cleaner than some of the 14 RV parks that they inspect. 15 16 Ο. So what, if any, adverse issues are going on out there, from a neighborhood perspective? You've 17 18 heard Mr. Grimes, and you've heard Ms. Kelly testify. 19 What is your response to that? 20 So some of the concerns that they have Α. I -- I share. I personally would like to see less 21 22 burning going on, but our rule out there is that they 23 can only burn for one of two reasons: And that's either 24 to cook or to stay warm, which is also permitted in the 25 county code.

Q. And you've gone through that process and know that those are two exceptions to the open-burning rule; correct?

Correct. And -- and they -- they are well 4 Α. 5 aware that they are not allowed to cut down any trees or anything on the property, so they either pick up dead 6 7 growth off of the ground or there have been people from 8 the neighborhood and the surrounding Escambia County area that has brought in firewood on their own accord. 9 I haven't asked -- I have never requested 10 11 firewood to come in, which people have just brought in 12 firewood, knowing that they would need something to stay warm with. If we had the finances, we would probably 13 lean towards propane. 14

Q. And, in fact, you provided through the winter months, at the county's request, propane heaters; correct?

A. Yes, sir. And -- and we still have them.
And when we have the propane, we use that in lieu of
burning.

21 Q. Michael, what other aspects -- what other 22 efforts have you and Sean's Outpost taken with regards 23 to any type of problems or concerns that have come up 24 and been brought to your attention? I mean, have they 25 been quickly rectified?

Page 155 Yes, sir. 1 Α. 2 Q. And give us an example of a situation that was -- you know, that came up, came to your attention 3 and was rectified. 4 5 I'm actually drawing a blank right now, Α. but let's see. 6 7 0. Well, Mr. Biles -- earlier there was 8 testimony that you put in -- Mr. Grimes testified that 9 you put in the fence to keep the Code Enforcement from 10 taking pictures. Is that why you installed the fence? 11 No, sir. Α. 12 Ο. Why -- why did you install the fence? 13 Mr. Grimes had no problem sharing with us Α. that he was not too happy about what we were doing. And 14 we were trying to be respectful neighbors because 15 16 working in homelessness, we are -- we are very much aware that homelessness is very much frowned upon. 17 It's -- in -- in some cases even vilified by -- the view 18 19 of homelessness is that it's all criminals and drug 20 addicts. 21 And so we -- we understand that that's -that that's the view, so out of respect, we wanted to 22 23 put up a privacy fence. And we -- we share all concerns 24 with the criminal element in homelessness. We recognize 25 that there is a criminal element in homelessness. And

Page 156 those people are not welcome on our property. 1 2 MR. DUNAWAY: No further questions. 3 THE CHAIRPERSON: Thank you, sir. 4 MR. KIMBREL: Thank you. 5 MR. JOLLY: I'm sorry. May I speak? THE CHAIRPERSON: Did you sign up? 6 7 MR. JOLLY: No, sir, I didn't. 8 THE CHAIRPERSON: We'll get your 9 signature. MR. JOLLY: Didn't know I was supposed to. 10 11 MR. JONES: Once he signs the form, can he 12 speak because time is --13 THE CHAIRPERSON: Come forward, sir. And if you'll be kind enough to state your name and 14 address and be sworn in. 15 16 MR. JOLLY: My name's Louis Jolly. I live 17 at 1418 Cleo Drive. 18 19 LOUIS JOLLY 20 upon being duly sworn, was examined and testified as follows: 21 22 23 MR. JOLLY: I been living at that place 24 in -- on Cleo Drive for a long time. And I'm 82 25 years old. As far as those people talking about

Page 157 cutting down trees, I've seen them cut the trees 1 2 down. I've cleared the -- be clearing the bushes 3 in there. My fence is my back yard, and the 4 tents the people live in, they probably as far 5 as from here to that window there is how close 6 7 they are to my property. 8 And every morning when I get up and step out my back door, I'm on notice. I don't know 9 who's back there or who's not back there. 10 11 People coming and going all the time, but I'm concerned about my safety, my wife's safety, and 12 my neighbors' safety. 13 So as far as smoking and setting those 14 porta-johns go, they smell pretty ripe sometime, 15 16 so when I get ready to sell my property, when 17 you show your property to somebody, and they 18 say, "Well, what's all that blue stuff? What's 19 all that back there?" 20 I said, "Well, them's the homeless people live back there. You can get that put in the 21 22 house. When you buy the house, you can get that for free." 23 24 So I just wanted to say that very -- I'm 25 82 years old, and we're concerned for our safety

Page 158 as well. Thank you. 1 2 THE CHAIRPERSON: Just a moment. 3 Board, any questions? (No response.) 4 5 THE CHAIRPERSON: Staff, any questions? Counselor. 6 7 MR. DUNAWAY: Nothing. 8 THE CHAIRPERSON: Thank you, sir. 9 State your name and address. MS. JOLLY: My name is Helen Jolly. I'm 10 11 Jack Louis Jolly's wife. 12 13 HELEN JOLLY 14 upon being duly sworn, was examined and testified as follows: 15 16 17 MS. JOLLY: I live at 1418 Cleo Drive. 18 Our house is right adjacent to the tents. The 19 tents are as close from one end of your podium 20 to the other end. That's how close we are. We can look out our kitchen window and see 21 22 the people walking around. There's probably 23 four to five tents back there. They're large, 24 very large. They have two or three vehicles out 25 there.

They turn their vehicles when they drive 1 2 in. They are -- their lights shine, you know, right on our back door, which comes out the 3 side. 4 And in discussing how thin or thick the 5 woods are, when we moved here, we chose not to 6 7 have a privacy fence because we do like to see 8 the woods. 9 So when Mr. Freckles died, and then when 10 his nephew moved out, there was no more woods 11 down -- there were no more -- they both lived in 12 a trailer, and they took the trailer -- the nephew took the trailer with him. 13 And so naturally, the woods are thinner 14 15 now because we can see these people. We hear 16 them. If they're fussing and fighting, we hear 17 that. 18 We found a dog in our back yard that did 19 not climb the fence. It was a very sick dog. 20 And there's no one -- there's only one lady living on our left side, and she has dogs in her 21 22 house that lives in her house, so she's an 23 animal lover, but the dog was very sick. And my husband fed him. And he finally left -- and the 24 25 next day, and we didn't see him anymore.

My husband let him outside the fence 1 because he could not climb the fence. He had a 2 large growth on the very back of his back, and 3 he was very mangy. And he was -- he was so weak 4 5 he could hardly walk. And as far as the tree cutting, there was 6 7 a big -- big large tree, maybe about 11 inches 8 in diameter on the right side -- on their side of the fence. 9 10 And when we -- my husband and I both walk 11 because he had an illness. And so our yard is 12 very large, and we walk in our yard. And when he -- when he -- when we walk, we walk down that 13 side. 14 And one morning the tree was down. It had 15 16 been cut to a -- maybe about three feet from the 17 bottom. And it was laying down. So they had 18 cut the tree overnight because we're in our back 19 yard every day. But we don't stay there because we don't feel comfortable. 20 And there is burning, like Ms. Kelly said. 21 22 She may live three blocks over but we live adjacent to them. And there is burning a lot. 23 24 And we did notify code to begin with, but 25 then, you know, we realized that well, code

couldn't go to -- they couldn't always -- they couldn't go inside the property, so we stopped contacting them.

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But we, too, have allergies. And we can't breathe good, so we have to stay inside. And when they -- when they moved in this property, they kept it very quiet what they were doing.

8 And, in fact, my husband was walking. And 9 he asked Mr. King when he came down the alley 10 behind our house, which belongs to the county, 11 and then Mr. Grimes bought the property that's 12 behind them and adjacent to us as well. He 13 bought that property.

14But Mr. King was coming down the alley15behind our fence. And my husband introduced16himself to him and asked him if they were17building.

And he mumbled and kept walking. He didn't say anything, so we didn't know anything. We watched because we saw the toolshed that they had out there that they were using to mow and do different things with. And we observed that.

But, yes, we can take pictures from our
back yard. We don't have to climb on anything.
And if any of you would like to come out to our

Page 162 house, you're very welcome. We would welcome to 1 2 take you back there and show you exactly. And those tents go all the way down from 3 their privacy fence on the left or to the west 4 5 all the way to the east, as far as their 6 property, I suppose. 7 Thank you. 8 THE CHAIRPERSON: Thank you, Ms. Jolly. 9 Any questions of Mrs. Jolly? 10 (No response.) 11 THE CHAIRPERSON: Staff, any questions? 12 (No response.) 13 THE CHAIRPERSON: Counselor, any questions? 14 15 (No response.) 16 THE CHAIRPERSON: Thank you, Mrs. Jolly. 17 MS. JOLLY: You're welcome. 18 THE CHAIRPERSON: We will ask for closing 19 statements at this time, beginning with the 20 staff and ending with the applicant. MR. HOLMER: Thank you, Mr. Chairman. 21 22 I'd like to bring us back. We've gotten 23 some testimony here. Once again, there's been 24 testimony that's got a lot of emotion attached 25 to it. There's been testimony about the use of

the property.

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We're not here today to determine the use on the property. We're here today to discuss the denial of the development order.

5 The person serving as chairman that day? 6 Should they have written in that entire -- the 7 whole list? Sure, they could have. Would it 8 have changed the denial? No. Those 9 deficiencies were still there, the deficiencies 10 that resulted in the denial.

Y'all made mention of -- some board members made mention of remanding again. We're not here with a conditional use, where this board determines if a use is appropriate or not.

In that case, sure. You could say, "Hey listen. There's -- there's some outstanding issues here. Why don't you go back? Why don't you go back and see if you can resolve those and then we'll talk about it?"

20 You're not determining use. We're 21 determining that development order: Was the 22 denial backed up by facts in the code or was it 23 not? It's -- it's -- I mean, I hate to 24 keep saying this. It's that simple.

It's not feelings. It's not could it meet

Page 164 It's did it. Did it meet it that day? Was 1 it. 2 the decision right? 3 Could they go back? Sure. They could go back. Could they meet the conditions? Hey, 4 5 that's -- that's what the county was asking for in the first place. That's not what we're here 6 7 today to talk about. 8 We're here today because the applicant has come and said, "This denial was incorrect. 9 Tt. 10 was denied incorrectly. There was not a basis 11 for the denial." 12 Appeals are a different animal before this board. It's not a matter of coming in and 13 saying, "Here, have a second bite at the apple." 14 That would be great. That's fine. You know, we 15 16 want everyone to come into compliance. 17 We say all the time, especially Mr. Jones 18 says all the time about granting or finding a 19 way, giving someone a path to compliance. 20 So there is a path to compliance. It's meeting the requirements of the LDC. That's not 21 22 what we're here about today. What we're here 23 about today: Was that denial factually based? 24 Yes or no. 25 This board, when it comes to an appeal --

Page 165 So if you scroll down, please. 1 These are the 2 pages from the Land Development Code dealing with administrative appeals. 3 Please go down. So here we have final 4 5 determination. It's laying out that you're going to need -- if you do a finding one way or 6 7 the other, here's what your finding is. You're going to have to state how the 8 decision of the administrative official was 9 10 arbitrary or capricious. If that's not proven, 11 then you would need to affirm the denial. And below that, if you would just scroll 12 down, board authority. Let's face it: I'm a 13 geek about these development standard things. 14 Ι truly think this board's authority is not to say 15 something is some technical standard that can be 16 17 waived or it's okay to move ahead without, because there is -- there is a further technical 18 19 review called for. 20 If we want to talk about the roadway and 21 going to some sort of impervious use or 22 semi-impervious use surface, there's a ratio for each one of those as to the stormwater that 23 24 comes off of it. That's how stormwater 25 calculations are based.

We don't have any calculations. 1 There 2 were none of those on the site plan. The 3 request is in there: "Hey, we want to see this all-weather surface," but there's no 4 calculations. 5 The things -- the deficiencies missing on 6 7 the plan, they're there. We're -- we don't get 8 to look at it. And I keep saying this. I'm sorry. We don't get to look at this as, "Wow, 9 is this an appropriate use or not?" 10 11 This isn't the avenue for that. This 12 isn't what the DRC is doing. The DRC is doing: 13 Does the plan meet this? Yes or no. The denial was based on deficiencies on the plan. 14 Like I said, three sides. We're right in 15 16 the middle. Okay. We don't necessarily want to 17 be in the middle. That's where we are. 18 The magistrate was quite clear, explaining 19 to the applicant and to the county, "Hey, go 20 through the DRC. Bring this to a resolution." 21 The application -- the site plan submitted 22 for that resolution in October had multiple deficiencies that would have resulted in a 23 24 denial for any use. You could have brought in a 25 grocery store, and with all those deficiencies,

Page 167 it still would have been denied for a grocery 1 store. The use isn't factoring into the staff's 2 decision. 3 The county does not -- the county 4 disagrees with the idea that the denial was 5 arbitrary and capricious. 6 7 We've outlined areas of the code where the 8 facts are. We've explained that the denial was based on those deficiencies. Those are facts. 9 10 Those are facts. That was not arbitrary. We're 11 not talking about somebody not liking a use. That's capricious. We didn't go there. Staff 12 13 did not go there. The staff went letter of the law. 14 And really, at the end of the day, that's what this 15 16 is about, was it -- was it arbitrary and 17 capricious, the denial? County says no, it's The burden should be, if the applicant 18 not. 19 wants to overturn that, they need to prove that 20 it is. Thank you. 21 THE CHAIRPERSON: Thank you, sir. Board, any questions of staff? 22 23 (No response.) 24 THE CHAIRPERSON: Counselor, before your 25 summary, would you like to ask staff any

questions?

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MR. DUNAWAY: Mr. Chairman, I believe -- I 2 believe we've covered all that. I'd be happy to 3 move right into closing. 4 5 THE CHAIRPERSON: Okay, sir. Remember your mic. 6 7 MR. DUNAWAY: Thank you, Mr. Chairman and 8 members of the board. And we do appreciate the time and effort that you spent, along with the 9 public who are here who have been through this 10 11 process, again, many times. 12 And you are the appeal board. You're the 13 board that acts in the shoes of the planning director, and you get to make the decision that 14 the planning director can make. 15 16 The standards here are very clear. The 17 Irving standards of the Supreme Court give it those -- those standards. That is, did the 18 19 applicant show substantial compliance with the 20 objective requirements of the Land Development Code for the applicant use that it was 21 22 requesting? What it was requesting here in this 23 case. 24 If it did, then the burden shifts to the 25 staff to prove that the issuance of that permit

Page 169 would be adverse -- in fact, adverse to the 1 2 public. General ideas of, "I don't like it, not in 3 my back yard, " Supreme Court has already 4 indicated that that kind of lay testimony does 5 not rise to the level of an adverse use. 6 7 We've met those objective criteria. The 8 staff failed to meet its burden in showing that it's adverse. This board ought to approve the 9 10 permit. 11 And let us get to that point. What is it 12 that you would be approving? Because Mr. Holmer 13 said this is not about the use of the property, and any quotes from the special magistrate as to 14 what we were going through. 15 16 And let me be clear, because Mr. Jones 17 brought this up: The applicant, Sean's Outpost, 18 did not -- we weren't -- we are not fighting 19 currently today the fact that we had to make a 20 development review submittal. We gave in to 21 that. We gave up on that fight. We lost. 22 We filed the application for the 23 development permit. We paid the fee, \$859. We're here. We know that we are going through 24 25 some process of approval.

Page 170 The question -- and I think Ms. Rigby 1 pointed this out in her discussion with the 2 staff. And I think the staff's articulation 3 back to you shows very clearly the tension and 4 5 the problems that we're having. We're not talking about a subdivision. 6 We know what a subdivision is. We're not talking 7 8 about a KOA campground, which I think Mr. Grimes stated eloquently his position on that. 9 It doesn't matter whether it's going to be 10 11 a homeless camp or a KOA campground. Mr. Grimes 12 is going to be opposed to somebody doing something to make this property behind him not 13 14 vacant. It's commercial property. It's currently 15 16 vacant. We wanted to use the use that we're 17 doing now. The magistrate addresses that in 18 page two of the original order. 19 And he says -- and he goes, "The county 20 position is that the change of use from vacant to the existing use is a, quote, 'development', 21 22 pursuant to the Land Development Code." 23 I get that. Mr. Holmer pointed it out. 24 He said, "That's why we had to file the 25 application." We agreed. We did so.

And so what is it that we were doing? 1 Just that. Just that. We want that use to be 2 3 approved. And we know that that use is approved because the code says it's approved, and the 4 5 staff has already testified earlier they told you this is an allowable use. 6 7 So what, then, is it that needed to be 8 approved? And it gets to the point of where 9 we -- of where we are. The code -- look at the 10 provisions. And Mr. Holmer had them up there. 11 It says here, "The specific provisions 12 identified in the appeal application are 13 applicable. Make sure that these are applicable to the decision." 14 Well, look in your package. Look at my 15 16 letter of October the 27th. You have that 17 package before you. I state that at the DRC, 18 the issue is narrowed to the county claim that 19 the design standard manual, DSM, Section 2.2 20 required the construction of an all-weather 21 access road. 22 And you heard Mr. Jones testify in 23 response to Ms. Rigby's question. What is it? Because the development order doesn't say. 24 Just 25 says, "Denied. See below." Nothing there.

And he said it's the access road and the 1 stormwater that would be associated with it. 2 But we know from the testimony that stormwater 3 is not required if there's no access road 4 5 required. So the question is: Is there an access 6 7 road? Is that required? Staff said DSM 2.2 8 requires that. We didn't hear any testimony or 9 evidence submitted to that today. 10 But in any event, we -- the applicant said 11 to the DRC: "Okay. Issue the permit contingent 12 upon the access road. Make it a condition." 13 Staff says, "We can't do that because it wasn't on the application. We can't add to it." 14 But you see, you've got -- you've got special 15 16 conditions all the time. Go back and do the 17 stormwater -- the flood plain analysis. And all 18 kinds of conditions that are put on there. 19 We don't think this road's necessary. And 20 the reason, again -- and point this out -because we're not doing anything. We're not 21 22 developing anything. We're simply asking for what is the use. 23 24 And that's what the magistrate said. The 25 change -- the existing use is vacant. We know

1 that.

2	What is the use now? Well, people are					
3	there. There went the battery. They're using					
4	it. It's a residential use. We know that the					
5	use is allowed under the code. The question is:					
6	How do you get to a point in which you, the					
7	county, can approve?					
8	MR. JONES: Probably need to get to the					
9	mic. Be able to hear you and record it.					
10	MR. DUNAWAY: How do we get to a position					
11	in which the county					
12	(Microphone stand collapses.)					
13	MR. DUNAWAY: Because it's happened					
14	before.					
15	MR. HOLMER: I got it. It happened to you					
16	the last time.					
17	MR. DUNAWAY: Mr. Chairman, I'm just going					
18	to hold it so it doesn't drop through.					
19	MR. HOLMER: There you go.					
20	MR. DUNAWAY: So that's the whole point.					
21	What is it that we're doing? It's the use. It					
22	was vacant. You know that there was a					
23	trailer two trailers on there. Hauled the					
24	trailers off. It was used as a dump, so we're					
25	using it for residential use and temporary					

Page 174 shelters, so that's -- that is the issue that's 1 before you. That's the clear matter that is 2 before you on this case. 3 We believe that you, based on the fact 4 5 that you've seen, can overturn staff and issue the denial -- and issue the permit. 6 7 If you feel uncomfortable with that, then 8 we are asking, just as we asked the DRC, then overturn staff's condition, issue the permit and 9 condition it on the implementation or the 10 11 building of an all-weather road. 12 Again, I point out that we're not doing 13 anything. There's no -- the only reason the road it said was there was for the 14 porta-potties. Of course, you know, that's --15 16 we're past that point. If you want to make it a 17 condition, then do so. You have that authority. The staff said that it's black and white 18 19 and there are no shades of gray, but if this 20 were the case, there wouldn't be an appeal process. You act as the planning director. 21 Planning director has a lot of discretion in the 22 23 review and interpretation of the Land 24 Development Code. 25 As has already been stated, this is a use

that has never been permitted in Escambia County. I get that. It's a difficult decision. It's one that the staff needed your support. It needed a board of citizen-appointed persons who can say to the county and to the -- our citizens that, "You know what? This is an allowable use."

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People are living in Escambia County in a 8 tent all the time. We ought to give them a 9 place that is permissible, and this landowner is 10 11 doing so. It's a commercial zoned property, 12 heavy commercial, light industrial. We didn't 13 even go into all the details as to what could be permitted in this type of location in this type 14 of area. 15

16 The densities for this property, of which 17 there are currently 15 dwellings, people who are 18 dwelling on this eight acres, the densities in 19 here well exceed hundreds, the number of people 20 who could be permittable living in this area, 21 neighbors to the Mayfair Subdivision.

We get it that it's an unpopular use. We get it that people are justifiably -- are regrettably concerned about the people who don't have permanent housing, but as you stated -- as you've heard from the director, and as you see from the detailed analysis and the detailed operations manual, this is a well-run process.

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Code Enforcement is -- I promise you that the county is well aware of 1999 Massachusetts. Code Enforcement knows where we are. If there were issues regarding nuisance or any type thing, they would be written up. We would be written up. Those have not come before you.

10 There's not been the clearing that was 11 talked about, trees. There's not been any 12 adverse use of the property. In fact, the only competent substantial evidence before you is 13 that the property has been greatly improved. 14 It's been greatly improved from its previous 15 16 use. That use is for the housing of persons who 17 don't have permanent housing in Escambia County, and that is the use that Sean's Outpost requests 18 19 that you allow to continue.

20 We allow -- we request that it be granting 21 of the permit without the road, but if you 22 believe that that is, in fact, a DSM 2.2 23 requirement, then condition that on the issuance 24 of the permit and give us the permit. Thank 25 you.

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Page 177 1 THE CHAIRPERSON: Thank you, sir. 2 Board, any questions of the applicant? 3 (No response.) THE CHAIRPERSON: Staff, any questions of 4 the applicant? 5 6 (No response.) 7 The Chair will now THE CHAIRPERSON: 8 entertain a motion regarding this item. In your motion, please state whether or not you adopt 9 staff's findings of fact. 10 11 If for any reason you do not accept 12 staff's finding of fact, please go through the 13 criteria and address each one specifically as why you do not concur with staff's findings. 14 Do we have a motion? 15 16 MS. RIGBY: I thought we didn't have a staff's finding of fact per se on an appeal. 17 18 MR. HOLMER: There's not. That 19 boilerplate language . . . Sorry. That's 20 boilerplate language because most cases that come before us -- Once again this is a different 21 22 case. Y'all are deciding to overturn the denial 23 or, you know, agree with the denial is basically 24 what's . . . 25 MS. RIGBY: In overturning the denial, we

	Page 178
1	don't do we therefore we don't therefore
2	accept the development order; correct? Because
3	then that would be acting as a development
4	review specialist.
5	MR. DUNAWAY: Which you are. I mean, just
6	for clarification. The code Land Development
7	Code says that you in the appeal have all of the
8	authority as the planning director for the
9	county. You are now the planning director for
10	the county.
11	MR. HOLMER: And it's the highlighted
12	portion right there in front of you.
13	Also remind you about the technical
14	specifications to exempt any development from
15	required review or approval by the authority.
16	You know, you can't change technical standards
17	or the application therefor. You are deciding
18	was the was the denial good or bad,
19	essentially.
20	MS. HUAL: If you could just scroll up to
21	the board finding right there.
22	MR. HOLMER: There you go.
23	MS. HUAL: So in essence, if you decide
24	that the appeal decision was an error, in
25	which case you may wish to reverse it or modify

Page 179 it, or you may find -- affirm that decision. 1 2 Those are the options. And the decision was to deny the development order. 3 4 MR. HOLMER: Correct. 5 THE CHAIRPERSON: So bottom line: We either accept or deny. 6 7 MS. HUAL: Affirm. 8 THE CHAIRPERSON: Affirm or deny. Affirm 9 or deny. 10 MR. CASEY: Mr. Chairman, I have a 11 question. 12 THE CHAIRPERSON: Yes. You may affirm in 13 whole or in part. And by that I mean modify it. Okay. 14 MR. DUNAWAY: Deny and or remand -- well, 15 16 in that case, yes. 17 THE CHAIRPERSON: Or remand it. MS. HUAL: Well, if you're not affirming, 18 19 meaning you're reversing in whole or in part and 20 you add modification with an instruction, then that would entail remanding. 21 22 MR. JONES: And -- and -- and attorney, I 23 would suggest that if that is the decision, I 24 want specific and -- specifics on what this 25 board is directing. If that's the case, I'm

Page 180 going to be asking to request so that they'll 1 know . . . we'll know on what we are looking for 2 if there is a remand, based upon the Land 3 Development Code. 4 MR. GANT: Let me see the rest of 5 Paragraph B in its totality. I can't see it. 6 7 Thank you. 8 MR. CASEY: Mr. Chair, my question is, I 9 guess just being straight, without trying to search for the wording, is in the case of 10 11 accepting staff's finding of denial, where does 12 the applicant go from here? 13 Can he go back and do the re-ap to complete the requirements? I'm not sure if 14 that's something that staff could answer or the 15 16 applicant could answer. 17 MR. DUNAWAY: I'd be happy to answer for 18 Mr. Casey, subject to the staff's . . . 19 MR. JONES: Go ahead -- comments. 20 MR. DUNAWAY: The Land Development Code provides for the opportunity to appeal the Board 21 22 of Adjustment's decisions to a Circuit Court. 23 Circuit Court then would rule as to the legality 24 of the action here. 25 So that would -- that would be the next

Page 181 step if the board affirmed, essentially, the 1 staff denial. 2 MS. HUAL: I think Mr. Casey's question 3 was whether or not the applicant would have the 4 5 opportunity to go back to the DRC and meet the stated requirements that were deficient --6 7 MR. CASEY: Correct. 8 MR. DUNAWAY: Under the current --MS. HUAL: -- on the first go-round. 9 10 MR. DUNAWAY: -- procedural requirements 11 that are before us that were set by special 12 magistrate Beasley in the order that you were -submitted and that you have, the options that 13 the special magistrate gave the applicant were: 14 Obtain the permit or cease the activity within 15 16 90 days of final appeal. 17 So we know in that circumstance that under 18 the current Land Development Code, an appeal of 19 a staff decision is not the same as a 20 conditional use, so there's no 90-day or 180-day 21 cooling-off period. 22 We could resubmit, but we started this 23 process over a year ago the first time, so we 24 would be -- we only have 30 days to appeal, so 25 the appeal process to the Circuit Court is much

Page 182 faster than we know that we could ever get any 1 2 action at the county level. Otherwise, we would trigger the special magistrate's requirement 3 4 that we vacate the use. MS. HUAL: When did the clock start on the 5 90 days? 6 7 MR. DUNAWAY: The clock starts on the 90 8 days when final appeal is rendered. 9 MS. HUAL: Okay. MR. DUNAWAY: So I couldn't afford not to 10 11 do that because I won't have time in the 30 days 12 to get something resolved to meet the magistrate's order, so that's why I say the 13 practical consequence of that would be an appeal 14 to Circuit Court, of which we would do. 15 16 We would much prefer that if you had 17 some -- if you had some concern about that, that 18 you remand because a remand back from this board 19 would keep us out of the jurisdiction of the 20 special magistrate and would be able to allow that process to continue under the -- under your 21 22 guidance. You are the planning director now. MR. JONES: I would like to add -- Thank 23 24 you, Mr. Dunaway, for that legal -- and Madam 25 Attorney, that, again -- just -- just for

Page 183 clarification, don't know what you're going to 1 decide but -- if determine that if you continue 2 to come back, with the understanding that it 3 still must meet the requirements. 4 And we do need to -- and I will suggest 5 that we give it a timeline, a reasonable 6 7 timeline. This has been going on for guite a 8 while. We -- we -- because I know that they want 9 10 closure. We got to get closure to the 11 community. We got to give closure for ourself. 12 This has been going on a good length of time. So -- so -- so those conditions 13 of -- we're discussing, but that's the case with 14 the attorneys, we can be specific -- specific on 15 16 what we're looking at and what staff is required 17 to do and what they expect per the Land Development Code, if that is the case. 18 19 MR. HOLMER: I just want to point out: Α 20 remand, going back, getting a second bite of the apple, seeing could it meet it, that doesn't 21 22 address the question before you today. 23 MR. JONES: Absolutely. Thank you. 24 MR. HOLMER: The question before you today 25 is, was that denial arbitrary, capricious?

Really, it all boils down to that. It's not 1 2 could they go back and get another chance and make it? Hey, we don't know. At the heart of 3 the matter, we need some sort of finding from 4 5 this board on the issue of the day. MS. RIGBY: Okay. But what I'm seeing, 6 7 you're asking me -- asking us was the denial 8 arbitrary and capricious? But all we know is that it was denied because it didn't meet some 9 standards. What are those standards? 10 11 MR. HOLMER: I went through that. Ι 12 discussed those, which we talked about. Yes, we talked about the roadway and what that could 13 trip. I discussed the buffering requirements 14 that weren't met. I discussed the labeling. 15 16 MS. RIGBY: But you said there was other 17 things. If we had a list of -- and -- and I 18 guess that's what I'm looking for. I'm used to 19 seeing it, is that we denied you -- we denied 20 you, Mr. Applicant, because of this list. MR. DUNAWAY: "See below." 21 22 MS. RIGBY: And the applicant can say, "Yeah. I better do that." 23 24 Then, yes, you denied it and it was -- it 25 was a fair denial because the applicant is not

going to do it.

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2 The applicant has stated that you want a road. To me, it seems like this road came last, 3 but I don't know because I don't have 4 5 documentation that says when the road came into play or -- What I think happened here -- and I'm 6 7 basing on just the information given -- is that 8 this at first was a square peg that was going to fit in a square hole, and everybody on the board 9 knew what was going on. 10 11 That square peg rounded because they 12 decided they couldn't afford to do the bathhouse or -- or the structure, so the square peg became 13 round. But we've still got this square hole. 14 Okay? 15 16 So now we have to somehow figure out how 17 this square -- this round peg can fit into the 18 square hole. And through that process, there has been many variations of comments that, okay, 19 20 well, since you're not doing this anymore, the 21 bathhouse, the permanent structures, you're now 22 doing this, now these are your criteria to fall under. 23 Like he said, we're doing nothing. 24 What 25 do you want us to do if we're doing nothing?

Page 186 This is an animal all in and of itself. 1 This probably is not in the LDC, as far as 2 performance standards, as far as criteria, to a 3 certain degree. I don't know. 4 I would -- in my mind, I would think that 5 they would be looking at this as a campground, 6 7 and what are the criteria, the conformity of a 8 campground, and do they meet them. 9 They meet the standards A through G but 10 they don't meet standard S, Q, L and M. Ι 11 can -- I can -- I can say, "Yes, your 12 denial was correct." But not knowing specifics, 13 in general that is arbitrary. MR. HOLMER: You've talked about doing 14 subdivisions. Different animal. Fully 15 16 understand that. You're going through that 17 process. 18 When you get to the stage for a 19 development order, let's say your preliminary 20 plat. As to those comments, one of the things you get and you get signed off is from each 21 22 reviewer signing that disposition sheet saying, 23 "Hey, everything's done." 24 MS. RIGBY: Mm-hmm. 25 MR. HOLMER: We move forward. Because

Page 187 that's your thing, saying, "Hey, I met all their 1 2 conditions." 3 MS. RIGBY: Right. MR. HOLMER: We don't have that. 4 It didn't meet all the conditions before going to 5 the sign-off stage. Once again --6 7 MS. RIGBY: Why did it go to final if it 8 didn't meet that step? MR. JONES: Because -- I would like to --9 to submit this for -- in evidence. 10 The 11 evidence -- And I know that Mr. Rigby -- I mean 12 Mr. Dunaway definitely has this. There was a letter forwarded to him by 13 order of the special magistrate stating that we 14 had to send a copy of these comments to Mr. 15 16 Dunaway, the comments that are -- that are right 17 here -- he got a copy -- stating on what he got 18 to do for the September 28th site plan review 19 meeting. These comments right here. 20 MS. RIGBY: Okay. 21 MR. GANT: Read those comments. 22 MR. JONES: Yes. Yes, yes, yes. For the record -- for the record -- I'm 23 24 quite certain that Mr. Dunaway has this letter. 25 Certain.

Page 188 We need -- it says, one of the comments --1 2 MR. DUNAWAY: Mr. Chairman, the only -- if I could, the only reason I would object to this 3 is because the appeal that we're doing is coming 4 from DRC. We're coming from a denial at DRC. 5 As Ms. Rigby knows, at DRC, lots of things 6 7 get resolved one way or the other. Out of 8 DRC -- and I refer back to your standards for -and that is, the specific LDC provision 9 10 identified in the appeal application, are they 11 appropriate? 12 The appeal application made clear, and it's part of your record -- the appeal 13 application and the county -- the staff didn't 14 object to that. They didn't -- and then they 15 16 didn't present any evidence contrary to that. But the appeal -- and look at my letter of 17 18 October the 27th. That's my appeal. That's my 19 letter to you as the board, my appeal. 20 And it says, "At the DRC, the issue was 21 narrowed to the county claiming that the design standard, DSM 2.2, required an all-weather 22 road." 23 24 And again, the testimony during the 25 hearing -- now we're in argument -- but the

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testimony during the hearing was from Mr. Jones this was narrowed to the road, the all-access road.

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And the reason it was is because the 4 county knew that the road would kill the 5 project. It knew that, because I had been up 6 7 front with that since way back before.

I can't build a road if I don't have any money. I can't build a road, so is there a way we can work through this process without the 11 road?

12 And -- and there was a time -- but at the end, it turns out that, no, you can't. And so 13 we said, "Well, condition the permit -- issue 14 the permit conditioned on the road." 15

16 But what's before you is an appeal of the 17 DRC, not appeal of staff's random comments 18 because I -- you know, we've got April comments. 19 We've got all kinds of comments out there.

20 But as you know, Ms. Rigby, it's what was the denial at DRC. And the DRC was narrowed to 21 22 the issue of the all-weather road, so we 23 believed that we were appealing the denial of 24 the staff based on an all-weather road. That's 25 what we -- that's what we thought.

That's why we paid the \$682.60 to make this appeal, so we could bring it to you and say, "One, we don't think the road is necessary and we don't think the staff has proved it. And we didn't think they proved then. We don't think they proved it tonight -- I mean today." But if it is, as we said at DRC, clearly

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8 to the DRC, well, then, issue the permit conditioned on it because everything else we've 9 10 done. And that's what we appealed. That's what 11 the third paragraph is, so that's what your 12 provision -- specific LDC provision. Identify in the appeal application, are they appropriate 13 to the decision, and was the decision not in 14 compliance with those provisions? 15

We think we've met all those objective
criteria, and the burden would shift under the
Irving standard.

19 So I would object to Mr. Jones now in 20 argument, after the hearing is closed and the 21 board is discussing, to introduce comments which 22 I acknowledge we received. Absolutely. We 23 received a bunch of comments throughout the 24 years, but we narrowed these issues down at DRC 25 to the 2.2 DSM, was an all-weather road

required? That's what we appealed.

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2 MR. JONES: Now, in response to answering 3 the question -- there was a question asked regarding -- because I think -- I think it's 4 5 perfectly clear that they stated that they did not want to do, which is the primary -- one of 6 the primary concerns, which is probably most 7 8 costly for them. That's not my issue. That's not my issue, the cost. 9

I think it was stated emphatically by Mr. Stromquist that -- that they are aware of the comments, but they did not meet the requirements of complying on the site plan, to give us the opportunity to review for stormwater for the road in any other comments that that may trigger this.

17 They acknowledge the fact that they 18 received the comments. He just acknowledged the 19 fact that he got them. He just acknowledged the 20 fact that they know that they can do it, but "we 21 really don't want to do it."

So I think -- and I think at this point, the testimony is quite clear from Mr. Drew and Mr. Dunaway of what the primary issues are from -- from the comments that they received,

Page 192 and they acknowledged those things. 1 2 So and if you -- and again, that's why I 3 say, we have those. If you want to see them, we can submit them right now. 4 But it has been acknowledged that they 5 have them. We know why we're here. Because we 6 7 just cannot and don't want to meet the 8 condition. That's his -- his assertion, board, his assertion that due to this condition, we 9 cannot -- our code does not allow for this 10 11 because other things that stated that -- that 12 this triggered this -- this triggered this. 13 It's in here. They were aware of things so we were -- but through that, Mr. Rigby -- Mr. 14 Dunaway already gave his closing remarks. 15 16 I'm just responding to the comments that 17 Ms. Rigby is stating to readdress that fact, not 18 to rehash this all over again. 19 And what he said by him was said by Mr. 20 Drew, too, for me. The conditions . . . there 21 MR. HOLMER: 22 are conditions. They're small things. They 23 don't trigger other things. 24 The reason that the county approves a 25 development order, we want everything on that

Page 193 site plan. It's real simple. We have 1 2 inspectors who go out to make sure everything was done according to the plan on that piece of 3 4 paper. 5 If we were to conditionally approve something, a road, we don't know how much 6 7 impervious surface. We don't know how much 8 runoff. We don't know how the stormwater is going to be handled. 9 10 If the county approves the site plan 11 without all that -- without that stuff on there, 12 what happens when the complaints roll in? 13 MR. JONES: Absolutely. MR. HOLMER: Well, I think they're causing 14 15 problems for me downstream. Our inspector goes 16 out with a set of plans. It's not on the plans. 17 It's, "Well, we're going to do this." Where's the calculations? 18 19 We're in a position if it's not on that 20 plan and we need it on that plan, we have to 21 stop it at that point. There's a reason why 22 everything needs to be drawn on that plan. 23 And years down the road, someone could 24 have an issue. "Was it drawn on the plan?" 25 "No, it wasn't drawn on the plan. It was

Page 194 just going to be worked out later." 1 2 Mr. Jones is correct. We simply don't 3 have that leeway. We're not doing that. I'm 4 sorry. 5 MR. CASEY: Mr. Chair, if I may say, you know, what we're here to decide, if the process 6 7 was done correct. 8 And listening to everything, taking out the emotions, I'm hearing that's -- and I'm 9 convinced that staff is saying that two 10 11 requirements weren't met. And the applicant is 12 also understanding that the requirements weren't 13 met. So that being said, you know, I'm 14 convinced that the process -- the justification 15 16 for staff to deny it, I'm in a position that --17 I don't take it real light -- if all the 18 discussion's been taken care of, to move that we 19 accept the recommendation of staff's denial. 20 THE CHAIRPERSON: Okay. We have a motion to accept staff's finding of fact. 21 22 Do we have a second? 23 MS. GUND: Well, I too believe that you 24 weren't doing nothing. You were doing something 25 with the property, and going through the process

Page 195 of the county. And the county was in it for a 1 lot of years. I mean, they know the process and 2 3 that the process was not followed, so I second. I agree with Mr. Casey, and I second that 4 motion. 5 THE CHAIRPERSON: We have a motion and we 6 7 have a second. Second by Judy. Motion by Mr. 8 Casey. Discussion. 9 MS. HUAL: Just to clarify, the motion is 10 11 to affirm the decision. MR. CASEY: Yes, the denial. 12 13 MS. HUAL: Okay. 14 MR. CASEY: Correct. THE CHAIRPERSON: Discussion? 15 16 (No response.) 17 THE CHAIRPERSON: All those in favor, 18 signify by raising your right hand. 19 (Three hands raised.) 20 THE CHAIRPERSON: Oh, boy. Those opposed, likewise? 21 (Three hands raised.) 22 THE CHAIRPERSON: It's a tie vote, so the 23 24 staff's findings are accepted. Okay. 25 MR. DUNAWAY: Ms. Hual, may I ask a

Page 196 procedural question? 1 2 MS. HUAL: Yes. 3 MR. DUNAWAY: Given the fact that we have a three-three vote, and knowing that I have to 4 5 appeal that process, the motion was to accept staff's findings of fact, which we know there 6 7 are no findings of fact. MS. HUAL: Which I asked for the 8 9 clarification. 10 MR. DUNAWAY: Then Ms. Gund stated the 11 process was not followed. 12 MS. GUND: I'm sorry. 13 MR. DUNAWAY: I would request --14 MS. GUND: The process was followed. I'm sorry. I meant to say that the process -- the 15 county has a process, and it was followed. 16 It 17 was -- well, how do I put that? I guess it was 18 not followed by you guys. 19 MR. DUNAWAY: That's -- that's -- yeah, 20 that's what I heard -- I heard you say, that 21 Sean's Outpost did not follow the process. And 22 so I don't know what to appeal. 23 MR. GANT: I think the -- the vote was to 24 affirm the staff's -- approve -- approve the 25 staff's decision -- findings and decision, so I

Page 197 think that's -- is that correct? 1 MS. HUAL: That was what I understood. 2 3 And that was why I made a point of clarifying, to be sure that that was, in fact, Mr. Casey's 4 motion. 5 MR. DUNAWAY: Yes, ma'am. I just -- And I 6 7 understood that. It's just that there were no 8 findings of fact. 9 MS. HUAL: No. I think it was to affirm the decision. 10 11 MR. DUNAWAY: Yes, ma'am. 12 MS. HUAL: Is that true, Mr. Casey? 13 MR. CASEY: Yes, absolutely. 14 THE CHAIRPERSON: Any other business? (No response.) 15 16 MR. HOLMER: Yes, ma'am. We do have a 17 variance case on the 21st at 8:30 a.m. 18 THE CHAIRPERSON: Without objection, we 19 stand adjourned. 20 (Hearing concluded at 12:31 p.m.) 21 22 23 24 25

Page 198 1 2 3 CERTIFICATE OF REPORTER 4 5 б STATE OF FLORIDA ) ) 7 COUNTY OF ESCAMBIA ) 8 I, DAVID A. DEIK, CP, CPE, Professional Court 9 10 Reporter, certify that I was authorized to and did stenographically report the foregoing Board of 11 Adjustment proceedings; and that the transcript is a 12 true record of the proceedings contained herein. 13 I further certify that I am not a relative, 14 employee, attorney, or counsel to any of the parties, 15 nor am I a relative or employee of any of the parties' 16 17 attorney or counsel connected with the action, nor am I financially interested in the action. 18 19 20 21 2.2 23 DAVID A. DEIK, CP, CPE 24 Professional Court Reporter 25