

AGENDA
ESCAMBIA COUNTY BOARD OF ADJUSTMENT
February 20, 2019—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. Approval of Resume Minutes.
 - A. Approval of Resume Meeting Minutes from the January 16, 2019 Board of Adjustment Meeting.
6. **Consideration of the following cases:**
 - A. **CASE NO.: AP-2017-02**
ADDRESS: 11400 Blk. Gulf Beach Hwy.
REQUESTED APPEAL: An appeal of a compatibility decision by the Planning Official
REQUESTED BY: David Theriaque, Agent for Teramore Development, LLC and Shu Shurett and Leo Huang, Owners
7. Discussion Items.
8. Old/New Business.
9. Announcement.

The next Board of Adjustment Meeting is scheduled for Wednesday, March 20, 2019 at 8:30 a.m., at the Escambia County Central Office Complex, Room 104, 3363 West Park Place.
10. Adjournment.

Board of Adjustment

5. A.

Meeting Date: 02/20/2019

Attachments

Draft January 16, 2019 Board of Adjustment Meeting Minutes

DRAFT

RESUMÉ OF THE MEETING OF THE BOARD OF ADJUSTMENT HELD January 16, 2019

CENTRAL OFFICE COMPLEX
3363 WEST PARK PLACE, BOARD CHAMBERS
PENSACOLA, FLORIDA
(8:30 A.M. – 10:33 A.M.)

Present: Auby Smith
Bill Stromquist
Judy Gund
Jennifer Rigby
Michael Godwin
Walker Wilson

Absent: VACANT

Staff Present: Caleb MacCartee, Urban Planner, Planning & Zoning
Horace Jones, Director, Development Services
John Fisher, Senior Urban Planner, Planning & Zoning
Juan Lemos, Senior Planner, Planning & Zoning
Kayla Meador, Sr Office Assistant
Kristin Hual, Assistant County Attorney

REGULAR BOA AGENDA

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.

Motion by Board Member Auby Smith, Seconded by Board Member Judy Gund

Motion was made to accept the January 16, 2019 BOA meeting packet.

Vote: 6 - 0 Approved

4. Proof of Publication and waive the reading of the legal advertisement.

Motion by Board Member Auby Smith, Seconded by Board Member Judy Gund

The Clerk provided proof of publication and motion was made to accept.

Vote: 6 - 0 Approved

5. Approval of Resume Minutes.

A. Approval of Resume Meeting Minutes from the December 19, 2018 Board of Adjustment Meeting.

Motion by Board Member Auby Smith, Seconded by Board Member Judy Gund

Motion was made to approve the December 19, 2018, BOA Resume Meeting Minutes.

Vote: 6 - 0 Approved

6. **Consideration of the following cases:**

A. **Case No.: CU-2019-01**

Address: 15 Manor Drive

Request: Conditional use to place an accessory structure in the front yard of a waterfront lot

Requested by: Andrew Blanton, Agent for Jerry Treadway, Owner

No BOA member acknowledged any ex parte communication regarding this item.

No BOA member acknowledged visiting the site.

No BOA member refrained from voting on this matter due to any conflict of interest.

Motion by Board Member Michael Godwin, Seconded by Board Member Judy Gund

Motion was made to approve the Conditional Use, with the condition that it must meet all floodplain management requirements.

Vote: 6 - 0 Approved

B. **Case No.: CU-2019-02**

Address: 216 N Old Corry Field Road

Request: Conditional use to allow automobile sales, used autos only

Requested by: Wiley C. "Buddy" Page, Agent for Iuri Manolov & Valeriia Dvoriadkina

No BOA member acknowledged any ex parte communication regarding this item.

No BOA member acknowledged visiting the site.

No BOA member refrained from voting on this matter due to any conflict of interest.

Motion by Board Member Auby Smith, Seconded by Board Member Michael Godwin

Motion was made to delay until a pre-app has been completed by the DRC.

Vote: 6 - 0 Approved

C. Case No.: V-2019-01

Address: 15 Manor Drive

Request: Variance request to reduce the required front property line setback for the placement of an accessory structure on a waterfront lot from 60 feet to 25 feet

Requested by: Andrew Blanton, Agent for Jerry Treadway, Owner

No BOA member acknowledged any ex parte communication regarding this item.

No BOA member acknowledged visiting the site.

No BOA member refrained from voting on this matter due to any conflict of interest.

Motion by Vice Chairman Walker Wilson, Seconded by Board Member Auby Smith

Motion was made to approve the Variance, with the condition that it must meet all floodplain management requirements.

Vote: 5 - 1 Approved

Voted No: Board Member Jennifer Rigby

D. Case No.: V-2019-02

Address: 1522 White Caps Lane

Request: Variance to reduce the required front yard setback of 16 feet to 9 feet

Requested by: Wiley C. "Buddy" Page, Agent for Mel and Pauline Kerns, Owners

No BOA member acknowledged any ex parte communication regarding this item.

No BOA member acknowledged visiting the site.

No BOA member refrained from voting on this matter due to any conflict of interest.

Motion by Vice Chairman Walker Wilson, Seconded by Board Member Michael Godwin

Motion was made to accept Exhibit map from applicant.

Vote: 6 - 0 Approved

Motion by Board Member Michael Godwin, Seconded by Board Member Auby Smith

Motion was made to disagree with Staff's Findings of Fact and approve the Varinace.

Vote: 6 - 0 Approved

7. Discussion Items.

8. Old/New Business.

9. Announcement.

The next Board of Adjustment Meeting is scheduled for Wednesday, February 20, 2019, at 8:30 a.m., at the Escambia County Central Office Complex, Room 104, 3363 West Park Place.

10. Adjournment.



DEVELOPMENT SERVICES ADMINISTRATIVE APPEAL WORKSHEET

Board of Adjustment

6. A.

Meeting Date: 02/20/2019

I. SUBMISSION DATA:

APPLICANT: David Theriaque, Agent for Teramore Development, LLC and Shu Shurett and Leo Huang, Owners

DATE OF ADMINISTRATIVE DECISION: July 24, 2017

DATE OF APPEAL APPLICATION: August 7, 2017

PROJECT ADDRESS: 11400 Blk. of Gulf Beach Hwy.

PROPERTY REFERENCE NO.: 23-3S-31-2001-000-000

ZONING DISTRICT: Commercial

FUTURE LAND USE: Mixed-Use Suburban

III. REQUESTED APPEAL::

On July 24, 2017, the Escambia County Planning Official issued a determination of land use compatibility in relation to a request from Teramore Development, LLC.

The determination was that a proposed Dollar General store would not be compatible based on location criteria found in Section 3-2.1 of the county Land Development Code.

The submitted administrative appeal seeks to overturn the decision of the planning official in this matter.

III. RELEVANT APPEAL AUTHORITY:

**Land Development Code of Escambia County, Florida (Ordinance 96-3 as amended),
Section: 2.04.00 & 2.04.01**

Sections 2.04.00, Appeal of Administrative Decisions and 2.04.01, Procedures for the 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.

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 filing 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.

IV. BACKGROUND INFORMATION

The request by Teramore Development, LLC for land use compatibility was denied on July 24, 2017, by Escambia County Planning Official, Horace Jones.

The Administrative Appeal was filed with the Board of Adjustment on August 7, 2017, within the 15 day deadline provided in the LDC.

The case was added to the agenda for the scheduled October 18, 2017 BOA meeting.

At the October 18, 2017, BOA meeting, the Board voted 5-0 to deny the appeal of the Planning Officials Determination. The Board amended their findings to add that their decision was based on competent and substantial evidence presented by the expert witnesses.

At the October 17, 2018, BOA meeting, the Board granted a continuance to the Nov. 14, 2018 BOA meeting.

Attachments

AP-2017-02

Order Granting Petition for Writ of Certiorari Signed by Judge Duncan 8-3-18

Notice of Expert and Supplemental Authority Filed by Meredith Crawford

Attachment to Notice of Expert and Supplemental Authority

Letter from David Theriaque dated 11/9/18

Transcripts from 10/18/17 BOA Meeting

Notice of Continuance

AP-2017-02



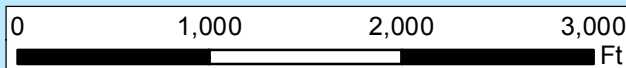
GARCON
SWAMP



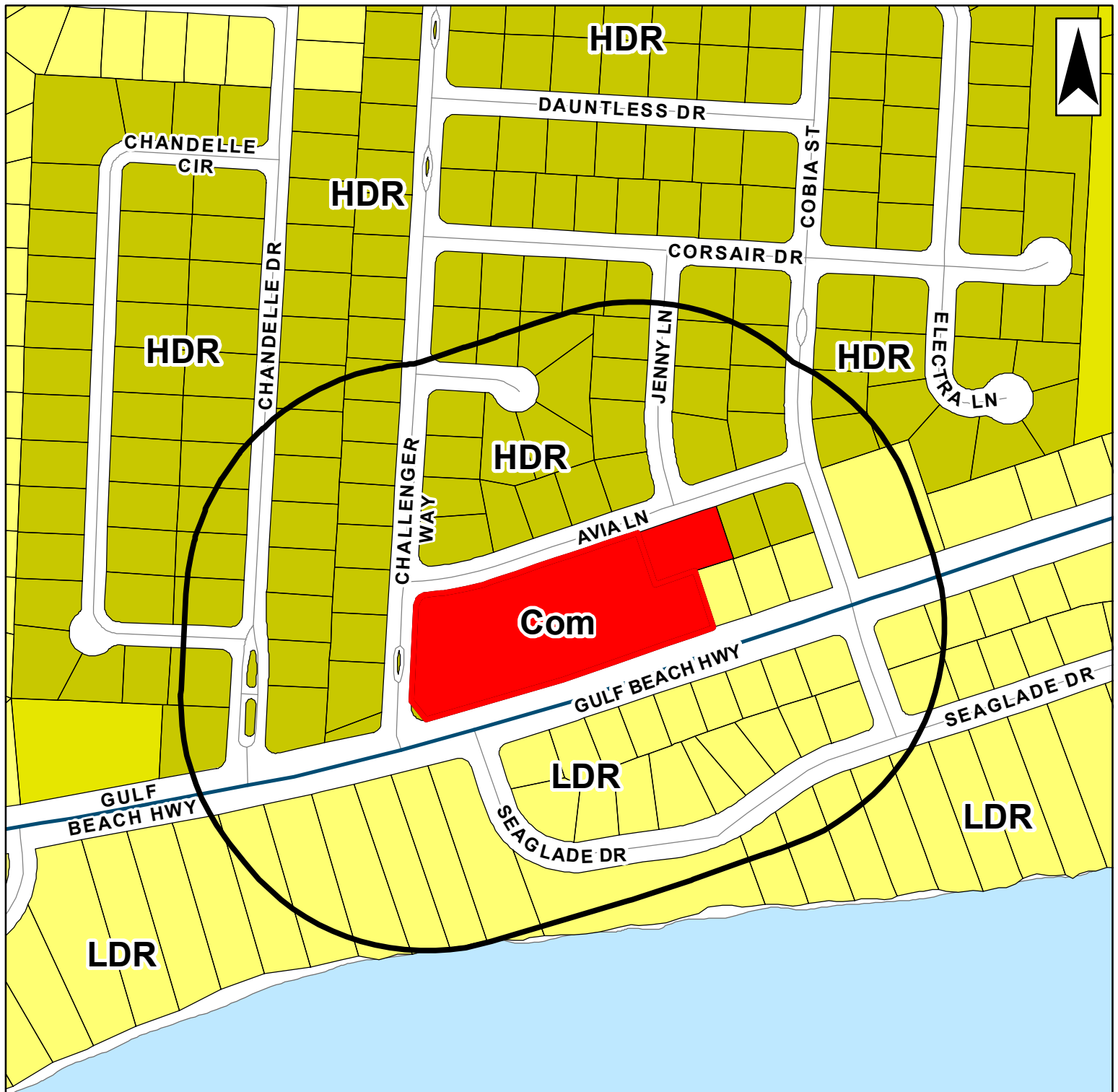
This map is provided for information purposes only. The data is not guaranteed accurate or suitable for any use other than that for which it was gathered.

Andrew Holmer
Planning and Zoning Dept.

AP-2017-02 LOCATION MAP



- PRINCIPAL ARTERIAL
- MINOR ARTERIAL
- COLLECTOR
- LOCAL ROAD



BIG
LAGOON



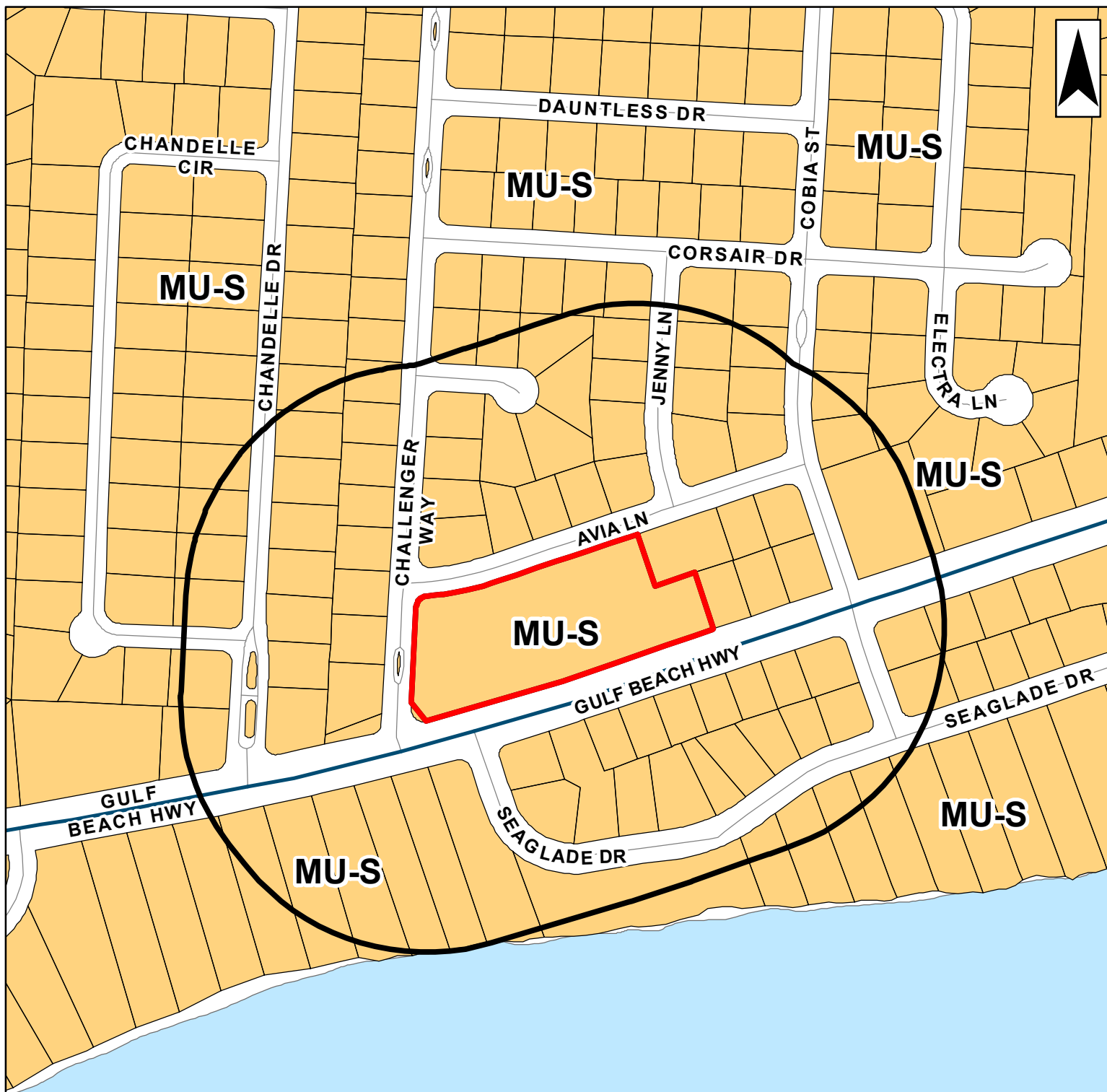
This map is provided for information purposes only. The data is not guaranteed accurate or suitable for any use other than that for which it was gathered.

Andrew Holmer
Planning and Zoning Dept.

AP-2017-02 500' RADIUS ZONING



- PARCELS
- PRINCIPAL ARTERIAL
- MINOR ARTERIAL
- COLLECTOR
- LOCAL ROAD



This map is provided for information purposes only. The data is not guaranteed accurate or suitable for any use other than that for which it was gathered.

Andrew Holmer
Planning and Zoning Dept.

AP-2017-02 FUTURE LAND USE



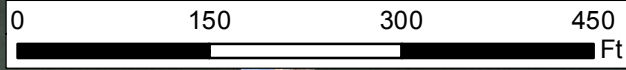
- PARCELS
- PRINCIPAL ARTERIAL
- MINOR ARTERIAL
- COLLECTOR
- LOCAL ROAD



This map is provided for information purposes only. The data is not guaranteed accurate or suitable for any use other than that for which it was gathered.

Andrew Holmer
Planning and Zoning Dept.

AP-2017-02 AERIAL MAP



- PARCELS
- PRINCIPAL ARTERIAL
- MINOR ARTERIAL
- COLLECTOR
- LOCAL ROAD



**NOTICE OF
PUBLIC HEARING
BOARD OF ADJUSTMENT**

TYPE OF REQUEST: ADMINISTRATIVE
APPEAL

CASE NO: AP-2017-02

DATE: 02/20/19 **TIME:** 8:30 AM

LOCATION OF HEARING
ESCAMBIA COUNTY CENTRAL OFFICE COMPLEX
3383 WEST PARK PLACE
BOARD MEETING ROOM

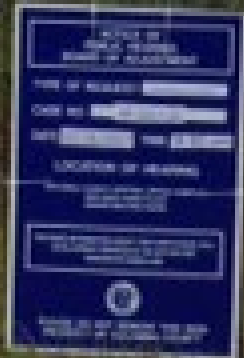
FOR MORE INFORMATION CALL:
DEVELOPMENT SERVICES AT 585-3476 OR VISIT
WWW.MYESCAMBIA.COM

PLEASE DO NOT REMOVE THIS SIGN
PROPERTY OF ESCAMBIA COUNTY

Public Hearing Sign



Looking onto Subject Property



Looking East along Gulf Beach Hwy.



Looking West along Gulf Beach Hwy.



Escambia County Planning and Zoning

Development Services Department

3363 West Park Place

Pensacola, FL 32505

Phone: (850) 595-3475 • Fax: (850) 595-3481

<http://myescambia.com/business/ds>

Board of Adjustment Application

FOR OFFICE USE ONLY - Case Number: _____ Accepted by: _____ BOA Meeting: _____

_____ Development Order Extension

☒ **Administrative Appeal**

1. Contact Information:

A. Property Owner/Applicant: Shu Cheng Shurett & Leo Huang

Mailing Address: 3434 Pelham Pkwy, Pelham, AL 35124

Business Phone: _____ Cell: _____

Email: dcsmarketing@aol.com

B. Authorized Agent (if applicable): Teramore Development, LLC

Mailing Address: P.O. Box 6460, Thomasville, GA 31758

Business Phone: 229-516-4289 Cell: 229-403-2436

Email: thodges@teramore.net

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. Property Information:

A. Project Name & Development Order Number (if applicable): N/A

B. Existing Street Address: 11400 block of Gulf Beach Highway, Pensacola

Parcel ID (s): Number 23-3S-31-2001-0000-000

C. Total acreage of the subject property: 3.4 acres

3. Reason for Request

A. Please explain why the extension or administrative appeal is necessary.

Please see Exhibit "A" which is attached hereto.

B. Development Order Extension

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.

4. Please complete the following form (if applicable): Affidavit of Owner/Limited Power of Attorney

AFFIDAVIT OF OWNER AND LIMITED POWER OF ATTORNEY
(if applicable)

As owner of the property located at the 11400 block of Gulf Beach Highway, Pensacola
Florida, Florida, property reference number(s) Number 23-38-31-2001-0000-000
I hereby designate Tom Hodges of Teramore Development, LLC.
for the sole purpose of completing this application and making
a presentation to the Board of Adjustments on the above referenced property. This Limited Power of
Attorney is granted on this 7th day of August the year of, 2017, and is effective until the Board of
Adjustment has rendered a decision on this request and any appeal period has expired. The owner
reserves the right to rescind this Limited Power of Attorney at any time with a written, notarized notice
to the Development Services Department.

Agent Name: Tom Hodges of Teramore Development, LLC Email: thodges@teramore.net

Address: P.O. Box 6480, Thomasville, GA 31758 Phone: 229-516-4288

Shu Cheng Shurett Shu Cheng Shurett 8-7-17
of Property Owner Printed Name of Property Owner Date

Signature of Property Owner

Printed Name of Property Owner

Date

STATE OF Alabama COUNTY OF Shelby
The foregoing instrument was acknowledged before me this 7 day of August 20 17
by Shu Cheng Shurett

Personally Known ☐ OR Produced Identification: ☒ Type of Identification Produced: Drivers License

Signature of Notary

Printed Name of Notary

(Notary Seal)



5. Submittal Requirements

4. Please complete the following form (if applicable): Affidavit of Owner/Limited Power of Attorney

AFFIDAVIT OF OWNER AND LIMITED POWER OF ATTORNEY
(if applicable)

As owner of the property located at the 11400 block of Gulf Beach Highway, Pensacola
_____, Florida, property reference number(s) Number 23-36-31-2001-0000-000
_____, I hereby designate Tom Hodges of Teramore Development, LLC
_____ for the sole purpose of completing this application and making
a presentation to the Board of Adjustments on the above referenced property. This Limited Power of
Attorney is granted on this 7th day of August the year of, 2017, and is effective until the Board of
Adjustment has rendered a decision on this request and any appeal period has expired. The owner
reserves the right to rescind this Limited Power of Attorney at any time with a written, notarized notice
to the Development Services Department.

Agent Name: Tom Hodges of Teramore Development, LLC Email: thodges@teramora.net

Address: P.O. Box 6460, Thomasville, GA 31756

Phone: 228-516-4289

[Signature]
of Property Owner

Leo Huang
Printed Name of Property Owner

8-9-17 Signature
Date

Signature of Property Owner

Printed Name of Property Owner

Date

STATE OF Alabama COUNTY OF Shelby
The foregoing instrument was acknowledged before me this 7 day of August 2017
by _____

Personally Known ☐ OR Produced Identification ☒ Type of Identification Produced: Driver's License

[Signature]
Signature of Notary

Samuel F. Clemmons
Printed Name of Notary



5. Submital Requirements

4. Please complete the following form (if applicable): Affidavit of Owner/Limited Power of Attorney

AFFIDAVIT OF OWNER AND LIMITED POWER OF ATTORNEY
(If applicable)

As owner of the property located at the 11400 block of Gulf Beach Highway, Pensacola
_____, Florida, property reference number(s) Number 23-S-31-2001-0000-000
_____, I hereby designate David A. Theriaque, Esquire,
_____ for the sole purpose of completing this application and making
a presentation to the Board of Adjustments on the above referenced property. This Limited Power of
Attorney is granted on this 7th day of August the year of, 2017, and is effective until the Board of
Adjustment has rendered a decision on this request and any appeal period has expired. The owner
reserves the right to rescind this Limited Power of Attorney at any time with a written, notarized notice
to the Development Services Department.

Agent Name: David A. Theriaque, Esquire Email: dat@theriaquelaw.com

Address: 433 North Magnolia Drive, Tallahassee, FL 32308 Phone: 850-224-7332

Leo Huang 8-7-17
of Property Owner Printed Name of Property Owner Date

Signature of Property Owner Printed Name of Property Owner Date

STATE OF Alabama COUNTY OF Shelby
The foregoing instrument was acknowledged before me this 7th day of August 20 17
by _____

Personally Known ☐ OR Produced Identification ☒ Type of Identification Produced: Driver's License

Samuel F. Clemens Samuel F. Clemens
Signature of Notary Printed Name of Notary



5. Submittal Requirements

A. X 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.

B. X Application Fee: Application Fees: To view fees visit the website: <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.

By my signature, I hereby certify that:

- 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
- 3) I understand that there are no guarantees as to the outcome of this request, and that the application fee is non-refundable; and
- 4) I authorize County staff to place a public notice sign(s) on the property referenced herein.

Shu Cheng Shurett

Shu Cheng Shurett

8-2-17 Signature of O-
Signature of O-

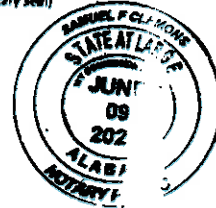
STATE OF Alabama COUNTY OF Shelby The foregoing instrument

was acknowledged before me this 7 day of August 20 17 by Shu Cheng Shurett
Personally Known ☐ OR Produced Identification ☒ Type of Identification Produced: Driver's License

[Signature]
Signature of Notary

Gemma F. Clonias
Printed Name of Notary

(notary seal)



A. X 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.

B. X Application Fee: Application Fees: To view fees visit the website: <http://myescambia.com/business/board-adjustment> or contact us at 595-3448

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Leo Huang

Leo Huang

8-7-17 Signature of On

Signature of On

STATE OF Alabama COUNTY OF Shelby The foregoing instrument

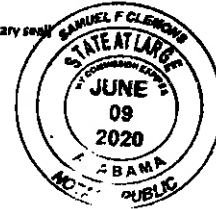
was acknowledged before me this 7 day of August 2017 by Leo Huang

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

Samuel F. Clemens
Signature of Notary

Samuel F. Clemens
Printed Name of Notary

(notary seal)





Escambia County Planning and Zoning
Development Services Department
3363 West Park Place
Pensacola, FL 32505
Phone: (850) 595-3475 • Fax: (850) 595-3481
<http://myescambia.com/business/ds>

Board of Adjustment Application

FOR OFFICE USE ONLY - Case Number: _____ Accepted by: _____ BOA Meeting: _____

_____ **Development Order Extension**

☒ **Administrative Appeal**

1. Contact Information:

A. Property Owner/Applicant: Teramore Development, LLC

Mailing Address: P.O. Box 6460, Thomasville, GA 31758

Business Phone: 229-516-4289 Cell: 229-403-2436

Email: thodges@teramore.net

B. Authorized Agent (if applicable): David A. Theriaque, Esquire

Mailing Address: 433 North Magnolia Drive, Tallahassee, FL 32308

Business Phone: 850-224-7332 Cell: _____

Email: dat@theriaquelaw.com

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. Property Information:

A. Project Name & Development Order Number (if applicable): N/A

B. Existing Street Address: 11400 block of Gulf Beach Highway, Pensacola

Parcel ID (s): Number 23-3S-31-2001-0000-000

C. Total acreage of the subject property: 3.4 acres

3. Reason for Request

- A. Please explain why the extension or administrative appeal is necessary.
Please see Exhibit "A" which is attached hereto.**

B. Development Order Extension

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- 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.

5

Last Updated: 6/21/17

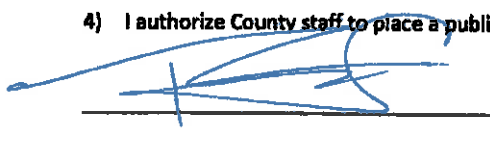
A. X Completed application: All applicable areas of the application shall be filled in and submitted to the Planning and Zoning Department, 3363 West Park Place, Pensacola, FL 32505.

B. X Application Fee: Application Fees: To view fees visit the website: <http://mvescambia.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.

By my signature, I hereby certify that:

- 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
- 3) I understand that there are no guarantees as to the outcome of this request, and that the application fee is non-refundable; and
- 4) I authorize County staff to place a public notice sign(s) on the property referenced herein.



Tom Hodges

Signature of Owner

Signature of Owner

STATE OF FLORIDA COUNTY OF THOMAS The foregoing instrument

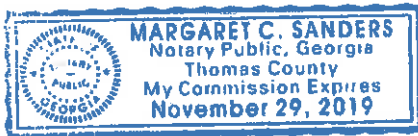
was acknowledged before me this 7th day of AUGUST 2021, by TOM HODGES OF
TERAMORE DEVELOPMENT, LLC

Personally Known X OR Produced Identification . Type of Identification Produced:


Signature of Notary

MARGARET C. SANDERS
Printed Name of Notary

(notary seal)





REPLY TO: TALLAHASSEE

August 7, 2017

Kayla Meador, Administrative Assistant
County Clerk to the Board of Adjustment
Developmental Services Department
3363 West Park Place
Pensacola, Florida 32505

Re: *Teramore Development, LLC – Parcel Number 23-3S-31-2001-0000-000*
Administrative Appeal of Horace Jones' Determination on July 24, 2017

Dear Ms. Meador:

Our law firm represents Teramore Development, LLC, in regard to its desire to construct a 9,100 square foot Dollar General retail store on Parcel Number 23-3S-31-2001-0000-000 in Escambia County, Florida ("Property"). Teramore Development, LLC, requested a confirmation of compatibility from the Planning Official. On July 24, 2017, Horace Jones issued a written determination in which he concluded that the proposed development is not compatible. (A copy of Mr. Jones' letter dated July 24, 2017, is attached hereto as Exhibit "1").

Teramore Development, LLC, hereby files this Administrative Appeal of Mr. Jones' July 24 determination. The specific provisions of the County's Land Development Code ("LDC") at issue in this Administrative Appeal include, but are not limited to, Sections 2-2.7 and 3-2.10(e). Teramore Development, LLC, respectfully submits that Mr. Jones incorrectly determined that the proposed development is not compatible. Rather, for the reasons set forth in the Land Use Compatibility Analysis prepared by The Planning Collaborative on June 25, 2017, the proposed development is compatible and, therefore, fulfills the locational criterion set forth in Section 3-2.10(e)(5) of the County's LDC. (A copy of the Land Use Compatibility Analysis is attached hereto as Exhibit "2").¹

¹ Teramore Development, LLC, reserves the right to submit additional evidence, including expert witness testimony, during the quasi-judicial hearing before the Board of Adjustment.

TALLAHASSEE
433 NORTH MAGNOLIA DRIVE
TALLAHASSEE, FLORIDA 32308
(850) 224-7332
FAX: (850) 224-7662

WINTER GARDEN
12200 WEST COLONIAL DRIVE, SUITE 300C
WINTER GARDEN, FLORIDA 34787
(407) 347-5388
FAX: (407) 264-6132



Kayla Meador, Administrative Assistant
August 7, 2017
Page 2

Teramore Development, LLC, requests that the Board of Adjustment determine that the proposed development is compatible and, therefore, fulfills the locational criterion set forth in Section 3-2.10(e)(5) of the County's LDC. Such a determination would allow Teramore Development, LLC, to submit an application for site plan approval for its proposed non-residential development.

I appreciate your attention to this matter. Please do not hesitate to contact me if you have any questions or need further information.

Sincerely,



David A. Theriaque

Enclosures

cc: Teramore Development, LLC



Board of County Commissioners • Escambia County, Florida

Horace L. Jones, Director
Development Services

Applicant information:

Name: Teramore Development, LLC Date: July 24, 2017

Address: 11400 Blk. Gulf Beach Highway, Pensacola, FL Parcel ID #: 23-3S-31-2001-000-000

Phone: (229) 516-4286 Other: _____ Email: develop@teramore.net

Section of the LDC to be interpreted: Sec. 3-2.10(e)

Address of proposed development for Compatibility Analysis: 11400 Blk. Gulf Beach Highway

Response to Request for Interpretation and/or Confirmation of Compatibility:

The applicant has submitted a Land Use Compatibility Analysis for a proposed Dollar General located at 11400 block of Gulf Beach Highway. The property is zoned Commercial and has a FLU of Mixed-Use Suburban (MU-S). The applicant has requested a confirmation of compatibility from the Planning Official pursuant to Sec. 2-2.7 of the LDC.

The proposed development is **NOT COMPATIBLE**. The proposed development does not meet the Location Criteria prescribed by the LDC.

Pursuant to Sec. 3-2.10(e) of the Land Development Code, all new nonresidential uses proposed within the commercial district that are not part of a planned unit development or not identified as exempt by the district shall be on parcels that satisfy at least one of the following location criteria: (1) Proximity to intersection. Along an arterial or collector street and within one quarter mile of its intersection with an arterial street. (2) Proximity to traffic generator. Along an arterial or collector street and within a one-quarter mile radius of an individual traffic generator of more than 600 daily trips, such as an apartment complex, military base, college campus, hospital, shopping mall or similar generator. (3) Infill development. Along an arterial or collector street, in an area where already established non-residential uses are otherwise consistent with the Commercial district, and where the new use would constitute infill development of similar intensity as the conforming development on surrounding parcels.



Response to Request for Interpretation and/or Confirmation of Compatibility

Teramore Development, LLC - 11400 Blk. Gulf Beach Highway

Page - 2 -

Additionally, the location would promote compact development and not contribute to or promote strip commercial development. (4) Site design. Along an arterial or collector street, no more than one-half mile from its intersection with an arterial or collector street, not abutting a single-family residential zoning district (RR, LDR or MDR), and all of the following site design conditions: a. Any intrusion into a recorded subdivision is limited to a corner lot. b. A system of service roads or shared access is provided to the maximum extent made feasible by lot area, shape, ownership patterns, and site and street characteristics. c. 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. (5) Documented compatibility. A compatibility analysis prepared by the applicant provides competent substantial evidence of unique circumstances regarding the potential uses of parcel that were not anticipated by the alternative criteria, and the proposed use, or rezoning as applicable, 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).

Gulf Beach Highway is designated as a major urban collector street. However, the proposed development is not within one-quarter mile of an intersection with an arterial street. The proposed development is not within one quarter mile radius of an individual traffic generator of more than 600 daily trips. The proposed development is not in an area where already established nonresidential uses are otherwise consistent and where the new development would constitute infill development of similar intensity. The proposed development is not more than one-half mile from its intersection with an arterial or collector street, not abutting a single-family residential zoning district. The compatibility analysis provided by the applicant does not show unique circumstances that were not anticipated by the alternative criteria. The proposed use will not serve to achieve long-term compatibility with existing and potential uses. The proposed development is surrounded by existing residential uses and established residential development.

This confirmation of compatibility is not final authorization or denial of any requested development and the applicant must complete the County development review process prior to proceeding.

Date:

July 24, 2017

Signature:

H. Jones

Horace L. Jones, Director, Development Services

Additional pages attached: yes X no

Land Use Compatibility Analysis

For a Dollar General Store to be located in the 11400 block of Gulf Beach Highway, Pensacola, Florida

Also referenced as Parcel ID number 23-35-31-2001-000-000

Conducted for:

Teramore Development, LLC

Ph: 229.516.4286

develop@teramore.net



Prepared for:

Escambia County Planning and Zoning Division

Ph: 850.554.8210

3363 West Park Place

Pensacola, FL 32505

Prepared by:

The Planning Collaborative

Allara Mills Gutcher, AICP

Ph: 850.319.9180

allara@theplanningcollaborative.com



June 25, 2017



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EXHIBIT 3 – Preliminary Site Plan prepared by Bell Engineering Services, LLC, as revised February 2, 2017.	

EXHIBIT 4 – Escambia County Property Appraiser Subdivision Map, as printed April 16, 2017.

EXHIBIT 5 – Example of a Dollar General Store architectural design.

EXHIBIT 6 – Example of a Dollar General Store architectural design.

EXHIBIT 7 – Example of a Dollar General Store architectural design.

EXHIBIT 8 – Letter dated June 22, 2017, from Bonita Player, P.E.

PURPOSE AND INTRODUCTION

This report analyzes the compatibility of a Dollar General retail store proposed to be located in the 11400 block of Gulf Beach Highway, Pensacola, Florida. As set forth below, the proposed Dollar General retail store will not, over time, adversely or negatively impact the surrounding existing uses. The proposed store will provide daily necessities and other common household items for consumers. Dollar General is known for its neighborhood-scale stores in locations convenient to customers.

In the development of this report, the following definition of compatibility set forth in §163.3164(9), *Florida Statutes*, was utilized:

“Compatibility means a condition in which land uses or conditions can coexist in relative proximity to each other in a stable fashion over time such that no use or condition is unduly negatively impacted directly or indirectly by another use or condition.”

The Escambia County Comprehensive Plan also provides a definition of “Incompatible/compatible development” in Chapter 3 Definitions. Section 3.04 Definitions states as follows:

“Incompatible development is new development proposed to be constructed next to existing development wherein the proximity of the two kinds of development would each diminish the usefulness of the other or would be detrimental to existing operations. The incompatibility can arise from either land use or structure size and design. Compatible development is new development proposed to be constructed next to existing development in which the proximity of the two kinds of development would each complement or enhance the usefulness of the other.”

Finally, the County’s Land Development Regulations Chapter 6, Definitions, Section 6-0.3 Terms Defined provides the following definition for “compatible:

“*Compatible*. A condition in which land uses, activities or conditions can coexist in relative proximity to each other in a stable fashion over time such that no use, activity, or condition is unduly negatively impacted directly or indirectly by another use, activity, or condition.”

As a note, the definition of “compatible” in Section 6-0.3 of the County’s Land Development Regulations is nearly identical to the definition of “compatibility” set forth in §163.3164(9), *Florida Statutes*.

This analysis has considered the type of development proposed in comparison to the existing built environment as directed by Florida Statutes and the Escambia County Comprehensive Plan. Such factors of study included the surrounding uses, lighting, building setbacks, building height, building orientation, open space ratios, and hours of operation.

The consultant, Allara Mills Gutcher, completed the following research in preparation of this report:

- A site visit conducted on Tuesday, April 4, 2017
- Review of the Escambia County Property Appraiser website data and maps
- Review of the Escambia County Comprehensive Plan, 2030
- Review of the Escambia County Land Development Regulations dated February 2017
- Review of the Escambia County Future Land Use Map and Zoning Map as shown on Escambia County's web mapping service web page.¹
- Consultation with Teramore Development, LLC

PROJECT DESCRIPTION

The applicant proposes construction of a retail establishment known as Dollar General, with approximately 9,100 gross square feet of building space on +/-1.25 acres of a 3.4-acre parcel. Approximately 2.15 acres of the 3.4-acre site will remain highly vegetated with the existing flora. (See Exhibits 1 and 2). The building will be oriented towards the south, facing Gulf Beach Highway. The area surrounding the developed portion of the site will remain in its natural condition. Parking will be located to the front of the structure, with a driveway along the east side of the structure to accommodate the loading and dumpster area. Ingress and egress to the site will be from Gulf Beach Highway. (See Exhibit 3).

The scale of the project will be that of a typical prototype Dollar General retail store. It will be single story in height, with a maximum height of twenty-two (22) feet, which includes any roof-top apparatus. This will be approximate in height to many of the existing on-site trees.

Hours of operation will begin at either 7:00 a.m. or 8:00 a.m., and close by 9:00 p.m. These hours of operation are conducive to general business hours with time in the evenings for local residents to shop for convenience needs. There will be no noise, smoke, glare, emissions, dust, vibration, or odors emitted from this use. Lighting used to support safety for vehicles and pedestrians will be installed in a down-lit fashion and attached to the side of the structure.

GENERAL PROJECT LOCATION AND SETTING

The site is in the 11400 block and on the north side of Gulf Beach Highway (CR 292A) in unincorporated Escambia County, 32507. The parcel is located to the east of and borders Challenger Way and is west of Cobia Street. It is south of and borders Avia Lane. The parcel is located within Section 23, Township 3S, Range 31. The Escambia County Property Appraiser's Reference Number is 23-3S-31-2001-000-000.

¹ <http://www.arcgis.com/home/item.html?id=4388823ea5fb4feeb4ebb3beb6677129>.

The undeveloped lot of 3.4 acres² is currently heavily vegetated with various types of trees. None of the trees are protected pursuant to the definition in Chapter 2, Environmental, Article 2 – Landscaping, Section 2-3.1(a) of the Escambia County Design Standards Manual. The site has a designation of “Upland Coniferous Forest” which includes a “canopy (of) at least 66 percent dominated by Coniferous species.”³ There are no wetlands on the site.⁴ The existing use of the site is classified as “Vacant Commercial.”⁵

Figure 1. Aerial Photograph



As part of this analysis, a review of the “*Escambia County Site Specific Survey for Environmentally Sensitive Lands or the Gulf Beach Highway Site*” was conducted. This document indicates that there are no wetlands, protected species, or protected trees that will be impacted or other environmentally sensitive land issues as a result of this development.⁶

² KJM Land Planning, LLC, Boundary and Topographic Survey dated January 16, 2017.

³ Florida Land Use, Cover and Forms Classification System, Florida Department of Transportation Surveying and Mapping Geographic Mapping Section.

⁴ Escambia County Site Specific Survey for Environmentally Sensitive Lands for the Gulf Beach Highway Site prepared by Biome Consulting Group, January 2017, pg. 2.

⁵ Escambia County Property Appraiser assigned Department of Revenue Tax Code.

⁶ Escambia County Site Specific Survey for Environmentally Sensitive Lands for the Gulf Beach Highway Site, prepared by Biome Consulting Group, January 2017, pg. 4.

Surrounding the parcel is established residential development. (See Exhibit 4). To the north and east of Avia Lane is a platted subdivision called Chevalier. This subdivision is within the Mixed-Use Suburban ("MU-S") Future Land Use category and the High Density Residential ("HDR") zoning district. The lots in close proximity to the subject site average three (3) to four (4) dwelling units per acre. To the south of Gulf Beach Highway is a platted subdivision called Seaglade. This subdivision is within the MU-S Future Land Use category and the Low Density Residential ("LDR") zoning district. The lots in Seaglade, that are within close proximity to the development site, range from one (1) to four (4) dwelling units to the acre, with the waterfront lots being the larger parcels. Within a quarter mile radius of the subject parcel, the average lot size is 0.45 acres, or approximately two (2) dwelling units to the acre.⁷ All of the lots contiguous to the subject parcel and not otherwise separated by a roadway are currently vacant.

Figure 2. Street View of Site



APPLICABLE POLICIES AND REGULATIONS

The site is currently designated with a Future Land Use category of MU-S and a zoning district of Commercial. All properties surrounding this site are also categorized with a Future Land Use category of MU-S. (See Figure 3). Consequently, no Future Land Use Map amendment or zoning change is required to allow the proposed development. Descriptions of the Future Land Use category and zoning district are provided below:

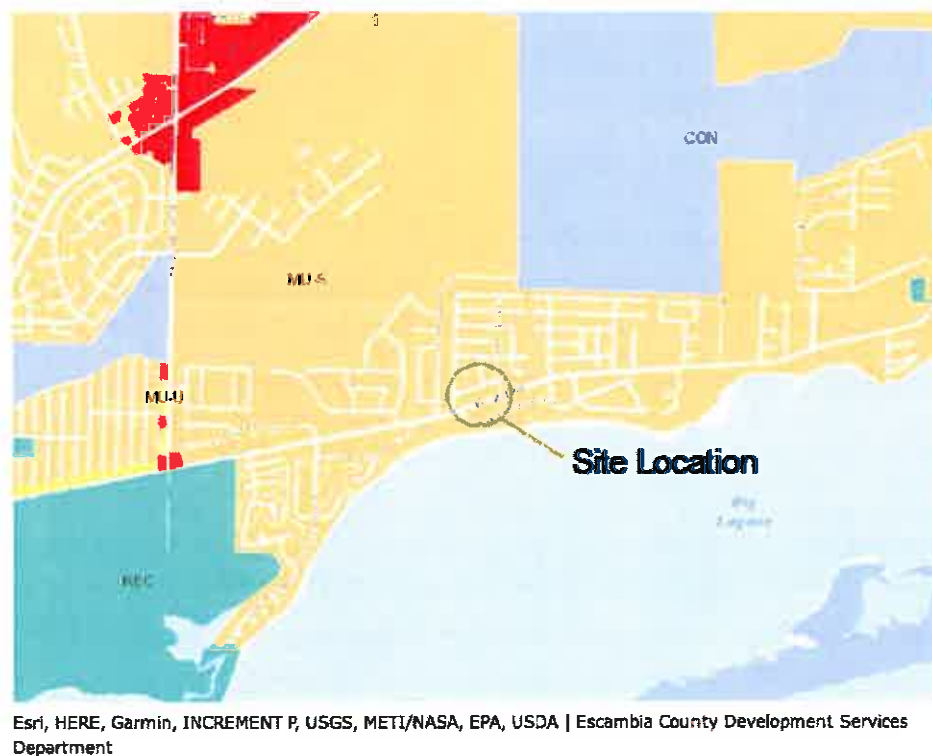
⁷ Escambia County Property Appraiser.

Future Land Use Category: Mixed-Use Suburban (MU-S)⁸

General Description of MU-S Future Land Use category: "Intended for a mix of residential and non-residential uses while promoting compatible infill development and the separation of urban and suburban land uses."

MU-S Allowable Uses: The Comprehensive Plan describes the allowable uses as a range. These include: "Residential, **retail sales** and services, professional office, recreational facilities, public and civic, limited agriculture." (Emphasis added). The maximum intensity for this category is a floor area ratio of 1.0.⁹

Figure 3. Escambia County Future Land Use Map



MU-S = Mixed-Use Suburban
MU-U = Mixed-Use Urban
REC = Recreation

C = Commercial
Con = Conservation

The MU-S Future Land Use category was created to "encourage redevelopment in underutilized properties (and) to maximize development densities and intensities"¹⁰ located not only within this category, but also in the MU-U, Commercial, and Industrial

⁸ www.myescambia.com/our-services/development-services/gis as of April 3, 2017.

⁹ Escambia County Comprehensive Plan, Future Land Use Element, Policy FLU 1.3.1.

¹⁰ Policy FLU 1.5.1 of the Escambia County Comprehensive Plan, 2030.

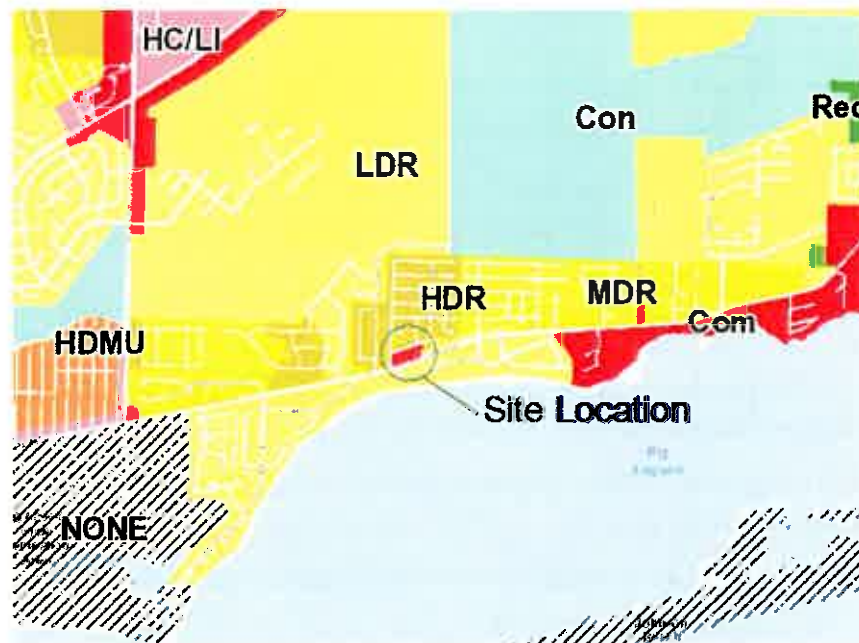
Future Land Use categories. In addition, the MU-S Future Land Use category provides for a minimum density to “ensure that developments are designed to be compact and to accommodate travel mode choices especially for short, local trips.”¹¹

Zoning Designation: Commercial¹²

The Commercial zoning district is established to designate appropriate areas and land for commercial activities, especially those in the retail and service industries. This category supports intense commercial uses.

The allowable uses within the Commercial zoning district are listed as: Residential (with restrictions), **retail sales** and services, public and civic uses, recreation and entertainment, limited industrial, agriculture and limited other uses such as billboard structures, parking garages and lots and some self-storage facilities. (Emphasis added). Other conditional uses are allowed.¹³

Figure 4. Escambia County Zoning Map



Esri, HERE, Garmin, INCREMENT P, USGS, METI/NASA, EPA, USDA | Escambia County Development Services Department

Com = Commercial	Con = Conservation
HDR = High Density Res	REC = Recreation
MDR = Medium Density Res	HC/LI = High Commercial and Light Industrial
LDR = Low Density Res	
HDMU = High Density Mixed Use	

¹¹ Policy FLU 1.5.2 of the Escambia County Comprehensive Plan, 2030.

¹² http://maps2.roktech.net/escambia_gomaps4/?mapName=General&mapType=zoning as of April 3, 2017.

¹³ Section 3-2.10 of the Escambia County Land Development Regulations dated February 2017.

The development standards for a parcel zoned "Commercial" are shown in Table 1, and are compared to the adjacent zoning district criteria.

Table 1. Zoning District Regulations Assigned to Subject Parcel and Parcels Contiguous to the Site

Criteria	Zoning Designation		
	Commercial	HDR	LDR
Location	Subject Parcel	North and West	South and East
Max Density	Max 25 d/u per acre	Max 18 d/u per acre	Max 4 d/u per acre
FAR	Not Specified*	Max 2.0	Max 1.0
Max Height	150 feet	120 feet	45 feet
Lot Area	No minimum	No minimum	No minimum
Minimum Lot Width	None for commercial uses.	40 feet for single family; 80 feet for two-family; 80 feet for other	20 feet for cul-de-sac lots; 70 feet for all other lots
Lot Coverage	15% minimum pervious; 85% max semi-impervious and impervious	20% minimum pervious; 80% max semi-impervious and impervious	30% minimum pervious; 70% max semi-impervious and impervious
Setbacks Front	15 feet	20 feet	25 feet
Setbacks Rear	15 feet	15 feet	25 feet
Setbacks Side	10 feet for structures less than 35 feet high; then additional 2 feet per each additional 10 feet in height.	10 feet for structures less than 35 feet high; then additional 2 feet for each additional 10 feet in height but does not exceed 15 feet.	5 feet or 10% of the lot width, not required to exceed 15 feet.

*Note: The floor area ratio is limited to 1.0 based on the Future Land Use category restriction of 1.0 (Policy FLU 1.3.1 for MU-S). Although the County's Land Development Regulation lists FARs for Commercial FLU and MU-U FLU categories, neither are assigned to this MU-S designated parcel.

Section 3-2.10(e) of the County's Land Development Regulations includes location criteria for new non-residential uses within the Commercial zoning district. At least one of the listed criteria for new non-residential uses proposed within the Commercial district which are not part of a PUD or otherwise exempt must be met. The proposed Dollar General retail store fulfills the location criteria pursuant to Section 3-2.10(e)(5), which is labelled as "Documented Compatibility."

This compatibility analysis constitutes competent substantial evidence that the use of the property was not anticipated by the alternative criteria listed in Section 3-2.10(e)(1)-(4) of the County's Land Development Regulations. Additionally, this compatibility analysis constitutes competent substantial evidence that the proposed use will achieve long-term compatibility with the existing residential uses without any detriment or conflict. Furthermore, the following criteria are met as listed in Section 3-2.10(e)(5)a. and b.:

- a. The parcel was not rezoned by the landowner from the mixed-use, commercial, or industrial zoning assigned by the County.
- b. The parcel is not within a County Redevelopment District.

Overlay District: Airfield Influence Planning District-2¹⁴

The Airfield Influence Planning District-2 (AIPD-2) is established in Section 4-4.4 of the County's Land Development Regulations and with the AIPD-1 overlay is created to "enhance protection in support of the continued operation of military airfields for areas that are close enough to those airfields to influence or be influenced by their activities." This site is located in the AIPD-2 overlay district, as shown on the Escambia County Zoning map.

Section 4-4.4(b)(6) describes the development regulations for the AIPD-2 overlay district. This section only notates that "densities and minimum lots sizes of the underlying zoning district," which is commercial in this case, "are not modified by AIPD-2." Therefore, no additional development criteria apply to this site as a result of its location within the AIPD-2.

ANALYSIS

It is clear that the intent of Escambia County is to promote new infill development in already developed areas, and to be resourceful with existing transportation networks, utilities, and governmental services such as police and fire protection. Goals, Objectives, and Policies from the Escambia County Comprehensive Plan to support this include:

"Policy FLU 1.5.1: **New Development and Redevelopment in Built Areas.** To promote the efficient use of existing public roads, utilities, and service infrastructure, the County will encourage the redevelopment in underutilized properties to maximize development densities and intensities located in the **MU-S**, MU-U, Commercial, and Industrial Future Land Use categories (with the exception of residential development)." (Emphasis added).

"GOAL FLU 2 Development and Public Services. Escambia County will promote urban strategies for compact development, the efficient provision of infrastructure and urban services, and the protection of natural resources. Urban strategies will include **infill development**, mixed-use development, and coordinated land use and transportation planning." (Emphasis added).

¹⁴ http://maps2.roktech.net/escambia_gomaps4/?mapName=General&mapType=zoning as of April 3, 2017.

“Objective FLU 2.1 Urban Development. Direct growth toward those areas where infrastructure and services exist to support development at approved densities and intensities.”

“Objective 2.3 Infill Development. **Encourage infill development** in appropriate urbanized areas where infrastructure is sufficient to meet demands, such as in MU-U and **MU-S.**” (Emphasis added).

This project will accomplish these directives by creating a general store that will provide daily necessities to local residents within a short walk or drive time. The development plan is supported by FLU Policy 1.3.1 – FLUM Mixed-Used Suburban standards where Escambia County describes the intent of the MU-S category as a “mix of residential and non-residential uses while promoting compatible infill development.”

As depicted in Table 2 below, the standards of the Commercial zoning district are far greater in intensity than the actual plan for development. The structure’s floor area ratio (“FAR”) is approximately 0.06 due to the developer leaving most of the site in its natural vegetative state. This is substantially less than the maximum amount allowed of 1.0 FAR in the neighboring LDR zoning district. The building height will be no more than twenty-two (22) feet, which is similar in height to some of the on-site trees.

Table 2. Commercial Development Standards Comparison to Development Plan

Standard	LDR Requirement	Development Plan
Density	Not applicable	None
Floor Area Ratio (FAR)	Not mentioned (see note)	0.06 FAR
Structure Height	Max 150 feet above grade	Max 22 feet above grade
Lot Area	No minimum	3.4 acres
Lot Width	No minimum for commercial	Approximately 650 feet at road frontage
Lot Coverage	Minimum pervious 15%; 85% maximum semi-impervious and impervious cover.	Pervious surface will be approximately 77%, or 23% impervious surface.
Structure Setbacks	Front and Rear: 15 feet	Front +/- 97 feet; Rear +/- 82 feet
	Side: 10 feet minimum	West side +/- 231 feet at shortest distance; East side +/- 175 feet at shortest distance

Note: The floor area ratio is limited to 1.0 based on the Future Land Use category restriction of 1.0 (Policy FLU 1.3.1 for MU-S). Although the Land Development Regulation lists FARs for Commercial FLU and MU-U FLU categories, neither are assigned to this parcel.

The Escambia County Land Development Regulations offer some guidance when analyzing compatibility when a new use is introduced. Chapter 3, Zoning Regulations, Section 3-1.6 “Compatibility” contains criteria which describe new non-residential development in relation to existing residential uses. Section 3-1.6(b) states that such criteria are created to allow for residential and non-residential uses to be located in close proximity to each other, specifically “small-scale dispersed neighborhood commercial uses in proximity to residential areas,” which is the case here. This site will be developed with a small-scale neighborhood use store to serve the residents with daily necessities.

Section 3-1.6(c) of the County’s Land Development Regulations states that other compatibility measures may be required such as landscaping, buffering, and screening to protect lower intensity uses from commercial uses. This criterion is met with the retention of most of the existing on-site vegetation. The site will only remove the vegetation that is within the footprint of the development, in addition to that which is needed for the site triangle and open space for transportation safety. Of the 3.4-acre parcel, approximately 2.15 acres will remain undisturbed, or sixty-three (63) percent of the site. This percentage will provide more than adequate buffering and screening from the Chevalier subdivision. Therefore, because of the extensive setbacks and existing tree canopy, the residential neighborhood to the north, east, and west will not have a visual sight-line of the structure or parking area. The building will be visible from Gulf Beach Highway, an Escambia County designated collector street.¹⁵

The planned setbacks are outlined below in Table 3, and are shown against the requirement for the zoning district. These extensive setbacks are an additional measure to ensure compatibility with the surrounding uses. The distance from the side of the structure to the property line has been greatly increased to provide a large vegetative buffer to the surrounding residential uses. These distances are shown as a percentage increase over the requirement, and are in no case less than 400 percent of the adopted standard.

Table 3. Setback Comparison

Setback Standard	Commercial Requirement	Development Plan	Percent Exceeded
Front	15 feet	97 feet	547%
Rear	15 feet	82 feet	447%
Side (West)	10 feet	231 feet at rear corner	2,210%
Side (East)	10 feet	175 feet at narrowest point	1,650%

Section 2-2.3 of Chapter 2, Article 2 of the Design Standards Manual incorporated in the Land Development Regulations states “the buffer shall protect the lower intensity use from the higher intensity use and provide an aesthetically attractive barrier between the uses.” Furthermore,

¹⁵ Escambia County Land Development Regulations, Chapter 6, Section 6-0.3 Terms Defined and Escambia County GIS interactive map.

through the preservation of the on-site vegetation, this buffer will provide a natural barrier between the uses.

Section 2-2.1 of Chapter 2, Article 2 of the Design Standards Manual requires no less than fifteen (15) percent of the parcel to be landscaped. This development, with sixty-three (63) percent of the parcel landscaped, exceeds the criterion by more than 300 percent.

Transportation Analysis:

Engineering & Planning Resources, PC, performed a traffic impact analysis of the proposed Dollar General retail store. The analysis focused on a comparison of the maximum allowable residential scenario to the planned commercial scenario for the referenced parcel.

The maximum development intensity for residential use of this site, using the Escambia County Comprehensive Plan and the County's Land Development Code as the guide, is an eighty-five (85) unit high-rise condominium. The planned commercial scenario under review is a proposed 9,100-square foot Dollar General discount store.

According to Engineering & Planning Resources, PC's analysis, none of the impacted roadway segments will exhibit adverse traffic conditions in the current year at either the planned commercial scenario or the maximum allowable residential scenario. (See Exhibit 8).

FINDINGS AND CONCLUSIONS

The proposed development of a 9,100-square foot retail store in the center of 3.4 acres (2.15 acres which will remain undisturbed) located on a collector roadway in unincorporated Escambia County will be compatible with the surrounding residential development. The proposed retail store will not result in any land use conflicts with the existing surrounding development. No adverse impacts will be generated such as noise, smoke, exhaust, emissions, dust, adverse lighting, vibrations, or odors that would be detrimental to the existing surrounding uses or would otherwise disturb the quiet enjoyment of adjacent residents. Additionally, the local residents will benefit from the location of this store with daily necessities and other common household items. This location will reduce vehicle trips and miles traveled on the roadways and reduce congestion by providing goods within a walkable or short driving distance to home.

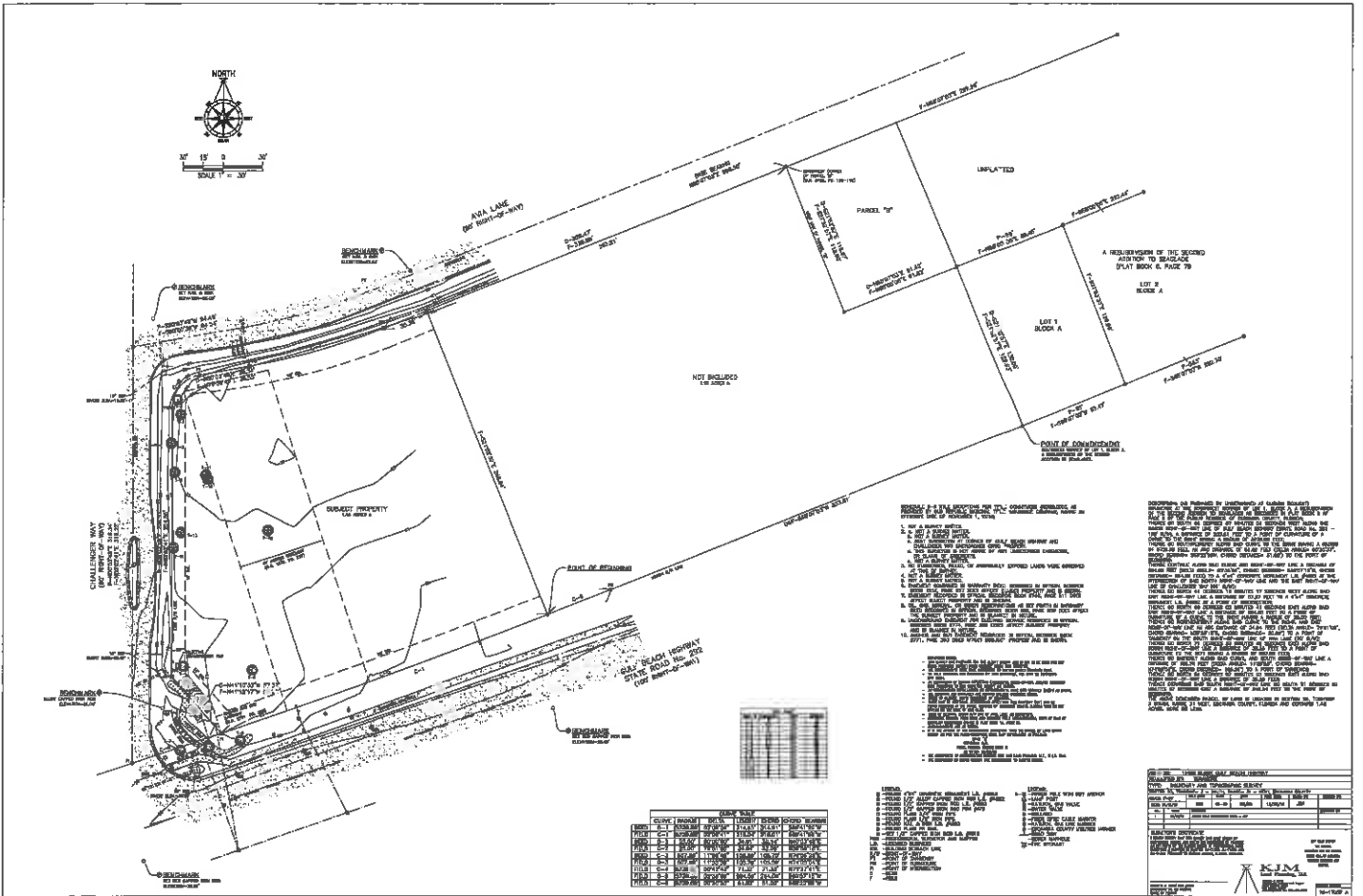
Extensive buffering surrounding the retail store will be retained in the existing natural vegetative state to create a visual barrier from the residential subdivision north of Gulf Beach Highway. Setbacks greatly exceeding the minimum requirements of the Commercial zoning district are incorporated into the plan for development. The proposed retail store is considerably below the intensity allowed for this parcel with a Commercial zoning designation.

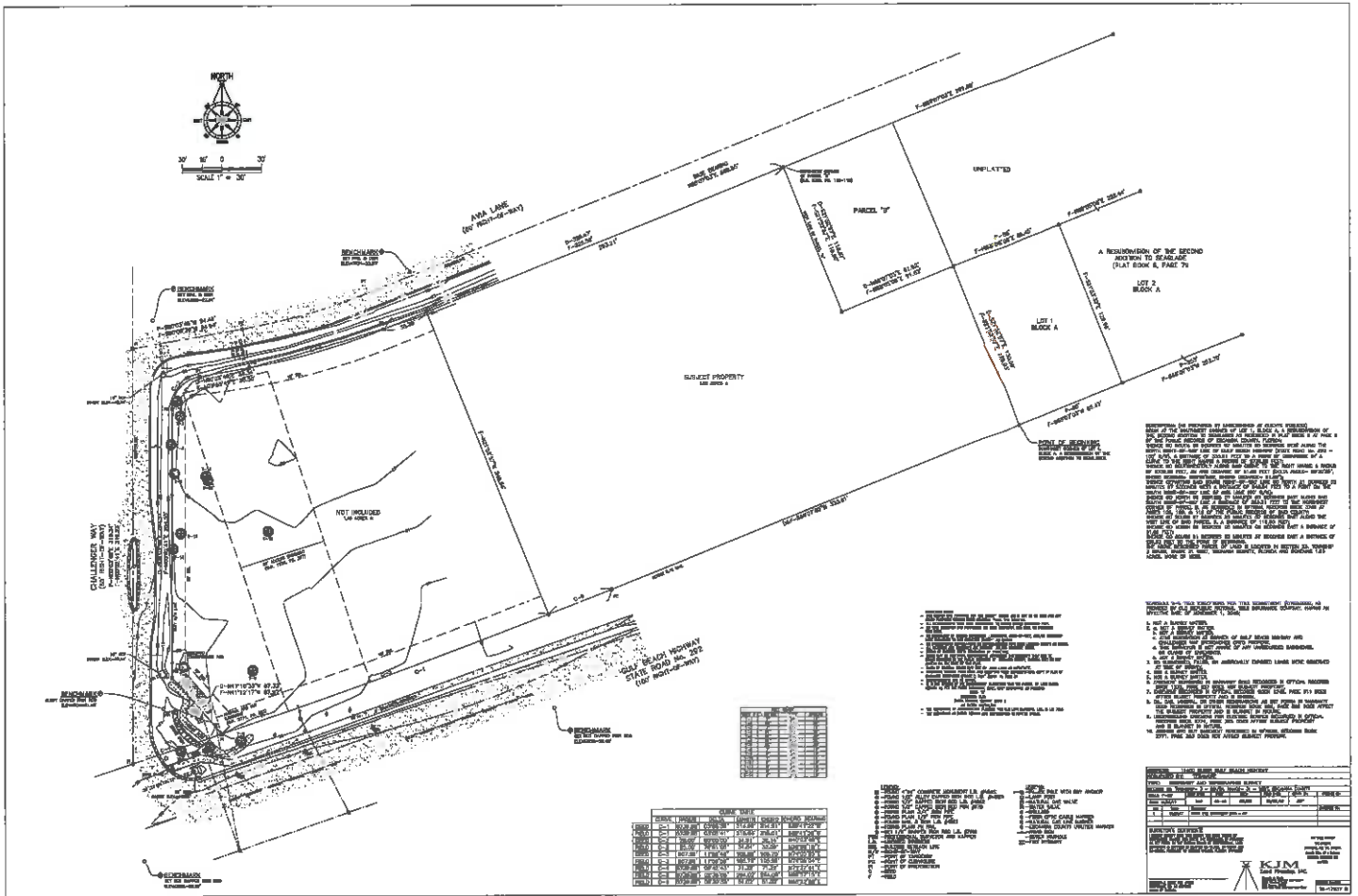
At 3.4 acres, the allowable residential density is eighty-five (85) dwelling units. The height limitation for the commercial zoning district is 150 feet and the floor area ratio is 1.0. In comparison to a residential development alternatively allowed on this site, a 150-foot high-rise

multi-family condominium or apartment complex with eighty-five (85) dwelling units would be less compatible due to the bulk and height of the structure. The proposed Dollar General store will not be visually obtrusive to the surrounding neighborhoods, and the traffic generation is similar for both development scenarios. (See Exhibit 8).

The proposed Dollar General retail store is consistent with and furthers the Goals, Objectives, and Policies of the Escambia County Comprehensive Plan and complies with the adopted requirements of the County's Land Development Regulations. The development of this store will not create a condition that will negatively impact the residential uses over time.

Exhibit 1 - Survey of 1.45-Acre Parcel





[illegible]

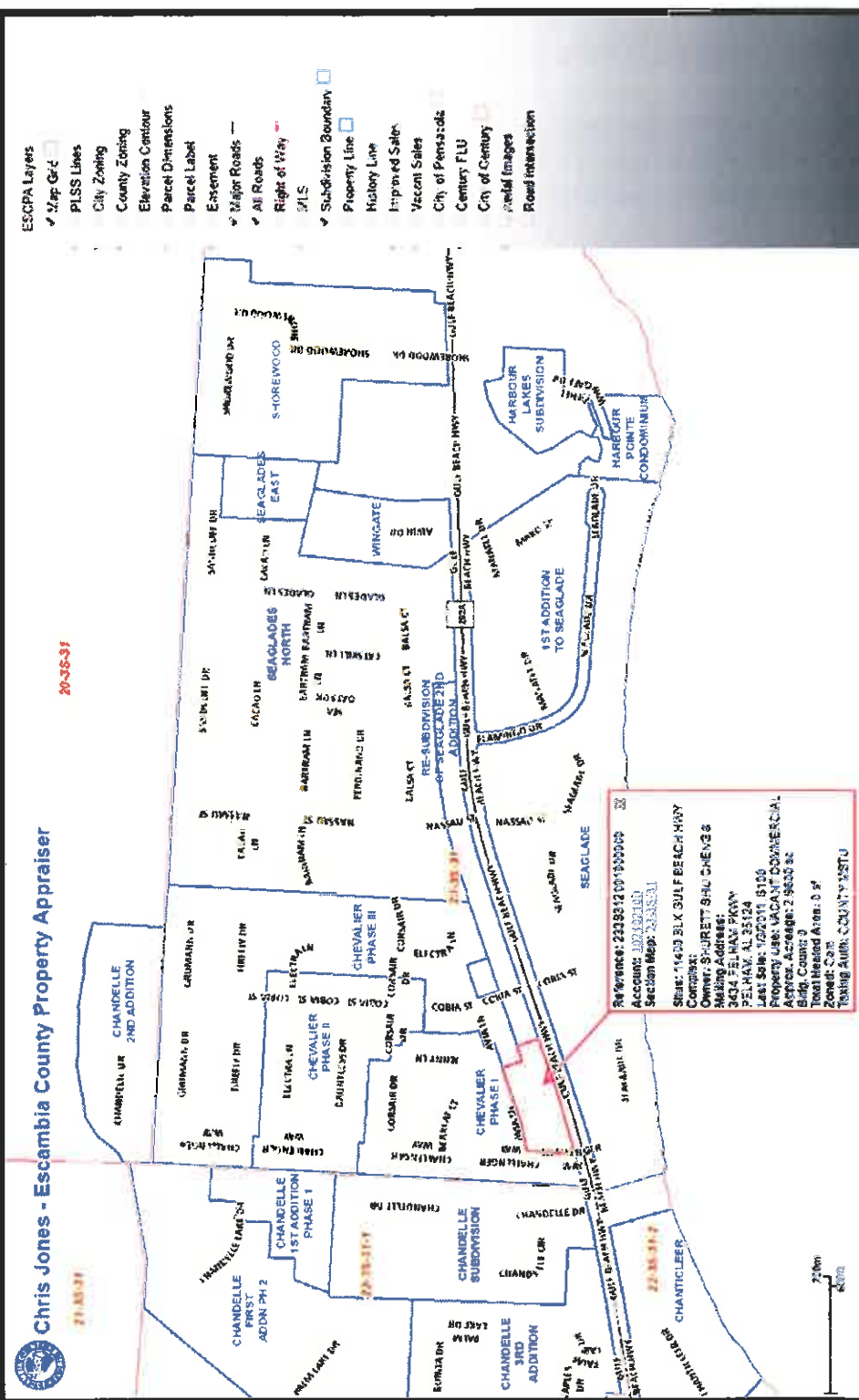


EXHIBIT 5 – Example of elevation rendering of a Dollar General Store



EXHIBIT 6 – Example of elevation rendering of a Dollar General Store



EXHIBIT 7 – Example of elevation rendering of a Dollar General Store





Exhibit 8 - Letter from Bonita Player, P.E.

June 22, 2017

Horace L. Jones
Department Director/Supervisor
Escambia County Developmental Services
3363 W Park Place
Pensacola, FL 32501

Dear Mr. Jones:

I have performed a traffic impact analysis of a proposed development located at parcel reference number 23-3S-31-2001-0000-000 in Escambia County at the northeast corner of Gulf Beach Highway and Challenger Way. The analysis focused on a comparison of the maximum allowable residential scenario to the planned commercial scenario for the referenced parcel.

The maximum development intensity for residential use of this site, using the Escambia County Comprehensive Plan and the County's Land Development Code as the guide, is an eighty-five (85) unit high-rise condominium. The planned commercial scenario under review is a proposed 9,100-square foot Dollar General discount store.

According to my analysis, none of the impacted roadway segments will exhibit adverse traffic conditions in the current year at either the planned commercial scenario or the maximum allowable residential scenario.

Sincerely,
Engineering & Planning Resources, PC

A handwritten signature in blue ink that reads 'Bonita Player'.

Bonita Player, PE

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

TERAMORE DEVELOPMENT, LLC,
SHU CHENG SHURETT, and LEO
HUANG,

Petitioners,

vs.

Case No. 17-CA-1778

ESCAMBIA COUNTY, FLORIDA,

Respondent.

_____ /

ORDER GRANTING PETITION FOR WRIT OF CERTIORARI

This case is before the Court on the Amended Petition for Writ of Certiorari (“Amended Petition”) that the Petitioners filed on January 5, 2018. Respondent Escambia County, Florida (“County”), filed its Response on February 1, 2018. The Petitioners filed their Reply on March 5, 2018. The Court conducted oral argument on May 7, 2018.

FACTUAL BACKGROUND

The subject property is a 3.4-acre vacant parcel that is zoned Commercial (C) with a future land use designation of Mixed-Use Suburban (MU-S). The surrounding areas are zoned Low Density Residential (LDR) and High Density Residential (HDR), and the surrounding land uses are single family residential. The Petitioners proposed to build a 9,100-square foot retail store on the site to, in turn, lease to the Dollar General Corporation.

In mid-2017, the Petitioners requested confirmation of compatibility from the County’s Planning Official with regard to the proposed retail store pursuant to Section 3-2.10(c)(5) of the County’s Land Development Code (LDC), which provides:

All new non-residential uses proposed within the commercial district that are not part of a planned unit development or not identified as exempt by the district shall be on parcels that satisfy at least one of the following location criteria:

* * * *

(5) Documented compatibility. A compatibility analysis prepared by the applicant provides competent substantial evidence of unique circumstances regarding the potential uses of parcel 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. . . .

The Petitioners submitted a compatibility analysis prepared by a certified land use planner in support of the request. In the compatibility analysis, the Petitioners' land use planner analyzed the proposed retail store and factors such as the surrounding uses, building setbacks, building height, building orientation, building mass, open space ratios, buffers, lighting, noise, and hours of operation in evaluating whether the proposed retail store would be "compatible" with the surrounding area. On July 24, 2017, the Planning Official issued a written decision concluding the proposed development, which is surrounded by existing residential uses, did not satisfy the alternative location criteria (1-4), and the Petitioners' written analysis did not provide evidence of "unique circumstances" that were not anticipated by the alternative criteria so as to otherwise conclude that the proposed use would achieve long-term compatibility with the surrounding existing residential uses. The Petitioners timely appealed the Planning Official's compatibility determination to the Board of Adjustment (BOA) pursuant to the County's LDC ("Administrative Appeal"). On October 18, 2017, the BOA conducted a quasi-judicial hearing on the Petitioners' Administrative Appeal. The BOA heard testimony from the Petitioner's expert land use planner, Allara Gutcher, whom they recognized as an expert witness. The BOA also heard testimony from Teramore's corporate representative, the County's Planning Official,

the County's Planning Manager, and several citizens from the surrounding area of the proposed development. At the conclusion of the October 18 hearing, the BOA unanimously voted to deny the Petitioners' Administrative Appeal and to uphold the Planning Official's determination that Teramore's proposed retail store is not "compatible." Thereafter, the Petitioners timely sought certiorari review of the BOA's October 18, 2017 decision in this Court.

LEGAL ANALYSIS

Upon first tier review of a quasi-judicial proceeding, a court must determine whether the Petitioners were accorded procedural due process, whether the essential requirements of the law have been observed, and whether the administrative findings and judgment are supported by competent substantial evidence. Florida Power & Light Co. v. City of Dania, 761 So. 2d 1089, 1092 (Fla. 2000) (citing City of Deerfield Beach v. Vaillant, 419 So. 2d 624, 626 (Fla. 1982)). Such review is not *de novo*. Rather, a circuit court is limited to reviewing the record that was created before the lower tribunal. Florida Power & Light Co. v. City of Dania, 761 So. 2d at 1092.

Petitioners did not contest whether they were accorded procedural due process. However, Petitioners do contest whether the essential requirements of the law have been observed and whether the BOA's decision was supported by competent substantial evidence. They argue that because the essential requirements of law were not observed and competent substantial evidence did not exist to support the BOA's decision, the Court should quash the denial of Petitioners' administrative appeal.

Frankly, the code provision at issue in this case is difficult to comprehend and lacks clarity in how it should be applied in many respects.¹ It never defines what a "compatibility analysis" should contain or who is qualified to prepare such analysis, but yet explicitly states that

¹ The Petitioner has not asserted that the code provision is ambiguous.

such "compatibility analysis" is competent substantial evidence of unique circumstances regarding the potential uses of parcel that were not anticipated by the alternative criteria. It can be argued also that the code provision does not communicate to property owners sufficient notice of what the County expects in a compatibility analysis, other than if you have one, it constitutes competent substantial evidence to support your application, until, like in this case, the County says it does not. Better said in Park of Commerce Associates v. City of Delray Beach, 606 So.2d 633, 635 (Fla. 4th DCA 1992), "(P)roperty 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."

The record presented to this Court reveals that the BOA's denial of the Petitioner's Administrative Appeal was not supported by competent substantial evidence. Competent substantial evidence is that which is "sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached." De Groot v. Sheffield, 95 So. 2d 912, 916 (Fla. 1957). "For the action to be sustained, it must be reasonably based in the evidence presented." Town of Indialantic v. Nance, 400 So. 2d 37, 40 (Fla. 5th DCA 1981). "Surmise, conjecture or speculation have been held not to be substantial evidence." Fla. Rate Conference v. Fla. R.R. and Pub. Utils. Comm'n, 108 So. 2d 601, 607 (Fla. 1959).

The Court finds the BOA's decision to find that Petitioners' proposed retail store is not compatible with existing and potential uses is not supported by competent substantial evidence. The evidence presented at the hearing in support of the County's request that the proposed use be denied can only be characterized as speculative and conclusory. The record reveals that the

Planning Official's determination that the proposed development did not meet the criteria set forth in (e)(5) was not supported by any facts or evidence. The Planning Official did render an opinion that the development was not compatible, but never set forth any specific evidence to support such opinion. The record indicates that the County simply disagreed with the Petitioners' expert without presenting facts that contradicted the opinions set forth in her compatibility analysis. Additionally, the County's witnesses and the BOA itself never considered or applied the code's decree that a compatibility analysis was competent substantial evidence which supported the Petitioner's request. Further, other than its disagreement with the Petitioner's expert that the proposed use would be able to achieve long-term compatibility with existing and potential uses, the County never presented objective facts to support its disagreement. The County's opinion that the proposed development was not compatible and would not achieve long term compatibility was simply a bald conclusion and without more has no evidentiary value. Arkin Const. Co. v. Simpkins, 99 So. 3d 557, 561 (Fla. 1957).

In contrast, the Petitioner brought forth specific evidence in support of its application. The Petitioner's expert, who had put together hundreds of compatibility analyses in her career, prepared a compatibility analysis as contemplated by the code and gave testimony in support of such analysis at the hearing. In such analysis, and in her testimony, she also opined that the Petitioner's proposed use of the property would be able to achieve long-term compatibility with existing and potential uses; such opinion meeting the criteria set forth in (e)(5). As will also be addressed in another portion of this Order, the code language itself demands the BOA to find that the compatibility analysis is competent substantial evidence of unique circumstances regarding the potential uses of parcels that were not anticipated by the alternative criteria (i.e. (e)(1)-(4)). The County never introduced any specific evidence why the Petitioners' compatibility should be

rejected. Rather, the County's evidence was that it simply did not agree with the Petitioners' compatibility analysis. In fact, the County's witness never directly answered the question posed by Petitioners' counsel as to whether the proposed use (a commercial venture in a commercial zone) could coexist with the surrounding residential uses in a stable fashion over time such that no use, activity or condition is unduly negatively impacted. (See App. 076-080).

While the BOA affirmatively stated it based its decision on the expert testimony, and not the citizen testimony, the County argues that part of the competent substantial evidence supporting the BOA's decision did indeed come from the citizen testimony. The Court certainly understands the complaints and fears of these witnesses. However, the testimony of the citizens who spoke against the proposed use cannot constitute competent substantial evidence based upon existing case law.² The First District Court of Appeal has held that lay witnesses' speculation about potential traffic problems, light and noise pollution, and general unfavorable 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). Similarly any lay witnesses' opinions that a proposed land use will devalue homes in the area are insufficient to support a finding that such devaluation will occur. Further, while there were speakers who identified themselves as real estate agents, their testimony cannot be considered as expert opinions as to whether the proposed use would cause devaluation of property. Such witnesses did not identify themselves as appraisers of real property and did not base their testimony on specific real estate sales and listings, opinions of brokers and other real estate agents, and information as to the general status of the local economy. See Trustees of Central States Southeast and Southwest Areas, Pension Fund v. Indico Corp., 401 So.2d 904, 906 (Fla. 1st DCA 1981). Based on the evidence the BOA

² The Florida Supreme Court has stated that the decisions of the district courts of appeal represent the law of Florida unless and until they are overruled by the Florida Supreme Court. Stanfill v. State, 384 So.2d 141, 143 (Fla. 1980).

could consider, the Court finds there was no competent substantial evidence justifying the BOA's decision to deny the Petitioners' administrative appeal.

The Court also finds that the BOA departed from the essential requirements of law by ignoring the code's language that a petitioner's compatibility analysis provides competent substantial evidence of unique circumstances regarding the potential uses of a parcel that were not anticipated by the alternative criteria. It is not for this Court to add or subtract words or requirements from a code provision. Anderson Columbia v. Brewer, 994 So.2d 419, 421 (Fla. 1st DCA 2008). Nothing in the plain language of Section 3-2.10(e)(5) of the County's LDC authorizes the County Staff or the BOA to simply disregard the Petitioner's compatibility analysis. The Code sets forth the established principle that a compatibility analysis must be viewed as competent substantial evidence. The County never considered that proposition when rendering its opinion, and neither did the BOA when it rejected the Petitioners' appeal. This is not a mere simple legal error, but rather a failure to apply the plain language of the Code. To be clear, this Court is not ruling at this time that a compatibility analysis automatically entitles the Petitioner the relief it seeks. However, the Court believes the Code mandated the BOA to apply the standards set forth in the Code when it rendered its decision, and by failing to do so the BOA departed from the essential requirements of the law that applied to this case.

For the reasons set forth above, the Court finds that the BOA's decision denying the Petitioners' Administrative Appeal was not supported by competent substantial evidence, and that the BOA departed from the essential requirements of the law. Accordingly, it is hereby ORDERED and ADJUDGED that:

1. The Petitioners' Amended Petition for Writ of Certiorari is GRANTED;

2. The BOA's decision denying the Petitioners' Administrative Appeal is QUASHED; and

3. The Court reserves jurisdiction to award costs, if appropriate, upon proper motion by the Petitioners as the prevailing party in this appellate proceeding.

DONE AND ORDERED in Chambers in Escambia County, Florida, this _____ day of _____ 2018.


eSigned by CIRCUIT COURT JUDGE J. SCOTT DUNCAN in 2017 CA 001778
on 08/03/2018 18:47:49 yw76gVXG

SCOTT DUNCAN
CIRCUIT COURT JUDGE

Conformed copies via e-mail to:

David A. Theriaque, Esquire (Counsel for Petitioners)
S. Brent Spain, Esquire (Counsel for Petitioners)
Kristin D. Hual, Esquire (Counsel for Respondent)

**BOARD OF ADJUSTMENT
ESCAMBIA COUNTY, FLORIDA**

Teramore Development, LLC,
Petitioner

v.

Parcel No.: 23-3S-31-2001-000-000
Address: 11400 block of Gulf Beach Highway
Date of County Administrative Decision: July 24, 2017
Date of BOA Appeal: October 18, 2017
Date of Circuit Court Decision: October 6, 2018
Date of BOA Rehearing: November 14, 2018

ESCAMBIA COUNTY, a political
subdivision of the State of Florida,
Respondent.

**ESCAMBIA COUNTY'S NOTICE OF EXPERT WITNESS AND SUPPLEMENTAL
AUTHORITY**

Respondent, Escambia County Board of County Commissioners, (hereinafter, the "County")
by and through undersigned counsel provides this Notice of Expert Witness and Supplemental
Authority for consideration at the hearing on this matter. The County states as follows:

I. Background:

1. The subject parcel is located at 11400 block Gulf Beach Highway. The property is
zoned Commercial (C) and is located within the Mixed-Use Suburban (MU-S) future land use (FLU)
category.

2. Section 3-2.10(e) of the Escambia County Land Development Code (LDC) requires
all new non-residential uses proposed within the Commercial (C) zoning district to satisfy at least
one of the listed locational criteria.

3. Within this zoning district, the LDC provides five possible ways to satisfy the
locational criteria. These are 1) proximity to an intersection, 2) proximity to a traffic generator, 3)

infill development, 4) site design, and 5) documented compatibility.

4. The applicant conceded that the parcel could not satisfy the first four criteria and submitted a Compatibility Analysis to satisfy the remaining criterion. Thus, the “Documented Compatibility” criterion was the only criterion addressed. To this end, the applicant submitted a Compatibility Analysis.

5. Documented Compatibility requires:

Documented compatibility. A compatibility analysis prepared by the applicant provides competent substantial evidence of unique circumstances regarding the potential uses of parcel that were not anticipated by the alternative criteria, and the proposed use, or rezoning as applicable, 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).

See Sec. 3-2.10(e)(5), Escambia County Land Development Code (2018).

6. On July 24, 2017, the Planning Official issued a determination that the applicant’s Compatibility Analysis was insufficient and, therefore, it did not satisfy the locational criteria requirement.

7. The applicant appealed the Planning Official’s determination, and on October 18, 2017, the matter came before the Board of Adjustment. The BOA voted 6-0 to deny the appeal and upheld the determination of the County Planning Official. Next, the applicant appealed the BOA’s decision by filing a Writ of Certiorari in Circuit Court.

8. On August 6, 2018, the Circuit Court granted the applicant’s Petition for Writ of Certiorari and quashed the prior decision of the BOA.

9. With the BOA’s order quashed, the matter is once again before the Board of

Adjustment for hearing on November 14, 2018.

II. Law:

10. It is well-established that the circuit court has no power in exercising its jurisdiction in certiorari to enter a judgement on the merits of the controversy under consideration nor to direct the respondent to enter any particular order or judgment. Snyder v. Douglas, 647 So.2d 275, 279 (Fla. 2d DCA 1994).

11. To this point, the Florida Supreme Court has held that when an Order is quashed on review of a Petition for Writ of Certiorari, the parties should be allowed to proceed "... in the same manner and to the same extent which they might have proceeded had the order reviewed not been entered." Broward v. G.B.V. International, Ltd., 787 So.2d at 838, 844 (Fla. 2001).

12. The Florida Supreme Court explained in Broward v. G.B.V. International, Ltd., that

"When the order is quashed, as it was in this case, it leaves the subject matter, that is, the controversy pending before the tribunal, commission, or administrative authority, as if no order or judgment had been entered and the parties stand upon the pleadings and proof as it existed when the order was made with the rights of all parties to proceed further as they may be advised to protect or obtain the enjoyment of their rights under the law in the same manner and to the same extent which they might have proceeded had the order reviewed not been entered."

The appellate court has no power in exercising its jurisdiction in certiorari to enter a judgment on the merits of the controversy under consideration nor to direct the respondent to enter any particular order or judgment.

Id. quoting Tamiami Trail Tours v. Railroad Commission, 174 So. 451, 454 (1937) (on rehearing). (Emphasis added.)

13. Because the Circuit Court does not have the inherent authority to direct any particular action by the BOA, to reweigh the evidence, or to substitute its judgment for that of the BOA's, the law requires the case to be returned to the BOA for consideration "as if no order or judgment had been entered." Id.

14. While the County recognizes that the "law of the case" doctrine requires that

questions of law which have been decided on appeal must govern the case in the appellate court and in the lower tribunal in all subsequent stages of the proceeding, it is important to note that the law of the case doctrine **does not** require a contrary result upon rehearing.

15. In a similar case, Dorian v. Davis, 874 So.2d 661 (Fla. 5th DCA 2004), the Orange County Board of County Commissioners disapproved a Development Plan to construct multi-family residential units on the grounds that it would create a public safety emergency. This action was appealed. The appellate court held that the County did not present competent and substantial evidence to support the denial and quashed the County's action. Following the appellate Court's ruling, Orange County held a second full public hearing in which additional evidence and testimony was presented. Once again, Orange County denied the Development Plan, and once again, the County's decision was appealed.

16. On the second appeal in Dorian, the Fifth District Court upheld the County's denial and noted that "in the second proceeding, the County considered additional new evidence and based its decision to disapprove the Development Plan on different grounds." Dorian v. Davis, 874 So.2d at 664.

17. The Dorian Court explained that the law of the case doctrine is narrower than the doctrine of *res judicata* in that it bars consideration only of those legal issues actually considered and decided in the former appeal. Id. See also Fla. Dept. of Transp. v. Juliano, 801 So.2d 101 (Fla. 2001).

18. Another example of this principle is outlined in Wood v. Dep't of Prof. Reg., Bd. of Dentistry, 490 So.2d 1079, 1081-82 (Fla. 1st DCA 1986). Here, the First District Court noted that any attempt by an appellate court "to prophesy as to the permissible limits of [a board's] discretion to determine the manner in which it will discharge its duty" under the law is premature if the question is not specifically before the board. As stated by the Second District Court, a reviewing court is

not empowered to review issues which the lower tribunal has not previously decided or to issue an advisory opinion. State v. Vogel, 415 So.2d 821 (Fla. 2d DCA 1982).

19. The law of the case doctrine has no application when a subsequent hearing or trial develops different facts and different issues. Parker Family Trust I v. City of Jacksonville, 804 So.2d 493 (Fla. 1st DCA 2001) (citing Steele v. Pendarvis Chevrolet, Inc., 220 So.2d 372, 376 (Fla. 1969)).

20. The determination that locational criteria have been met is more than a ministerial one.

21. The intent of the Documented Compatibility locational criterion is to allow the County to determine whether unique circumstances exist such that an applicant is entitled to relief through authorization to develop a new non-residential use.

22. The scope of the hearing on remand should include all issues relevant to what alternatives the Planning Official and the County had at the point of the decision.

III. Additional Evidence:

23. In addition to previous submittals, the Count intends to proffer the following:

- i. Expert testimony and written opinion of Ms. Shawna E. Martin, AICP, 2510 Goldenrod Way, Tallahassee, Florida 32311.
- ii. Records of certain recent rezonings along Gulf Beach Highway.
- iii. Records of other compatibility determinations by the Planning Official.
- iv. Testimony of County staff.

24. All additional records have been provided to opposing counsel and are attached hereto.

IV. Relief:

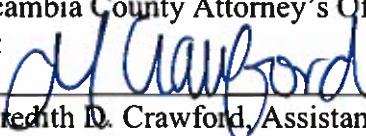
25. WHEREFORE, Escambia County requests that you re-open the hearing, rescind your prior action such that no order has been entered, accept additional information for consideration in

deliberation of the matter, and reconsider your prior motion. Any other action denies the County due process.

Respectfully submitted,


Alison P. Rogers, County Attorney
Escambia County Attorney's Office

By:


Meredith D. Crawford, Assistant County Attorney
221 Palafox Place, Suite 430
Pensacola, Florida 32502
(850) 595-4970 phone
(850) 595-4979 fax
Florida Board No.: 0048086
Attorney for Escambia County, FL
mdcrawford@myescambia.com
aespinosa@myescambia.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Notice of Expert Witness and Supplemental Authority for consideration by the Board of Adjustment was filed on November 9, 2018, via electronic mail to David A. Theriaque, Attorney for Teramore Development, LLC, at dat@theriaquelaw.com and to Kayla Meador, Clerk for the Escambia County Board of Adjustment, at krmeador@myescambia.com,


Meredith Crawford, Assistant
County Attorney
Attorney for Escambia County, FL

Shawna E. Martin

2510 Goldenrod Way, Tallahassee, FL 32311 • (850) 766-1242 • Shawna.Martin@hotmail.com

Summary of Qualifications

Mature multi-disciplinary management professional with considerable experience coordinating with numerous city, county and state departments, as well as civic and community groups, to effectively complete key projects.

Education

Masters of Science in Planning, 2007
FLORIDA STATE UNIVERSITY - Tallahassee, FL
Major Studies: Environmental Planning and Natural Resource Management

Bachelor of Science in Biological Sciences, 1996
FLORIDA STATE UNIVERSITY - Tallahassee, FL

Certifications and Honors

AICP Certification, American Institute of Certified Planners, May 2016

The Adaptive Leader Certification, Association of Fish and Wildlife Agencies, 2012

The Edward E. McClure Award for Academic Achievement, FSU, Department of Urban & Regional Planning, 2008

Professional Experience

LEON COUNTY DEPARTMENT OF DEVELOPMENT SUPPORT AND ENVIRONMENTAL MANAGEMENT (DSEM) - Tallahassee, FL
Principal Planner, November 2016 – Present; Senior Planner, October 2014 – November 2016;
Planner II, July 2012 – October 2014

My responsibilities include aiding citizens, developers and elected officials in navigating the County's land development process and shaping future development by recommending and developing amendments to the Comprehensive Plan and Land Development Regulations (LDRs).

FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION - Tallahassee, FL
OPS Government Operations Consultant/Stakeholder Coordinator, September 2011 – June 2012

I served as the Stakeholder Coordination Specialist for statewide stakeholder engagement efforts to develop imperiled species management plans for 60 state-listed wildlife species. The project that involved 80 biologists statewide and required coordination across agency divisions as well as with outside interest groups for its development and implementation.

PANAMA CITY COMMUNITY REDEVELOPMENT AGENCY (CRA) – Panama City, FL
St. Andrews Community Redevelopment Agency Program Manager & St. Andrews Waterfronts Florida Partnership (non-profit) Program Manager, August 2009 to August 2011

As Community Redevelopment Area (CRA) Program Manager, I was solely responsible for the direct implementation of the St. Andrews CRA Plan. St. Andrews CRA I soon found was quite unique amongst other CRAs in that it had a formal citizen support board that oversaw the implementation of the CRA

Shawna E. Martin

redevelopment plan and since their redevelopment boundaries overlapped, also served as the Waterfronts Florida Partnership board for the Waterfronts Florida Program with DCA.

DEPARTMENT OF COMMUNITY AFFAIRS – Tallahassee, FL
Senior Planner/Waterfronts Florida Program Coordinator, January 2008 to July 2009;
Planner II/Waterfronts Florida Program, January 2007 to January 2008

In this role I provided technical coordination and support for the Waterfronts Florida Program, assisting Florida's coastal communities with waterfront revitalization focused on hazard mitigation, public access, environmental and cultural resource protection and economic retention and redevelopment. Part of meeting the program's goals requires close linkage with goals, objectives and policies within a county's comprehensive plan.

SELECTED PUBLICATIONS & PRESENTATIONS

Guiding the Way to Waterfront Revitalization: A Best Management Practices Series, prepared by the Department of Community Affairs (June 2007), Contributor

The Waterfronts Florida Program: Revitalizing and Preserving Florida's Working Waterfronts, Strategic Plan 2008-2018, prepared by the Department of Community Affairs (2008), Contributor & Editor

Coastal Cities Summit 2008 Annual Conference, St. Petersburg, FL, Presenter on Joint Panel: Coastal & Waterfront Smart Growth

Waterfronts Florida Partnership Program: Community Case Studies, prepared by the Department of Community Affairs (May 2009), Contributor & Editor

Smart Growth for Coastal and Waterfront Communities, joint publication prepared by NOAA, EPA, ICMA and SeaGrant (September 2009), Contributor



Land Use Suitability and Compatibility Analysis

PREPARED FOR THE:
ESCAMBIA COUNTY BOARD OF COUNTY COMMISSIONERS

Site Location: 11400 Block of Gulf Beach Highway
Parcel ID#: 23-3S-31-2001-000-000

Prepared By:
Shawna E. Martin, AICP | October 26, 2018

Land Use Suitability and Compatibility Analysis

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Purpose

This report was commissioned by Escambia County in response to an Administrative Appeal filed with the Board of Adjustment (BOA) on August 7, 2017 by Teramore Development, LLC and subsequently petitioned in the Circuit Court of the First Judicial Court in Escambia County, Florida on January 5, 2018. The Circuit Court remanded the case back to the BOA for rehearing.

The case surrounds the development of a 9,100 square foot (SF) Dollar General store on a 3.4 acre parcel located in the County's Commercial zoning district. In mid-2017, Teramore requested confirmation of compatibility from the County's Planning Official regarding the proposed development pursuant to Section 3-2.10(c)(5) of the County's LDC. Teramore submitted a Compatibility Analysis prepared by a certified land use planner, Allara Mills Gutscher, AICP, in support of the request (*Land Use Compatibility Analysis – Gulf Beach Highway*; The Planning Collaborative, June 25, 2017). On July 24, 2017, the Planning Official issued a written decision concluding the proposed development, which is surrounded by residential uses, did not satisfy the alternative location criteria and did not provide evidence of "unique circumstances" as required by the LDC. Upon appeal, the BOA upheld the Planning Official's decision and denied the appeal. Teramore, et al. then appealed to the Circuit Court which granted a Writ of Cert quashing the BOA's decision on August 6, 2018.

This report evaluates, according to plain language, whether the proposed retail sales store is permissible and compatible based on the goals, strategies and policies of the Escambia County Comprehensive Plan 2030 (Comp Plan) and the criteria and development standards outlined in the Escambia County Land Development Code (LDC). An analysis will also be provided regarding the information contained within the Compatibility Analysis submitted by Teramore in support of the proposed development.

Overview of Proposed Development

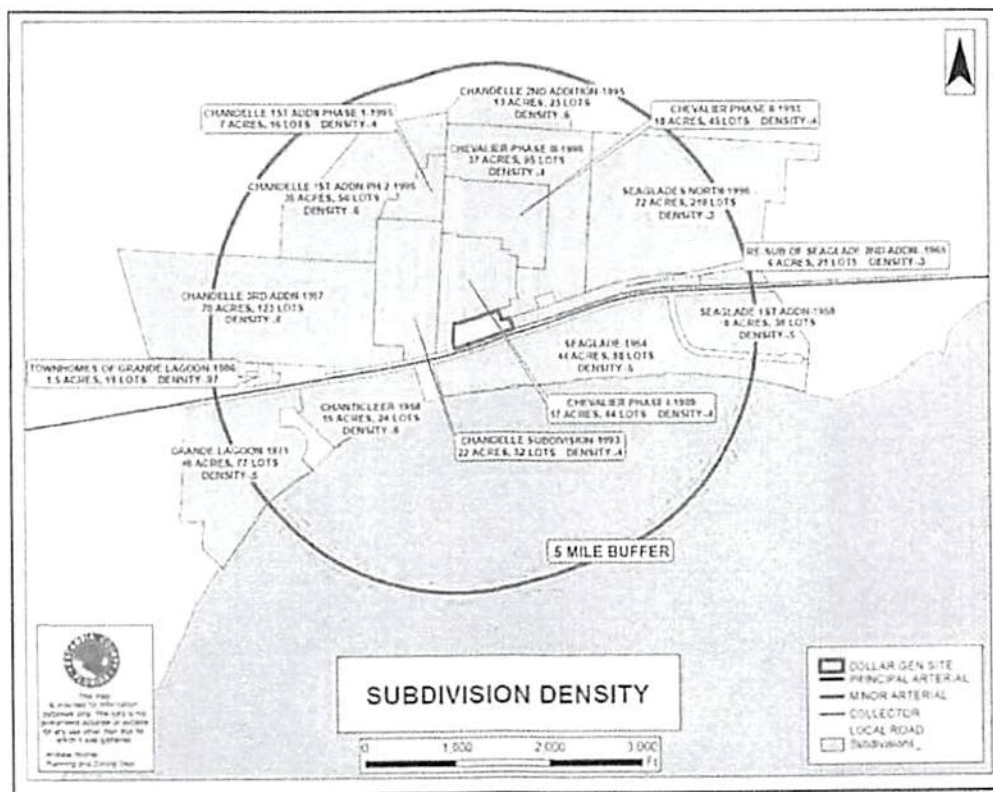
The applicant, Teramore, proposes the construction of a Dollar General retail store of approximately 9,100 square feet on a 3.4 acre parcel (parcel identification number 23-3S-31-2001-000-000) located in the northern 11400 block of Gulf Beach Highway in unincorporated Escambia County, Florida. The applicant purports that the retail sales store will have normal hours of operation between 7:00 (or 8:00 a.m.) to 9:00 p.m. No formal site plan has been submitted; however, the applicant proposes to orient the building towards the south, facing Gulf Beach Highway, with parking in the front and retaining approximately 2.15 acres of the site in a natural state. Additionally, ingress/egress to the site will be limited to Gulf Beach Highway. The Compatibility Analysis states there "will be no noise, smoke, glare, emissions, dust, vibration, or odors emitted from this use" and that "lighting...will be installed in a down-lit fashion" (*Land Use Compatibility Analysis – Gulf Beach Highway*; The Planning Collaborative, June 25, 2017, pg. 4).

As previously noted, the subject parcel is surrounded by single-family detached residential neighborhoods: Chevalier (184 Lots; all phases), Seaglade (357 Lots; all phases with some estate waterfront lots) and Chandelle (270 Lots; all phases); see Figure 1. These subdivisions are very

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low-density residential subdivisions with an average density of 2.27 dwelling units/acre (1/4 to 1/2 lot sizes on average), are contained within the County's Mixed-Use Suburban Future Land Use Category and are within either the Low-Density Residential (LDR; south of Gulf Beach Highway) or High-Density Residential (HDR; north of Gulf Beach Highway) zoning districts. The subdivisions to the south of Gulf Beach Highway are the oldest, most having been established in the mid to late 1950s. The subdivisions north of Gulf Beach Highway were established in the mid-to late 1990s. There is one contiguous parcel to the east of the subject site which is also zoned Commercial; however, this small, vacant parcel is owned by the Chevalier Homeowner's Association (HOA). Other than these two parcels, the nearest commercially-zoned area or parcel is approximately 1/2 mile to the southeast.

Figure 1: Map of Surrounding Residential Neighborhoods & Density



Comprehensive Plan Goals, Growth Strategies & Policies

A comprehensive plan is a document designed to guide the current and future needs and aspirations of a community. Future development is guided through long-range goals, strategies and policies for all activities that affect the local government. In reviewing the Escambia County Comp Plan, it becomes evident through overarching goals, strategies and policies, that the

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County's aspiration is to provide orderly growth management by providing a "clear separation between urban, suburban and rural areas" (Chapter 7, FLU, *Purpose and Intent*).

The policies adopted are "not intended to terminate growth but rather to provide mechanisms for growth management in order to serve the citizens, visitors and property owners" (Chapter 1, Section 1.03, *Intent*). The Comp Plan outlines specific policies intended to implement future development patterns, with the most notable for the purposes of this report being the "correction of nonconforming uses" and ensuring the "compatibility of adjacent uses" (Chapter 7, FLU, Policy 1.1.2).

Throughout the Future Land Use Element (FLU), it is continually referenced that the County's intent is to achieve a mix of land uses while promoting compatible infill and a clear separation of urban and suburban land uses. A suburban area is defined in the Comp Plan as:

"a predominately low-density residential area located immediately outside of an urban area or a city and associated with it physically and socioeconomically."

The subject parcel under evaluation is contained within the Mixed-Use Suburban (MU-S) FLU category, which states its intent to focus a mix of development within a $\frac{1}{4}$ mile of arterial roadways and transit corridors. MU-S allows for a range of uses including but not limited to residential, retail sales and services, office, recreation, public and civic, and even limited agriculture. The growth anticipation is that the FLU will achieve a good mix of uses within these corridor areas. The FLU goes even further with its growth goals by outlining the percentages of specific uses that are intended to be achieved through implementation of policies. Non-residential uses within the MU-S FLU are anticipated to comprise 30-50% of new development at these corridor intersections. Beyond the $\frac{1}{4}$ mile radius, residential development is anticipated to make up 70-80% of the land use, with non-residential only comprising 5-10%.

The FLU does not provide for a minimum intensity for non-residential uses but does provide a maximum intensity of 1.0 Floor Area Ratio (FAR). The maximum density for residential development is 25 dwelling units per acre (du/ac) with a minimum requirement of at least 2 du/ac. The minimum density is consistent with residential development on septic tank systems that require a minimum of a $\frac{1}{2}$ acre by the Florida Department of Health.

Each local government's Comprehensive Plan must be found consistent with Florida Statutes. Escambia County's Comp Plan has been found consistent by the Department of Economic Opportunity and therefore meets the requirements of being consistent with the State's definition of compatibility, which is as follows:

"Compatibility means a condition in which land uses or conditions can coexist in relative proximity to each other in a stable fashion over time such that no use or condition is unduly negatively impacted directly or indirectly by another use or condition."

Compatibility can be a subjective term and is often further refined by a local jurisdiction to help guide the type of development that is desired in an area. Jurisdictions are afforded the ability to

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adopt policies that are more stringent, so long as they are consistent with and do not conflict with Florida Statutes. Escambia County adopted definitions that sought to further define what compatible development means in their jurisdiction and have defined compatible and incompatible development as follows:

"Incompatible development is new development proposed to be constructed next to existing development wherein the proximity of the two kinds of development would each diminish the usefulness of the other or would be detrimental to existing operations. The incompatibility can arise from either land use or structure size and design.

Compatible development is new development proposed to be constructed next to existing development in which the proximity of the two kinds of development would each complement or enhance the usefulness of the other."

These definitions apply to all FLU categories and the path for development throughout the County. As not one size fits all, the definitions for compatible development are further defined in the zoning districts of the LDC by the stated allowable uses, conditional uses, location standards and development densities and intensities. To determine if a use is compatible with another, you must consider the intent of the Comp Plan, the intent of the FLU category, the intent of the zoning district and the intent of the development standards that are outlined. It should be a comprehensive analysis of all these components in harmony with one another, not in isolation.

Commercial Development Patterns

In many jurisdictions throughout the nation, planners are developing innovative policies to eliminate spot zoning and reinvent areas that demonstrate bad commercial development patterns, both of which can have devastating effects on a community and the creation of a sense of place. Both patterns will be discussed in more detail below in relation to the zoning of the subject parcel.

CONDITIONS OF SPOT ZONING

The subject site has historically had some form of commercial zoning since the adoption of the Comp Plan and LDC. Even as the area developed with predominately single-family residential neighborhoods, no downzoning of the property occurred. Downzoning reduces densities and intensities; however, communities rarely downzone as it can raise issues regarding the loss of property owners' investment-back expectations of development potential.

While no rezoning has occurred on the property, by perception the small lot size and isolation of the commercial zoning designation has the look and appearance of a parcel that has been "spot zoned." Spot zoning describes the application of a specific zoning district classification to a small area, which is surrounded by a larger different (usually less intense) zoning district leading to a disharmony with the surrounding area [See *Dade County v. Inversiones Rafamar, S.A.*, 360 So. 2d 1130, 1133 (Fla. 3d DCA 1978)].

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Good planning practices prevent the appearance and effects of spot zoning by ensuring Comp Plan policies and LDC standards provide smooth transitions between commercial and residential development. Under Section 2-7.2 of the LDC, the applicant for a rezoning has the burden of presenting competent substantial evidence to the reviewing board establishing that the requested zoning district would contribute to or result in a logical and orderly development pattern. A logical and orderly pattern shall require demonstration of five different conditions. One of these conditions refers to spot zoning and states:

"Where the proposed zoning would establish or reinforce a condition of spot zoning as defined in Chapter 6, the isolated district would nevertheless be transitional in character between the adjoining districts, or the differences with those districts would be minor or sufficiently limited."

I bring attention to this to show that while the parcel has historically been commercial, the small parcel set in isolation among a swath of low-density residential development has the same effect as a spot zoned parcel. It is out of harmony with the community and provides no transition in character between uses. If this isolated parcel applied for a rezoning from a lower intensity land use to a commercial zoning under the current Comp Plan and LDC, then it would most surely be considered spot zoning and the application denied due to disharmony with surrounding development patterns.

STRIP COMMERCIAL DEVELOPMENT

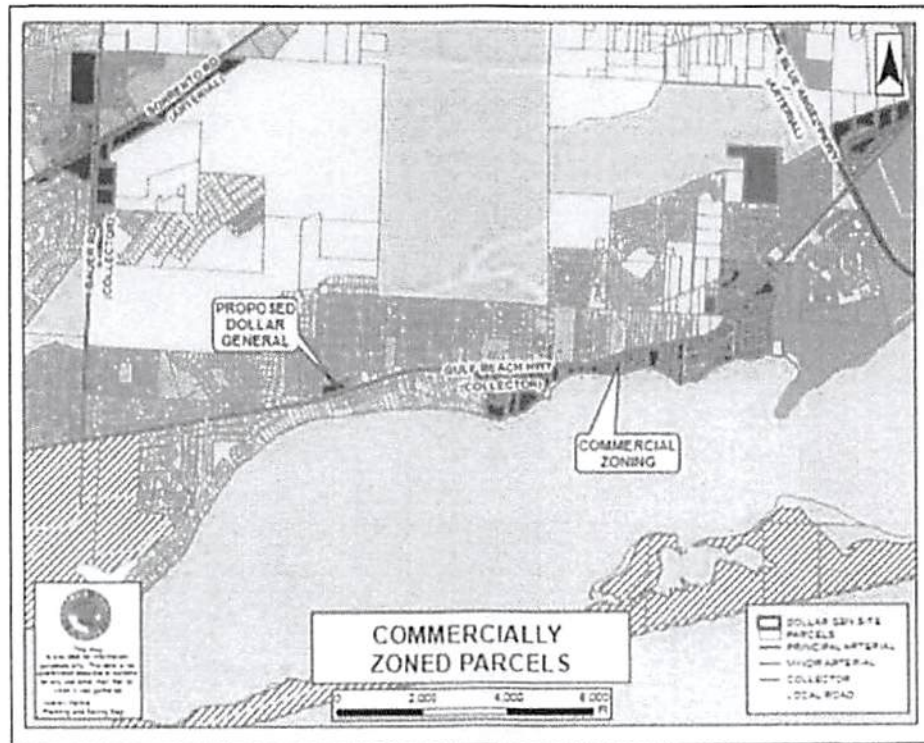
Strip commercial development patterns are contrary to the basic tenants of good planning practice as it ruins any sense of place that a community is trying to build due to conflicting urban forms. Strip development consumes natural areas and open space, impedes traffic flow and inevitably expands and grows outward from its limits. Very few communities are immune from the strip or scattered development patterns of the past, when growth went unchecked.

Gulf Beach Highway shows signs of past strip development patterns and zoning (see Figure 2 below), which the County is aspiring to correct through good planning strategies. The Escambia County Comp Plan outlines several policies in its Mobility Element that further demonstrate its intent to combat strip commercial development patterns and coordinate land use decisions with future traffic circulation system improvements. Policy 1.1.7 of the Mobility Element (Access Management) states:

"Escambia County will promote access management by limiting the number of conflict points that a motorist experiences during travel, separating conflict points as much as possible when they cannot be eliminated, and controlling the turning movements to facilitate traffic flow on affected roadways."

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Figure 2: Map of Commercial Zoning Along Gulf Beach Highway



Strip development introduces additional access points that disrupt through traffic and diminish the overall carrying capacity of roadways as cars pull in and out. The above-referenced policy, along with numerous other transportation and land use policies in the Comp Plan, clearly demonstrate the County's goal of eliminating the issues surrounding strip commercial development.

To make up for the mistakes of the past, many communities are developing plans that limit development to centric nodes in suburban areas. A node is the concentration of commercial and/or office development near the intersection of major arterial and collector roadways. Concentrated nodes prevent the negative impacts associated with strip development along major corridors which are often the gateways into a community.

Nodes accomplish two goals: they help maintain traffic flow along roadways and can better maintain or improve community character. The node concept can be established in several different ways, but the most common techniques are through overlay districts or specific location criteria. The latter being the technique that Escambia County has adopted, which is discussed in more detail below.

Compatibility Standards & Location Criteria (LDC)

The Escambia County LDCs have an entire section devoted to compatibility (Section 3-1.6, LDC) which outlines specific location criteria that are designed to create smooth transitions of uses and protect natural resources from intrusive activities and negative impacts. This section specifically states in its intent that "although zoning separates generally incompatible development, inclusion as a permitted use within a district does not alone ensure compatibility with other district uses."

This section clearly outlines, in plain language, that location criteria are established in some zoning districts to promote compatibility among uses, especially new non-residential uses in relation to existing residential uses. It also notes that the location criteria are meant to "prevent the adverse impacts of continuous strip development along major streets and avoid blighting influences of some commercial uses on adjacent residential neighborhoods [Section 3-1.6(b), LDC].

As this section generally applies to all zoning districts, it is clear the intent of the LDC is to prevent strip development, and as such, has created specific location criteria to concentrate non-residential development in areas which can better accommodate commercial intensities and the impacts that can result.

Commercial Development Standards (LDC)

The Commercial zoning district (Section 3-2.10, LDC) clearly states that the district intent is to "establish appropriate areas and land use regulations for general commercial activities, especially the retailing of commodities and services." The district allows for a range of uses including residential, retail sales and services, public and civic, recreation and entertainment, limited industrial and agricultural activities.

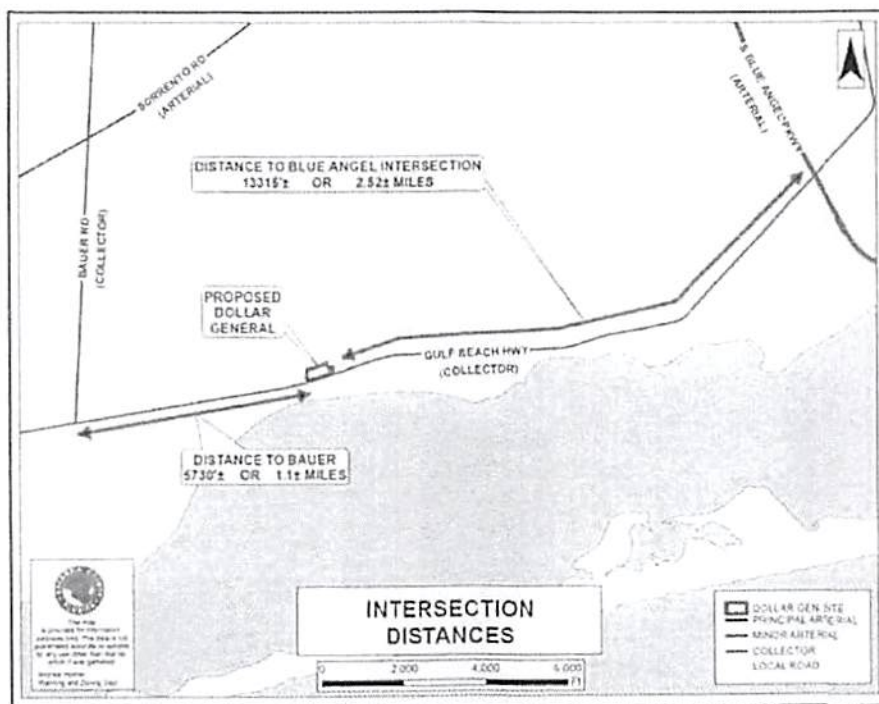
Pursuant to Section 3-2.10(e) of the LDC (location criteria), all new non-residential uses in the district, which are not part of a Planned Unit Development or exempt, shall be on parcels that satisfy at least one of the location criteria. It should also be noted that the applicant's expert witness and certified land use planner, Mrs. Allara Mills Gutcher, AICP, admitted during her testimony at the proceeding of the Escambia County BOA on October 18, 2017, that the subject site did not meet location criteria #1-4 (Escambia County BOA Transcripts, page 42, lines 6 and 7). Additionally, none of criteria #1-4 were discussed in the Compatibility Analysis submitted by the applicant.

While only criterion #5 is of consideration in this case, this report will document why the subject parcel does not meet criteria #1-4 as it is important to show the intent of the location criteria, how they each build upon one another and why the proposed site is not suitable or ripe for commercial development. Therefore, each of the five criteria will be discussed in detail below and the subject parcel will be analyzed based on each criterion.

LOCATION CRITERIA #1 - PROXIMITY TO AN INTERSECTION

This criterion limits non-residential uses to (1) being located along either an arterial or collector street, and (2) being within $\frac{1}{4}$ mile of its intersection with an arterial street. The subject site is located along Gulf Beach Highway, which is a collector street; however, it is not located within a $\frac{1}{4}$ mile of its intersection with an arterial street, as illustrated in Figure 3 below. The nearest arterial street intersection is actually a distance of 2.52 +/- miles away. Therefore, the subject site does not meet this criterion and in fact, is not even relatively close to meeting this criterion, as the nearest arterial street intersection is more than 10 times further away from the subject site than required.

Figure 3: Map of Nearest Intersections



LOCATION CRITERIA #2 - PROXIMITY TO A TRAFFIC GENERATOR

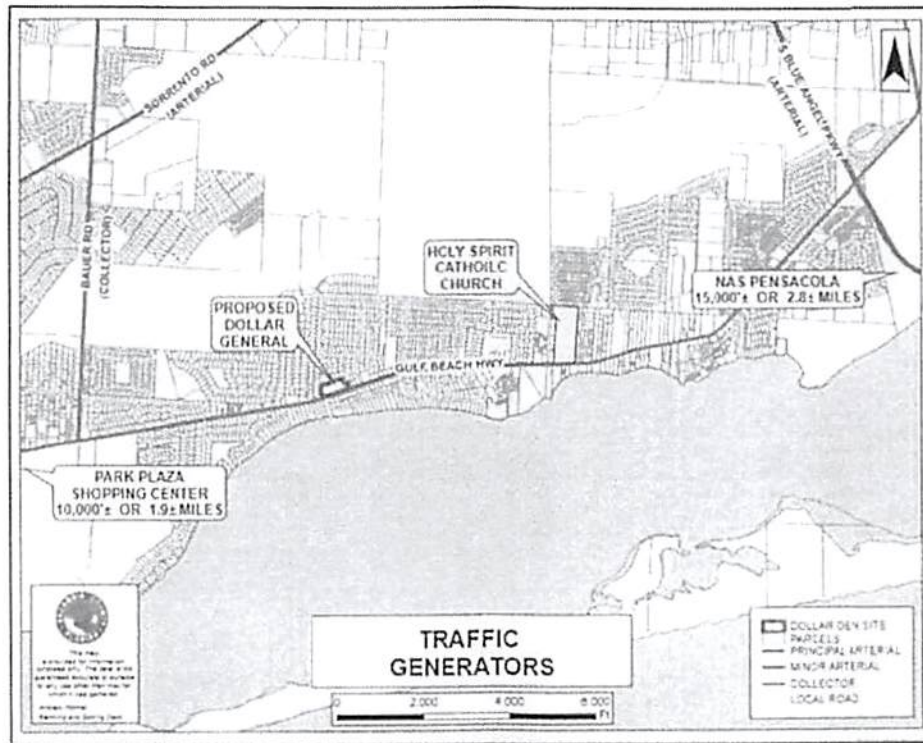
This criterion limits non-residential uses to (1) being located along either an arterial or collector street, and (2) being within a $\frac{1}{4}$ mile radius of an individual traffic generator of more than 600 daily trips, such as an apartment complex, military base, college campus, hospital, shopping mall, or similar generator.

The subject site does not meet this criterion, as there are no traffic generators within a $\frac{1}{4}$ mile radius of the site (See Figure 4). In fact, the nearest traffic generators are Naval Air Station Pensacola which is 2.8 +/- miles to the east, which is a 255% increase in the proximity

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requirement, and Park Plaza Shopping Center which is 1.9 +/- miles to the west and a 165% increase.

Figure 4: Map of Nearest Traffic Generators



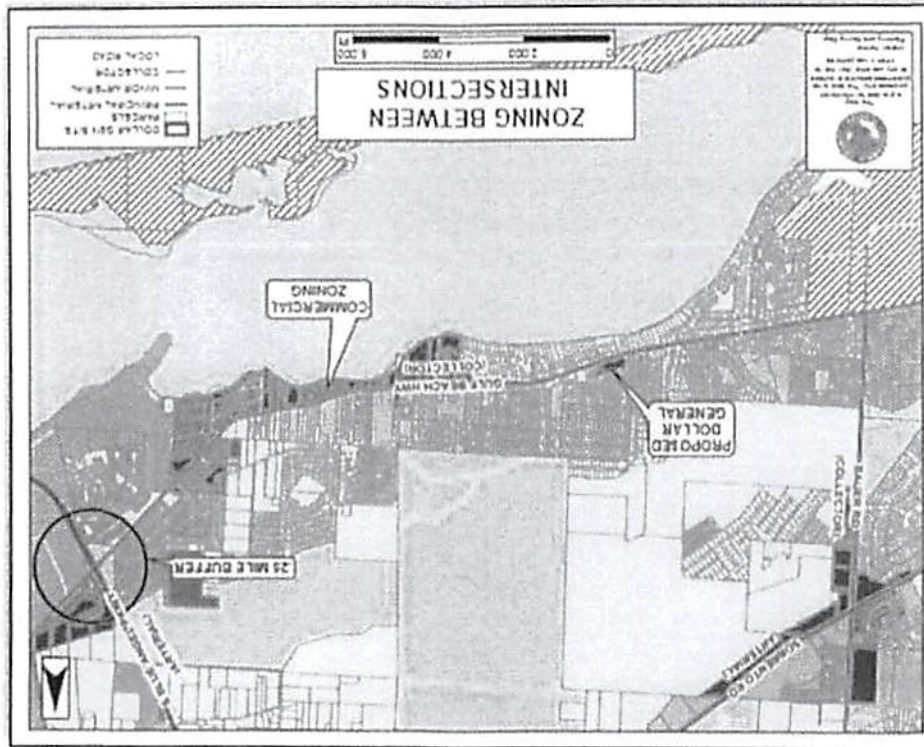
LOCATION CRITERIA #3 – INFILL DEVELOPMENT

This criterion limits non-residential uses to being located (1) along either an arterial or collector street, (2) in an area where already established non-residential uses are otherwise consistent with the Commercial zoning district, (3) where the new use would constitute infill development of similar intensity as the conforming development on surrounding parcels, (4) in an area that would promote compact development and (5) in an area that would not contribute to or promote strip commercial development.

The subject site also did not meet the five prongs of this location criterion. While the site is located along a collector street, it is not in an area where already established non-residential uses are consistent with the Commercial zoning district (see

Figure 5 below), does not constitute infill development of a similar intensity (see traffic generation rates in Table 3 below), and does not promote compact development as it is a stand-alone use and could promote strip commercial development.

Figure 5: Map of Nearest Commercial Zoning



LOCATION CRITERIA #4 - SITE DESIGN

This criterion limits non-residential development to being located (1) along either an arterial or collector street, (2) no more than a ½ mile from its intersection with an arterial or collector street, (3) not abutting a single-family residential zoning district (RR, LDR, MDR), and (4) meeting all the following site conditions:

1. Any intrusion into a recorded subdivision is limited to a corner lot;
2. A system of service roads or shared access is provided to the maximum extent made feasible by lot area, shape, ownership patterns, and site and street characteristics; and
3. Adverse impacts to any adjoining residential uses are minimized by placing more intensive elements of the use, such as solid waste dumpsters and truck loading/unloading areas, furthest from the residential use.

The subject site also does not meet the four prongs of this location criterion. Again, while it is located on a collector street, it is 1.1 +/- miles away from the nearest collector street intersection which is more than double the ½ mile requirement. The next prong of this test requires that the parcel not be next to a single-family residential zoning district. The site is directly adjacent to both the High-Density Residential (HDR) zoning district and the Low-Density Residential (LDR) Zoning District. Lastly, the fourth prong of this test is multifaceted as it requires that the site

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meet specific site conditions which all relate to minimizing intrusions and impacts upon existing residential uses nearby.

LOCATION CRITERIA #5 – DOCUMENTED COMPATIBILITY

This criterion requires the applicant provides competent substantial evidence of compatibility through a two-pronged test: (1) that “unique circumstances” exist regarding the parcel or potential uses of the parcels that were not anticipated by the alternative criteria (above), and (2) it is demonstrated that the proposed use will be able to achieve long-term compatibility with existing and potential uses.

Additionally, the following conditions must exist: (1) the parcel has not been rezoned by the landowner from the mixed-use, commercial, or industrial zoning assigned by the county, (2) 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). Neither of these conditions exist and thus are inapplicable to this proposed development.

The applicant submitted a Request for Interpretation and/or Confirmation of Compatibility to the County’s Planning Official along with a Land Use Compatibility Analysis (*Land Use Compatibility Analysis – Gulf Beach Highway*; The Planning Collaborative, June 25, 2017) prepared by a certified land use planner for the proposed retail sales use of the property. The Director of the Development Services Division, Mr. Horace Jones, reviewed the application and compatibility analysis and determined that the applicant did not provide competent substantial evidence to support compatibility based on the two-pronged test outlined in the LDC. It will be demonstrated below, based on the plain language of the code and documented past precedence regarding the evaluation of this location criterion (#5), that the proposed use does not meet the criterion of “documented compatibility.”

The first prong of the compatibility test states that “unique circumstances” must be proven that were not “anticipated by the alternative criteria,” which is referring to location criteria #1 – 4 of this section. It has already been affirmed that the project site did not meet criteria #1-4, and in fact, did not even come close to meeting any one of these location criteria. However, the code provides the applicant the opportunity to bring forth an alternative (locational) criteria that may not have been anticipated by the County but is consistent with the intent of the location criteria and the intent of the district.

The dictionary definition of unique is “being the only one of its kind; unlike anything else; particularly remarkable, special or unusual” and circumstance is “a fact or condition connected with or relevant to an event or action.” So, in summation, a unique circumstance is a parcel

¹ “Unique, Def. 1.1 and 1.2.” *OED Online*, Oxford University Press, 2018.

<https://en.oxforddictionaries.com/definition/unique>. Accessed 29 September 2018.

² “Circumstance, Def 1.” *OED Online*, Oxford University Press, 2018.

<https://en.oxforddictionaries.com/definition/circumstance>. Accessed 29 September 2018.

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condition that is remarkable, unlike anything else and is not predictable by the other location criteria.

Compatibility Analysis for Gulf Beach Highway Site

The applicant's Compatibility Analysis proposes that the unique circumstances of the parcel and/or use is that (1) it supports redevelopment, and (2) is infill development. As the criterion specifically states, the unique circumstance needs to be something that was not predicted or already expected in another criterion. Redevelopment is just as it states in plain language which is to develop again. In fact, Chapter 6 of the LDC clearly defines redevelopment as:

"The removal and replacement, rehabilitation, or adaptive reuse of an existing structure or structures, or the rehabilitation or adaptive reuse of land from which previous improvements have been removed."

According to the Compatibility Analysis, this site is vacant, has never been developed and is highly vegetated. Therefore, this parcel does not meet the qualifications to be deemed a redevelopment site and one can reasonably determine that this cannot be discerned to be a unique circumstance regarding the potential use of the property.

The second unique circumstance noted in the compatibility analysis is that the proposed use encourages and supports Comp Plan objectives regarding infill development. Infill development. Infill development is defined in Chapter 6 of the LDC as:

"The development of new housing or other land uses on vacant or underutilized land in existing developed areas, focusing on the reuse and renovation of obsolete or underutilized buildings and sites."

If only focusing on the first part of this definition, "development...on vacant...land in existing developed areas," then you may assume the subject parcel qualifies as infill development. However, the second part narrows intent to "focus on the reuse and renovation...of sites." The words reuse and renovation do not apply to this site as it has historically been vacant and never developed. Additionally, the "unique circumstances" criterion specifically states that to qualify as a unique circumstance, it cannot have been anticipated by the alternative criteria. Location criteria #3 speaks specifically to infill development and establishes five separate criteria that must be met to qualify as infill development in the Commercial zoning district. As has already been determined, the site does not meet this locational criterion and therefore, infill development cannot be cited here as a "unique circumstance" of the parcel or use.

No other "unique circumstances" were identified as plausible in the compatibility report and since the two stated above have been determined invalid, then the first prong of the compatibility test has not been met. Understandably, the Planning Official determined the proposed development does not meet criterion #5 and therefore issued a determination that the request was not compatible.

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Table 1 below provides a summary of the Commercial Zoning District Location Criteria for easy reference.

Table 1: Summary of Commercial Zoning District Location Criteria Analysis

Gulf Beach Highway Site (Collector Roadway) Location Criteria Analysis Summary			
Location Criteria	Requirement	Actual	Criteria Met/Not Met
#1 – Proximity to Intersection with Arterial Roadway	0.25 miles	2.52 miles (1,008 % increase over requirement)	Not Met
#2 – Proximity to Traffic Generator	0.25 miles	1.9 miles (760% increase in requirement)	Not Met
#3 – Infill Development	1. Existing area of commercial development	1. Surrounded by SFR development	Not Met
	2. New infill of similar intensity	2. No commercial in the area; green site	Not Met
	3. Promote compact development	3. Single use proposed	Not Met
	4. Doesn't promote strip development	4. Could promote strip development	Not Met
#4 – Site Design	1. 0.5 miles from collector road intersection	1. 1.1 miles away (110 % increase over requirement)	Not Met
	2. Not abutting SFR zoning	2. Abuts LDR and HDR zoning	Not Met
	3. Meets all site conditions and minimizes impacts on SFR	3. Does not minimize intrusions or impacts of SFR	Not Met
#5 Documented Compatibility	1. Unique Circumstances	1. None Identified	Not Met
	2. Compatibility Measures	2. Not Achieved	Not Met

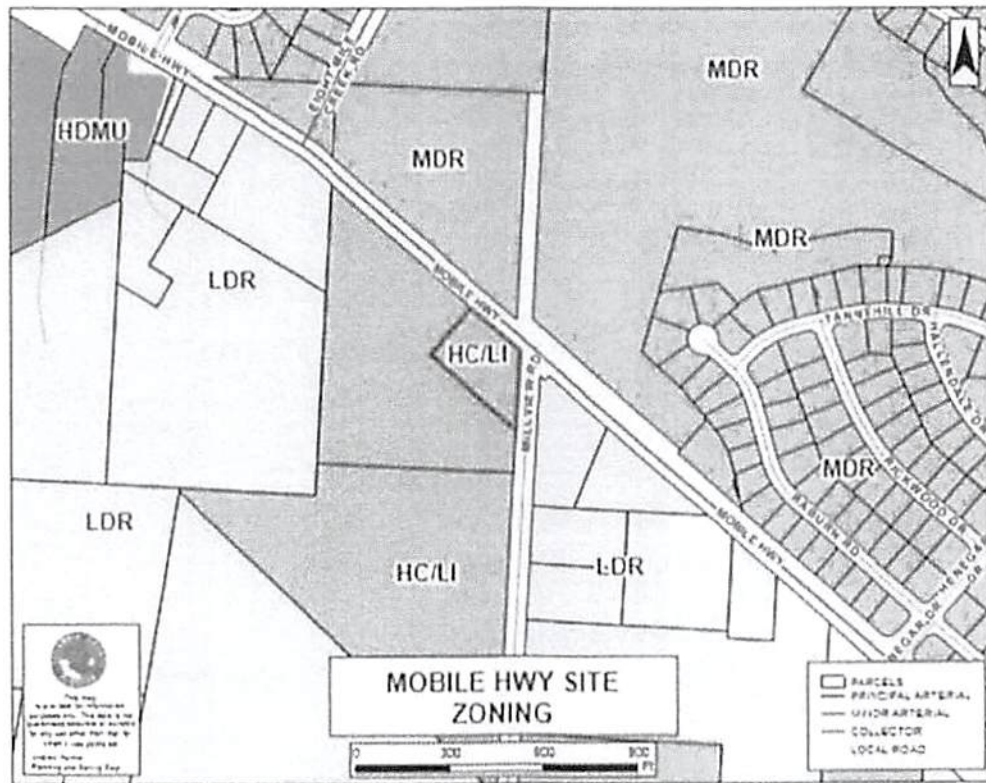
Compatibility Analysis for Mobile Highway Site

Notably, the applicant also submitted a Compatibility Analysis (*Land Use Compatibility Analysis – Mobile Highway*; The Planning Collaborative, March 28, 2018) for a separate site located at 7065 Mobile Highway for the same proposed retail sales use (Dollar General). This property has a different zoning classification and criteria as it is located within the Heavy Commercial and Light Industrial (HC/LI) zoning district (Section 3-2.11 of the LDC; see Figure 6 below). The intent of the HC/LI zoning district is to allow light manufacturing, large-scale wholesale and retail uses, major services and other more intensive uses than allowed in the Commercial district. The variety and

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intensity of uses is governed by the FLU and the compatibility of the proposed use with surrounding uses.

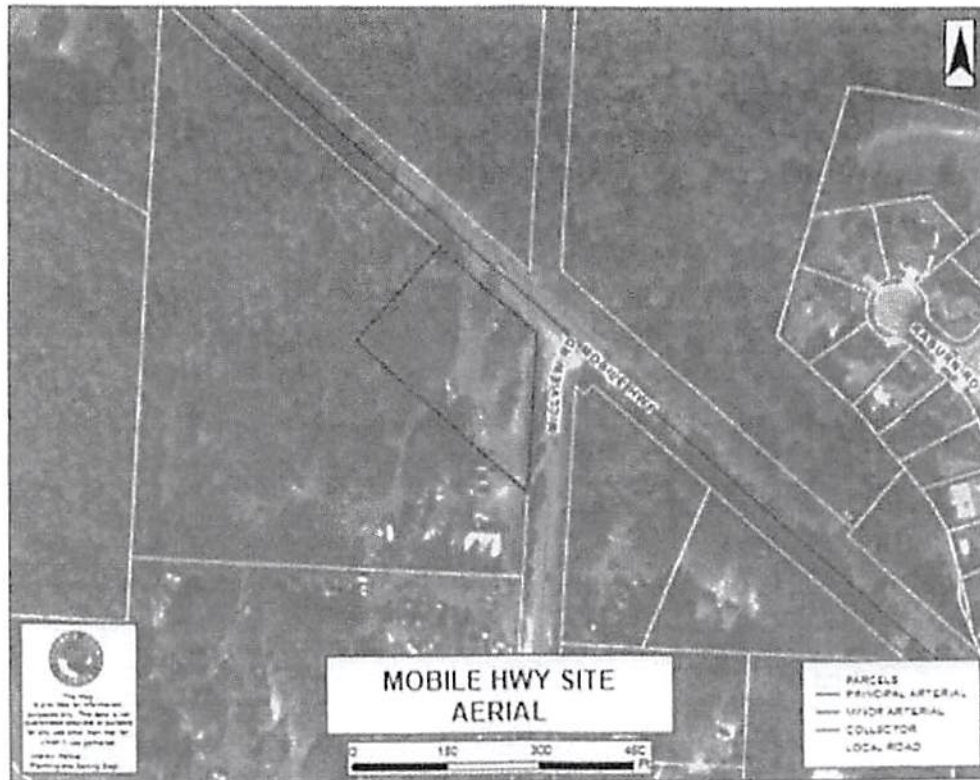
Figure 6: Map of Mobile Highway Site Zoning



Retail uses in this district must also meet location criteria. While slightly different than those location criteria outlined in the Commercial district, it was determined that this Mobile Highway site also did not meet "standard" location requirements. This development was required to meet the "documented compatibility" criteria, which again calls for a site to (1) have unique circumstances and (2) documented compatibility.

The Mobile Highway Compatibility Analysis documented the following as the unique circumstances of the site: (1) part of the site is currently developed with a vehicular storage lot or junk yard; (2) the parcel is relatively large at 9 +/- acres; (3) immediately surrounding the site are large vacant parcels (6, 8 and 97 +/- acre parcels); (4) the nearest subdivision is 1/3 mile of the subject site; and (5) there are several non-residential uses within 1/2 mile.

Figure 7: Map of Mobile Highway Site



The parcel is located along an arterial roadway, Mobile Highway, and is located within approximately ½ mile from the intersection of another major arterial roadways, Blue Angel Parkway. In fact, Millville Road directly connects to Blue Angel Parkway to the south and Mobile Highway connects to Blue Angel Parkway to the east. Additionally, the nearest arterial and collector road intersection is approximately 0.03 miles to the west and lastly, the site is approximately 5+/- miles from an Interstate Highway (I-10) interchange. This area is intended for high traffic generation and accommodation. While the Compatibility Analysis did not reference redevelopment or infill development as a reason why this Mobile Highway site is unique, it seems more plausible an argument on this site than the Gulf Beach Highway site in question.

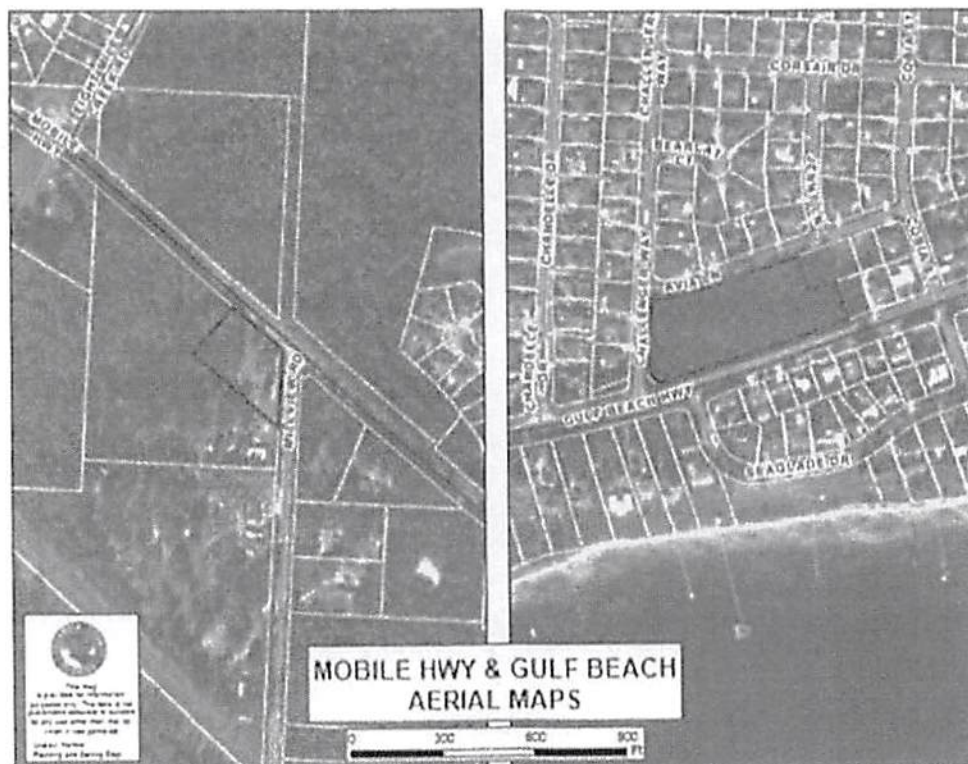
Ultimately, the Planning Official agreed with the Mobile Highway Compatibility Analysis as it documented numerous unique circumstances of the site that were not anticipated by the alternative criteria and redevelopment of the site furthers the goals, strategies and policies of the Comprehensive Plan. Potentially impacted single-family neighborhoods were a great distance away, the redevelopment of the site will enhance aesthetic value and property values, redevelopment would go toward improving the environmental impacts of the current use on the site, and the zoning allows for more intensive uses in this area in anticipation of businesses receiving bulk deliveries by truck that can have undesirable effects on nearby property and

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residential uses. Furthermore, the applicant worked with the County during the site plan review process to design the layout of the site to further achieve compatibility with surrounding uses.

As apparent in Figure 8 below, the surrounding land use patterns of the Mobile Highway site are in stark contrast to the Gulf Beach Highway site. The Gulf Beach Highway site is a completely isolated, commercially zoned parcel that is entirely surrounded by residential development. The site greatly exceeds the distance requirements set forth in the location criteria and the traffic impact comparisons in Table 4 show that the planned retail sales use will greatly impact adjacent roadways with daily trips, pass-by capture and will slow traffic through the construction of additional access points.

Figure 8: Map Comparison of Two Dollar General Sites



The Mobile Highway site, in contrast, is proximate to a major interstate highway (I-10), major arterial and collector roadways, is surrounded by vacant industrially-zoned land and is some distance away from any existing residential development. The Compatibility Analysis for the Mobile Highway site also presented competent substantial evidence of unique circumstances of the site that were not anticipated through the other location criteria. It is therefore easy to see the differences in the two sites and the reasons why the Planning Official determined the Mobile Highway site to meet the "documented compatibility" criteria and not the Gulf Beach Highway site.

Traffic Impacts

Trip generation is the estimated peak hour and daily site traffic volumes for a particular land use that evaluates the relationship between vehicle trips and land use characteristics. Trip generations can help local jurisdictions determine the impact a particular land use will have on its roadways. That information can then inform whether the roadway can support the increase in traffic, if roadway improvements would need to occur to support the traffic and help determine any impact fees that should be assessed to mitigate these impacts.

A Florida Department of Transportation (FDOT) Trip Generation Recommendations report completed by Kimley-Horn in 2014¹ noted that actual trip generation rates in Florida have historically been higher than the national averages reported in the Institute of Transportation Engineers (ITE) trip generation reports. This report also noted that Florida has seen an overall increase in the number of small box stores since the economic downturn in 2008. Until recently, the ITE did not have a suitable category for small box stores, such as Dollar General, and as such, other traffic generation rates including ITE Land Use – Specialty Retail Center (826), ITE Land Use – Shopping Center (820) and ITE Land Use – Free-Standing Discount Superstore (815) were utilized to determine traffic impacts.² This report concluded that rates for small box stores were significantly higher, roughly 30% to 60% higher, than the traffic generation rates (mentioned above) typically used to analyze traffic impacts from these retailers. Since then, ITE has added a new category, ITE Land Use – Variety Store (814), which captures the traffic impacts of these small box stores. The number of vehicle trips generated on roadways for the proposed 9,100 SF Dollar General retail store are outlined in Table 2 below.

Table 2: ITE Trip Generation for the Proposed Dollar General Store

ITE Trip Generation for the Proposed Dollar General Store (9,100 SF) Land Use: Variety Store (814)³ Trip Generation Manual, 10th Edition		
Vehicle Trip Ends vs	Rate	Number of Vehicle Trips Generated
1,000 SF of Gross Floor Area (GFA)		
Weekday Average Rate	63.47	578
Weekday Peak A.M. Rate	3.18	29
Weekday Peak P.M. Rate	6.84	62
Employees (Avg. 6 employees)		
Weekday Average Rate	95.59	870
Weekday Peak A.M. Rate	3.04	28
Weekday Peak P.M. Rate	7.42	68

¹ Kimley-Horn (2014). *FDOT Trip Generation Recommendations*, page 1.

² Kimley-Horn (2014). *FDOT Trip Generation Recommendations*, page 7.

³ Institute of Transportation Engineers (2017). *Trip Generation Manual*, 10th Edition, Volume 2: Data, Part 3.

Land Use Suitability and Compatibility Analysis

It is unclear from the applicant's Compatibility Analysis what trip generation rates were used to make the assumption that "none of the impacted roadway segments will exhibit adverse traffic conditions," as a complete traffic analysis was not provided, but only a letter stating the above from Engineering & Planning Resources (*Compatibility Analysis - Gulf Beach Highway*, The Planning Collaborative, pg. 13 and Exhibit 8).

The analysis compared the proposed retail commercial use to the maximum allowable residential scenario of an 85 unit high-rise condominium of 150 feet in height. The average height per story of a residential building is estimated to be 10 feet, so the 150 foot maximum allowance would equate to a 15-story condominium building. Market conditions have clearly not generated a demand for a high-rise condominium of 150 feet in height on this site or within the immediate vicinity. In fact, the tallest building even remotely close to this site is Lost Key Marina Condominiums which is 117 feet tall and is located approximately 1.7 miles away on waterfront property. Furthermore, rarely is a maximum allowed density or intensity achievable in consideration of the other site layout standards that are required, including but not limited to, stormwater management, buffers, parking, drive aisles, refuse collection, delivery of goods and services and open space/natural area.

ITE calculates residential land uses to generate significantly less daily traffic trips as commercial retail uses as show in Table 3 below. The best assumption for development on this site in the foreseeable future is likely equivalent to the type of single-family detached residential development surrounding the site, or low-rise multifamily housing (townhomes or duplexes). These uses, as shown below, generate anywhere from 149-180% less daily traffic volume than small box stores, such as a Dollar General.

Table 3: ITE Common Trip Generation Rates

<i>ITE Common Trip Generation Rates (PM Peak Hour)⁶</i>				
Code	Description	Unit of Measure	Trips Per Unit	Percent Difference with Variety Stores
210	Single-Family Detached	Dwelling Units	0.99	- 149%
220	Multifamily Housing (Low-Rise)	Dwelling Units	0.56	-170%
222	Multifamily Housing (High-Rise)	Dwelling Units	0.36	-180%
814	Variety Store	1,000 SF GFA	6.84	N/A

To compare traffic impacts, we have the make a few assumptions about the development potential of the land for residential uses. According to the National Association of Home Builders⁷, the smallest average lot size in the U.S., based on census data, has continued to decrease from the early 1990s to what it is today which is around 1/5 of an acre (0.2 ac) in South Atlantic states. Townhomes, in comparison, can be built on smaller lot sizes with the average lot

⁶ Institute of Transportation Engineers (2017). *Trip Generation Manual*, 10th Edition, Volume 2: Data, Parts 1 and 3.

⁷ Siniavskaia, N. (2018, August 31). *Lot Size Remains Record Low* [Web log post]. Retrieved from <http://www.eyeeonhousing.org>.

Land Use Suitability and Compatibility Analysis

size of about 0.1 ac of land. For a high-rise condominium, we will assume the highest maximum achievable density for the site even though it has not been evaluated as feasible to achieve this density with the topography of the land, infrastructure needs, height restrictions, development standards and market demand. Below are the traffic volumes which would be generated from these development types for the p.m. peak hours of 4:00 – 6:00 p.m. based on the ITE data noted above.

Table 4: Maximum Residential Development Scenarios Trip Generation Rates

Maximum Residential Development Scenarios Trip Generation Rates (PM Peak Hour)			
Description	Development Unit	Trips Per Unit	Daily PM Peak Trips
Single-Family Detached	17 dwelling units	0.99	17
Multifamily Housing (Low-Rise)	34 dwelling units	0.56	19
Multifamily Housing (High-Rise)	85 dwelling units	0.36	31
Dollar General	9,100 SF GFA	6.84	62

Table 4 clearly shows that the difference in traffic generation, and thereby the intensity of development, greatly differs from a residential use to a small box store use. The highest residential traffic generator is the high-rise multifamily housing at approximately 31 p.m. peak trips. The trips generated by the Dollar General are approximately two times higher than the most intense residential land use scenario and almost four times higher than the single-family detached residential neighborhoods. Furthermore, these trip generation rates are only reflective of the p.m. peak hours, which are generally used by local jurisdictions to determine traffic impacts to a roadway. The overall traffic impacts from the Dollar General site would be much greater, as estimated in Table 2 above, at between 578 to 870 trips per day whereas single-family residential units from the site would only generate approximately 160 trips with maximum allowed build-out of the site which is not a likely scenario.

Findings and Conclusions

The Escambia County Comprehensive Plan outlines the community's vision to foster responsible, compatible and sustainable growth and development patterns. The Land Development Code translates this vision into specific development standards to ensure the vision is achieved. The Comp Plan and LDC clearly outline the County's intent to (1) separate urban and suburban land uses, (2) ensure compatible development, (3) limit commercial development in the suburban environment through good planning practices (e.g., location criteria), (4) limit adverse impacts on the natural environment, and (5) ensure adequate public facilities, including roadway capacity.

As summarized in Table 1 above, the proposed Gulf Beach Highway Dollar General site did not meet the location criteria set forth in the Commercial zoning district. These location criteria clearly outline the areas where commercial development is desired and sets forth standards to adequately time development, provide a smooth transition between uses and achieve compatibility.

Land Use Suitability and Compatibility Analysis

The point of disagreement in this case surrounds the evaluation of whether the site meets the prescribed 5th location criteria. It is apparent the 5th location criteria, "Documented Compatibility," was created to provide for fairness and flexibility by allowing the development community to identify unique site circumstances that may not have been anticipated by the strict standards of code, while also ensuring the compatibility of a proposed use.

Pursuant to Section 1-1.1(c), the provisions of the LDC must first be evaluated based on plain language and if any provision is unclear, then the meaning shall be determined in consideration of other provisions of the LDC so that the interpretation is consistent and not disconnected to the rest of the LDC. This section further states that "every part of a provision is presumed to have some effect and must not be treated as having no effect unless absolutely necessary." Section 1-1.1(e) also defines how definitions, tense, permissive language and conjunctions shall be interpreted. Pursuant to Section 1-1.1(e)(6), the conjunction "and" indicates that all the connected terms, conditions, provisions, or events apply.

A retail use must demonstrate that it has met one of the five location criteria to be permissible on a parcel of land within the Commercial zoning district. Criterion #5, "Documented Compatibility" stipulates a site must meet a two-prong test of compatibility. This two-prong test is validated by the use of the conjunction "and," which indicates that all the connected terms, conditions and provisions must be met in order to "have the effect" of documented compatibility:

"a compatibility analysis prepared by the applicant provides competent substantial evidence of unique circumstances... and the proposed use, or rezoning as applicable, will be able to achieve long-term compatibility with existing and potential uses."

The Gulf Beach Highway Compatibility Analysis does not provide competent substantial evidence of any unique circumstances of the site, and thereby fails the two-prong test required for determining the site to be suitable for a commercial retail sales use and compatible with surrounding residential uses. The applicant instead presents several enhanced performance standards and in return, seeks a favorable determination from the County that the proposed use will be compatible with adjacent residential neighborhoods. Performance standards are already written into the LDC to ensure compatibility between permissible uses within a zoning district. The proposed retail sales use is not permissible until it demonstrates through competent substantial evidence that specific location criteria are met. It has not met any of the location criteria and therefore, cannot be found compatible through the provision of enhanced performance standards. To do so would be in direct conflict with the goals, strategies and policies of the Escambia County Comp Plan and Land Development Code.

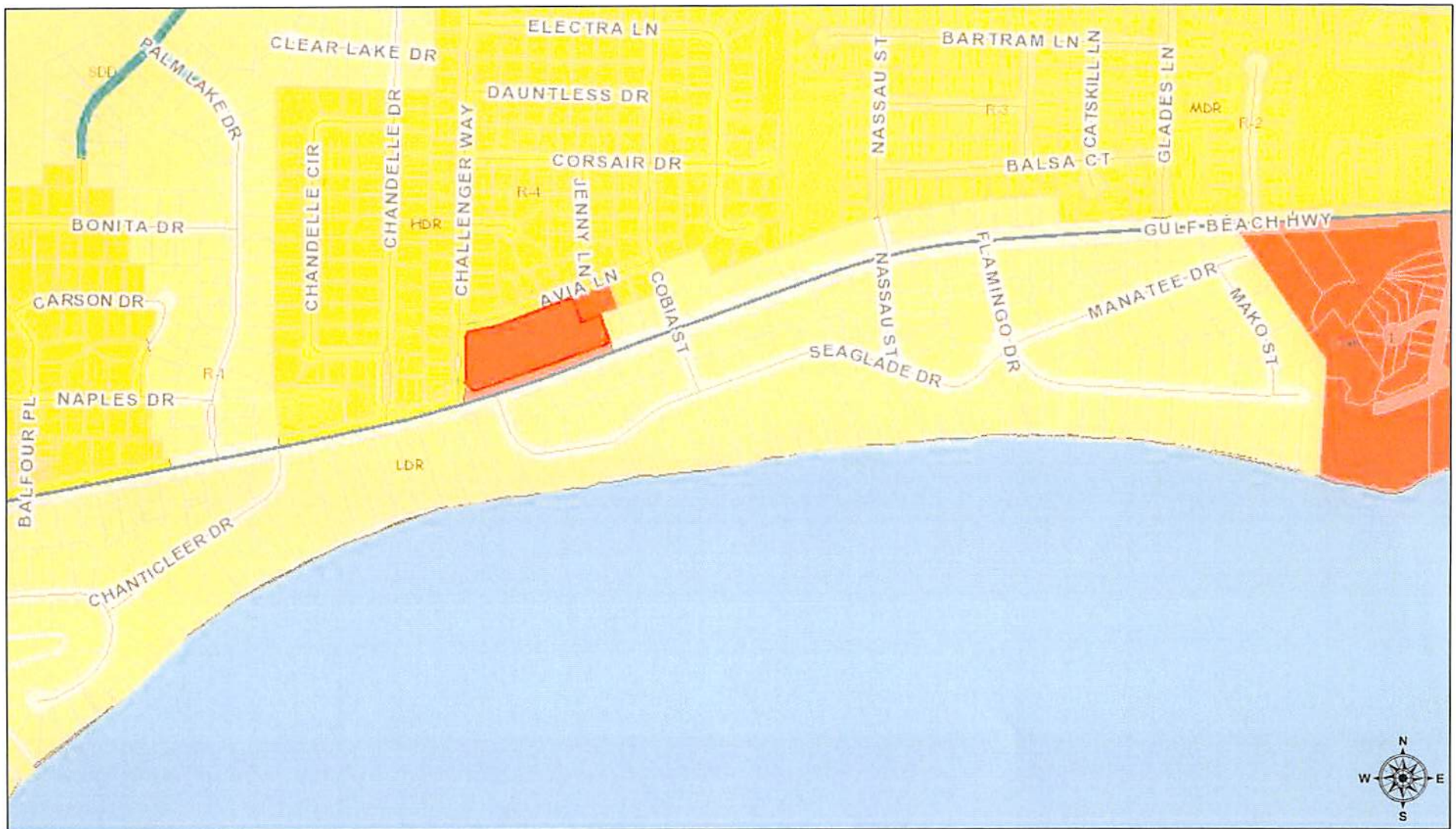
Pursuant to Sec. 1-3.3 of the LDC, the Planning Official has the authority to "make determinations concerning uses of land and structures, especially as to whether a particular use or activity, or class of uses or activities, or characteristic of a use or activity is of the same general character as those uses or activities identified in the LDC as permitted, conditionally permitted or prohibited."

Land Use Suitability and Compatibility Analysis

The Planning Official, in his official capacity and under the authority of the LDC, provided a determination that that the proposed Dollar General, on the parcel identified as 23-3S-31-2001-000-000, was not suitable for a commercial retail sales use nor compatible with surrounding residential uses.

The Planning Official's determination was not arbitrary or capricious as a separate Dollar General site on Mobile Highway was determined to meet the "Documented Compatibility" two-prong test and allowed to pursue development of the site, as outlined on page 14 of this report. Furthermore, the decision by the Planning Official does not find the Gulf Beach Highway site undevelopable, as residential uses are a by-right use in the Commercial Zoning District.

GoMaps



September 25, 2018

polygonLayer

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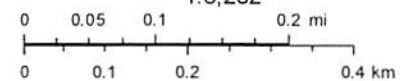
— COLLECTOR

— LOCAL ROAD

□ Parcels

— Rivers, Creeks, and Streams

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Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, © OpenStreetMap contributors, and the GIS User Community

**Escambia County
Clerk's Original**

4/15/2018 GMR 5:43pm PH

ORDINANCE NUMBER 2018- 12

AN ORDINANCE OF ESCAMBIA COUNTY, FLORIDA, AMENDING PART II OF THE ESCAMBIA COUNTY CODE OF ORDINANCES, THE ESCAMBIA COUNTY COMPREHENSIVE PLAN: 2030, AS AMENDED; AMENDING CHAPTER 7, "THE FUTURE LAND USE ELEMENT," POLICY FLU 1.1.1, TO PROVIDE FOR AN AMENDMENT TO THE 2030 FUTURE LAND USE MAP, CHANGING THE FUTURE LAND USE CATEGORY OF A PARCEL WITHIN SECTION 22, TOWNSHIP 3S, RANGE 31W, PARCEL NUMBERS 5001-002-001, TOTALING 1.33 (+/-) ACRES, LOCATED ON GULF BEACH HIGHWAY AND BAUER ROAD, FROM COMMERCIAL (C) TO PUBLIC (P) PROVIDING FOR A TITLE; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Chapter 163, Part II, Florida Statutes, Escambia County adopted its Comprehensive Plan on April 29, 2014; and

WHEREAS, Chapter 125, Florida Statutes, empowers the Board of County Commissioners of Escambia County, Florida to prepare, amend and enforce comprehensive plans for the development of the County; and

WHEREAS, the Navy Air Station (NAS) Pensacola is an active naval air base that provides flight training within the County such that Escambia County Airfield Overlay density restrictions apply; and

WHEREAS, the Escambia County Planning Board conducted a public hearing and forwarded a recommendation to the Board of County Commissioners to approve changes (amendments) to the Comprehensive Plan; and

WHEREAS, the Board of County Commissioners of Escambia County, Florida finds that the adoption of this amendment is in the best interest of the County and its citizens;

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Escambia County, Florida, as follows:

Section 1. Purpose and Intent

This Ordinance is enacted to carry out the purpose and intent of, and to exercise the authority set out in, the Community Planning Act, Sections 163.3161 through 163.3215, Florida Statutes.

Date: 4/12/2018 Verified By: D. Allen

Section 2. Title of Comprehensive Plan Amendment

This Comprehensive Plan amendment shall be entitled – "Small Scale Amendment 2018-01."

Section 3. Changes to the 2030 Future Land Use Map

The 2030 Future Land Use Map, as adopted by reference and codified in Part II of the Escambia County Code of Ordinances, the Escambia County Comprehensive Plan: 2030, as amended; Chapter 7, "Future Land Use Element," Policy FLU 1.1.1; and all notations, references and information shown thereon, is further amended to include the following future land use changes:

A parcel within Section 22, Township 3S, Range 31W, parcel number 5001-002-001, totaling 1.33 (+/-) acres, located on Gulf Beach Highway, as more particularly described in the Boundary Survey description produced by Pittman, Glaze and Associates, INC., registered land surveyor David D. Glazo dated 11/23/2002, attached as Exhibit A, from Commercial (C) to Public (P).

Section 4. Severability

If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by any Court of competent jurisdiction, the holding shall in no way affect the validity of the remaining portions of this Ordinance.

Section 5. Inclusion in the Code

It is the intention of the Board of County Commissioners that the provisions of this Ordinance shall be codified as required by Section 125.68, Florida Statutes, and that the sections, subsections and other provisions of this Ordinance may be renumbered or relettered and the word "ordinance" may be changed to "section," "article," or such other appropriate word or phrase in order to accomplish such intentions.

INTENTIONALLY LEFT BLANK

Section 6. Effective Date

Pursuant to Section 163.3184(3)(c)(4), Florida Statutes, this Ordinance shall not become effective until 31 days after the Department of Economic Opportunity notifies Escambia County that the plan amendment package is complete. If timely challenged, this Ordinance shall not become effective until the Department of Economic Opportunity or the Administration Commission enters a final order determining the Ordinance to be in compliance.

DONE AND ENACTED this 5th day of April, 2018.

BOARD OF COUNTY COMMISSIONERS
OF ESCAMBIA COUNTY, FLORIDA

By: _____

Jeff Bergesh, Chairman

ATTEST: PAM CHILDERS
CLERK OF THE CIRCUIT COURT

Date Executed

4/12/2018

By: _____

Deputy Clerk



This document approved as to form
and legal sufficiency

By

Title

Date

CM Crawford

4/9/18

ACA

ENACTED: April 5, 2018

FILED WITH THE DEPARTMENT OF STATE: April 12, 2018

EFFECTIVE DATE: See Section 6

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Exhibit A

RECEIVED
JUN 28 1963

**Escambia County
Clerk's Original**

4/15/2018 6:45:47 p.m. PH

ORDINANCE NUMBER 2018- 14

AN ORDINANCE OF ESCAMBIA COUNTY, FLORIDA, AMENDING PART II OF THE ESCAMBIA COUNTY CODE OF ORDINANCES, THE ESCAMBIA COUNTY COMPREHENSIVE PLAN: 2030, AS AMENDED; AMENDING CHAPTER 7, "THE FUTURE LAND USE ELEMENT," POLICY FLU 1.1.1, TO PROVIDE FOR AN AMENDMENT TO THE 2030 FUTURE LAND USE MAP, CHANGING THE FUTURE LAND USE CATEGORY OF A PARCEL WITHIN SECTION 18, TOWNSHIP 3S, RANGE 31W, PARCEL NUMBERS 1101-000-000, TOTALING 8.955 (+/-) ACRES, LOCATED ON SOUTH BLUE ANGEL PARKWAY AND GULF BEACH HIGHWAY, FROM COMMERCIAL (C) TO CONSERVATION (CON) PROVIDING FOR A TITLE; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Chapter 163, Part II, Florida Statutes, Escambia County adopted its Comprehensive Plan on April 29, 2014; and

WHEREAS, Chapter 125, Florida Statutes, empowers the Board of County Commissioners of Escambia County, Florida to prepare, amend and enforce comprehensive plans for the development of the County; and

WHEREAS, the Navy Air Station (NAS) Pensacola is an active naval air base that provides flight training within the County such that Escambia County Airfield Overlay density restrictions apply; and

WHEREAS, the Escambia County Planning Board conducted a public hearing and forwarded a recommendation to the Board of County Commissioners to approve changes (amendments) to the Comprehensive Plan; and

WHEREAS, the Board of County Commissioners of Escambia County, Florida finds that the adoption of this amendment is in the best interest of the County and its citizens;

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Escambia County, Florida, as follows:

Section 1. Purpose and Intent

This Ordinance is enacted to carry out the purpose and intent of, and to exercise the authority set out in, the Community Planning Act, Sections 163.3161 through 163.3215, Florida Statutes.

D. Allen
Data: 4/12/2018 Verified By:

Section 2. Title of Comprehensive Plan Amendment

This Comprehensive Plan amendment shall be entitled – "Small Scale Amendment 2018-02."

Section 3. Changes to the 2030 Future Land Use Map

The 2030 Future Land Use Map, as adopted by reference and codified in Part II of the Escambia County Code of Ordinances, the Escambia County Comprehensive Plan: 2030, as amended; Chapter 7, "Future Land Use Element," Policy FLU 1.1.1; and all notations, references and information shown thereon, is further amended to include the following future land use changes:

A parcel within Section 18, Township 3S, Range 31W, parcel number 1101-000-000, totaling 8.955 (+/-) acres, located on South Blue Angel Parkway, as more particularly described in the Boundary Survey description produced by Rebol-Battle & Associates, INC., registered land surveyor Mark A Norris dated 11/21/2016, attached as Exhibit A, from Commercial (C) to Conservation (Con).

Section 4. Severability

If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by any Court of competent jurisdiction, the holding shall in no way affect the validity of the remaining portions of this Ordinance.

Section 5. Inclusion in the Code

It is the intention of the Board of County Commissioners that the provisions of this Ordinance shall be codified as required by Section 125.68, Florida Statutes, and that the sections, subsections and other provisions of this Ordinance may be renumbered or relettered and the word "ordinance" may be changed to "section," "article," or such other appropriate word or phrase in order to accomplish such intentions.

INTENTIONALLY LEFT BLANK

Section 6. Effective Date

Pursuant to Section 163.3184(3)(c)(4), Florida Statutes, this Ordinance shall not become effective until 31 days after the Department of Economic Opportunity notifies Escambia County that the plan amendment package is complete. If timely challenged, this Ordinance shall not become effective until the Department of Economic Opportunity or the Administration Commission enters a final order determining the Ordinance to be in compliance.

DONE AND ENACTED this 5th day of April, 2018.

BOARD OF COUNTY COMMISSIONERS
OF ESCAMBIA COUNTY, FLORIDA

By: [Signature]
Jeff Bergosh, Chairman

ATTEST: PAM CHILDERS
CLERK OF THE CIRCUIT COURT

Date Executed

4/12/2018

By: [Signature]
Deputy Clerk



This document approved as to form
and legal sufficiency

By: [Signature]
Title: ACA
Date: 4/9/18

ENACTED: April 5, 2018

FILED WITH THE DEPARTMENT OF STATE: April 12, 2018

EFFECTIVE DATE: See Section 6

4/5/2018 GMR I-2 ESCAMBIA COUNTY BOARD OF COUNTY COMMISSIONERS

ORDER OF THE ESCAMBIA COUNTY
BOARD OF COUNTY COMMISSIONERS

The requested rezoning for:

Case No.:	Z-2018-01
Address:	12248 Gulf Beach Highway
Property Reference No.:	22-3S-31-5001-002-001
Property Size:	1.33 (+/-) acres
From:	Com, Commercial district (25 du/acre)
To:	Pub, Public district (du density limited to vested residential development)
FLU Category:	P, Public

Not Agenda Backup

4/12/2018 *[Signature]*

is hereby APPROVED this 5th day of April, 2018.

ESCAMBIA COUNTY, FLORIDA
by and through its duly authorized
Board of County Commissioners

[Signature]
Jeff Bergosh, Chairman

Date Executed

4/12/2018

ATTEST: Pam Childers
Clerk of the Circuit Court



[Signature]
Deputy Clerk

This document approved as to form
and legal sufficiency

By *[Signature]*
Title ACH
Date 4/9/18

4/5/2018 GMB I-5

ESCAMBIA COUNTY BOARD OF COUNTY COMMISSIONERS

ORDER OF THE ESCAMBIA COUNTY
BOARD OF COUNTY COMMISSIONERS

The requested rezoning for:

Case No.:	Z-2018-02
Address:	4100 Block South Blue Angel Parkway
Property Reference No.:	18-3S-31-1101-000-000
Property Size:	8.955 (+/-) acres
From:	Com, Commercial district (25 du/acre)
To:	Con, Conservation district (du density limited to vested development)
FLU Category:	Con, Conservation

Not Agenda Backup
4/12/2018 D Allen

is hereby APPROVED this 5th day of April, 2018.

ESCAMBIA COUNTY, FLORIDA
by and through its duly authorized
Board of County Commissioners

Jeff Bergosh, Chairman

Date Executed

4/12/2018

ATTEST: Pam Childers
Clerk of the Circuit Court



[Signature]
Deputy Clerk

This document approved as to form
and legal sufficiency

By *[Signature]*
Title *[Signature]*
Date 4/9/18



REPLY TO: TALLAHASSEE

March 30, 2018

VIA OVERNIGHT DELIVERY

Horace L. Jones
Department Director/Supervisor
Escambia County Developmental Services
3363 W Park Place
Pensacola, FL 32501

Re: Teramore Development, LLC -- Parcel Number 23-1S-31-3401-000-001

Dear Mr. Jones:

Our law firm represents Teramore Development, LLC, in regard to its desire to construct an approximately 9,100 square foot Dollar General retail store on Parcel Number 23-1S-31-3401-000-001 in Escambia County, Florida ("Property"). The Property is designated as "Industrial" on the County's Future Land Use Map ("FLUM") and is zoned "Heavy Commercial and Light Industrial" ("HC/LI").

Pursuant to Section 3-2.11(e)(3) of the County's Land Development Regulations, enclosed is a report entitled "Land Use Compatibility Analysis" that was prepared by Allara Mills Gutcher, AICP. We respectfully submit that Ms. Gutcher's "Land Use Compatibility Analysis" demonstrates that use of the Property as an approximately 9,100 square foot Dollar General retail store would be compatible with adjacent and surrounding properties.

Section 3-2.11(e)(3) of the County's Land Development Regulations states as follows:

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 [sic] from the mixed-use, commercial, or industrial zoning assigned by the county.

TALLAHASSEE
433 NORTH MAGNOLIA DRIVE
TALLAHASSEE, FLORIDA 32308
(850) 224-7332
FAX: (850) 224-7662

WINTER GARDEN
12200 WEST COLONIAL DRIVE, SUITE 300C
WINTER GARDEN, FLORIDA 34787
(407) 347-5388
FAX: (407) 264-6132

Horace L. Jones
March 30, 2018
Page 2

- 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).

We respectfully submit that there are unique circumstances regarding the Property which fulfill the criteria of Section 3-2.11(e)(3). Consequently, it would be appropriate for the County to approve the proposed approximately 9,100 square foot Dollar General retail store on the Property.

First, as stated above, the Property has an Industrial FLUM designation. Residential uses are not allowed on properties with an Industrial FLUM designation. Thus, if the County were to determine that none of the location criteria apply to the Property, the Property would be limited to residential uses, which are prohibited on the Property.

Additionally, the approximately 9,100 square foot Dollar General retail store proposed for the Property would not be the first non-residential use in that portion of Escambia County. Rather, there are eight (8) non-residential uses located within one-half mile of the Property. (*See Land Use Compatibility Analysis at p. 5*). Moreover, the Property is currently being used as a non-residential use -- a vehicular storage lot or junk yard.

Lastly, the Property meets the criteria set forth in Section 3-2.11(e)(3)a. & b. of the County's Land Development Regulations. The Property has not been rezoned by the land owner from the mixed-use, commercial, or industrial zoning assigned by the County and the Property is not located within a county redevelopment district.

In conclusion, we respectfully submit that the Property fulfills the criteria of Section 3-2.11(e)(3), and is eligible for the proposed approximately 9,100 square foot Dollar General retail store. I will try to reach you on Wednesday, April 4, 2018, to discuss this matter. In the meantime, please do not hesitate to contact me if you have any questions or need further information.

Sincerely,



David A. Theriaque

Enclosure

cc: Teramore Development, LLC
Meredith Crawford, Assistant County Attorney

Land Use Compatibility Analysis

For a Dollar General Retail Store to be located on a portion of the site located at 7065 Mobile HWY,
Pensacola, Florida

Also referenced as Parcel ID number 23-1S-31-3401-000-001

Conducted for:

Teramore Development, LLC

Ph: 229.516.4286

develop@teramore.net



Prepared for:

Escambia County Planning and Zoning Division

Ph: 850.554.8210

3363 West Park Place

Pensacola, FL 32505

Prepared by:

The Planning Collaborative

Allara Mills Gutcher, AICP

Ph: 850.319.9180

allara@theplanningcollaborative.com



March 28, 2018

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EXHIBIT 1 – Boundary Survey of 1.5-acre parcel.	
EXHIBIT 2 – Site Layout and Dimension Plan prepared by Bell Engineering Services, LLC, dated March 13, 2018.	
EXHIBIT 3 – Escambia County Property Appraiser Subdivision Map, as printed March 22, 2018.	
EXHIBIT 4 – Escambia County Future Land Use Map.	
EXHIBIT 5 – Escambia County Zoning Map.	

PURPOSE AND INTRODUCTION

This report analyzes the compatibility of a Dollar General retail store proposed to be located on a portion of a site located at 7065 Mobile Highway (U.S. HWY 90/SR 10A), Pensacola, Florida. As set forth below, the proposed Dollar General retail store will not, over time, adversely or negatively impact the surrounding existing uses. The proposed store will provide daily necessities and other common household items for consumers. Dollar General is known for its neighborhood-scale stores in locations convenient to customers.

In the development of this report, the following definition of compatibility set forth in §163.3164(9), *Florida Statutes*, was utilized:

"Compatibility means a condition in which land uses or conditions can coexist in relative proximity to each other in a stable fashion over time such that no use or condition is unduly negatively impacted directly or indirectly by another use or condition."

The Escambia County Comprehensive Plan also provides a definition of "Incompatible/compatible development" in Chapter 3 Definitions. Section 3.04 Definitions states as follows:

"Incompatible development is new development proposed to be constructed next to existing development wherein the proximity of the two kinds of development would each diminish the usefulness of the other or would be detrimental to existing operations. The incompatibility can arise from either land use or structure size and design. Compatible development is new development proposed to be constructed next to existing development in which the proximity of the two kinds of development would each complement or enhance the usefulness of the other."

Finally, the County's Land Development Regulations Chapter 6, Definitions, Section 6-0.3 Terms Defined provides the following definition for "compatible":

"*Compatible*. A condition in which land uses, activities or conditions can coexist in relative proximity to each other in a stable fashion over time such that no use, activity, or condition is unduly negatively impacted directly or indirectly by another use, activity, or condition."

As a note, the definition of "compatible" in Section 6-0.3 of the County's Land Development Regulations is nearly identical to the definition of "compatibility" set forth in §163.3164(9), *Florida Statutes*.

This analysis has considered the type of development proposed in comparison to the existing built environment as directed by Florida Statutes and the Escambia County Comprehensive Plan. Such factors of study included the surrounding uses, building setbacks, building height, building orientation, and open space ratios.

The consultant, Allara Mills Gutcher, completed the following research in preparation of this report:

- Review of the Escambia County Property Appraiser website data and maps.
- Review of the Escambia County Comprehensive Plan, 2030 (dated 8/2017).
- Review of the Escambia County Land Development Regulations dated February 14, 2018.
- Review of the Florida-Alabama Transportation Planning Organization Congestion Management Process Plan, June 2017.
- Review of the Escambia County Future Land Use Map and Zoning Map as shown on Escambia County's web mapping service web page.¹
- Consultation with Teramore Development, LLC.

PROJECT DESCRIPTION

The applicant proposes construction of a retail establishment known as Dollar General, with approximately 9,100 gross square feet of building space on +/-1.5 acres of a 9.16-acre parcel. The remaining +/- 7.66 acres are not part of the request for development. (See Exhibit 1). The building will be oriented towards Mobile Highway, an urbanized principal arterial roadway,² and ingress/egress to the site is proposed from Millview Road. Parking will be located to the front of the structure, with an area along the east side of the structure to accommodate the loading and dumpster area. (See Exhibit 2).

The scale of the project will be that of a typical prototype Dollar General retail store. It will be single story in height, with a maximum height of twenty-two (22) feet, which includes any roof-top apparatus.

There will be no noise, smoke, glare, emissions, dust, vibration, or odors emitted from this use. Lighting used to support safety for vehicles and pedestrians will be installed.

GENERAL PROJECT LOCATION AND SETTING

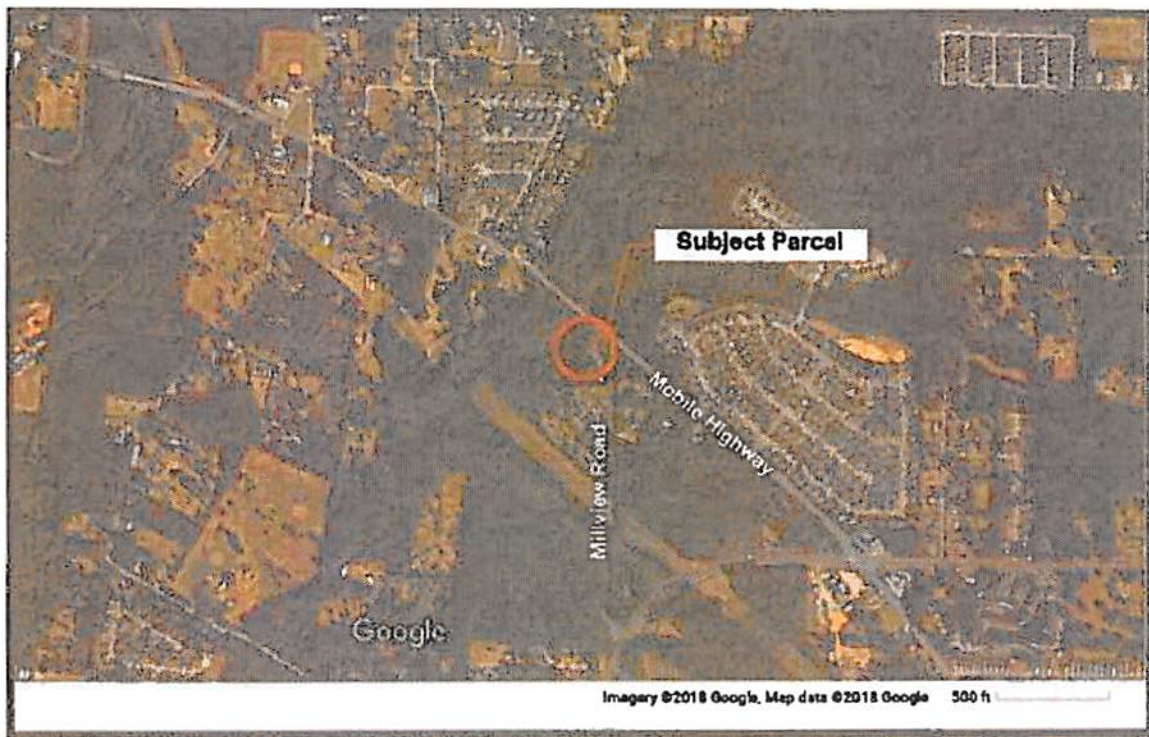
The site will be a portion of the parent parcel addressed as 7065 Mobile Highway and is on the south side of Mobile Highway (SR 10-A) and west of Millview Road in unincorporated Escambia County, 32526. The parent parcel is approximately 9.16 acres. The proposed section for this project is approximately 1.5 acres. The parcel is located within Section 23, Township 1S, Range 31. The Escambia County Property Appraiser's Reference Number is 23-1S-31-3401-000-001.

¹ <http://www.arcgis.com/home/item.html?id=4388823ea5fb4feeb4ebb3beb6677129>.

² Florida-Alabama Transportation Planning Organization Congestion Management Process Plan, June 2017, Appendix A Level of Service Tables, pg. 8.

The parent parcel of 9.16 acres³ is currently developed in part as vehicular storage lot or junk yard. The 1.5 acre portion of the parcel to be used for the retail store is currently vacant. A site-specific survey indicates that there are some wetlands on the subject parcel (See Exhibit 2) which will be protected from development.⁴ The existing use of the site is classified as "Open Storage."⁵

Figure 1. Aerial Photograph



The Escambia County geographic systems website does not locate this site within any AICUZ zone, an Airfield Installation Planning District, the Pensacola Regional Airport Overlay, or any Community Redevelopment Area or Scenic Highway Overlay.⁶

Immediately surrounding the parcel are a variety of uses. Adjacent to the subject parcel, vacant lands are located to the north (two parcels, one +/- 8 acres and the other +/- 6 acres) and northeast (+/- 97.5 acres) across Mobile Highway. To the west are two larger lot residential uses, and to the south is continued high intensity commercial/industrial uses (car storage).

Further to the east of the subject parcel at about 1/3 of a mile to the entrance is the Crystal Creek platted subdivision (See Exhibit 3). This subdivision is within the Mixed-Use Urban (MU-U) Future

³ Escambia County Property Appraiser website, March 22, 2018.

⁴ Site Layout & Dimension Plan, Bell Engineering Services, March 13, 2018.

⁵ Escambia County Property Appraiser assigned Department of Revenue Tax Code, referenced March 22, 2018.

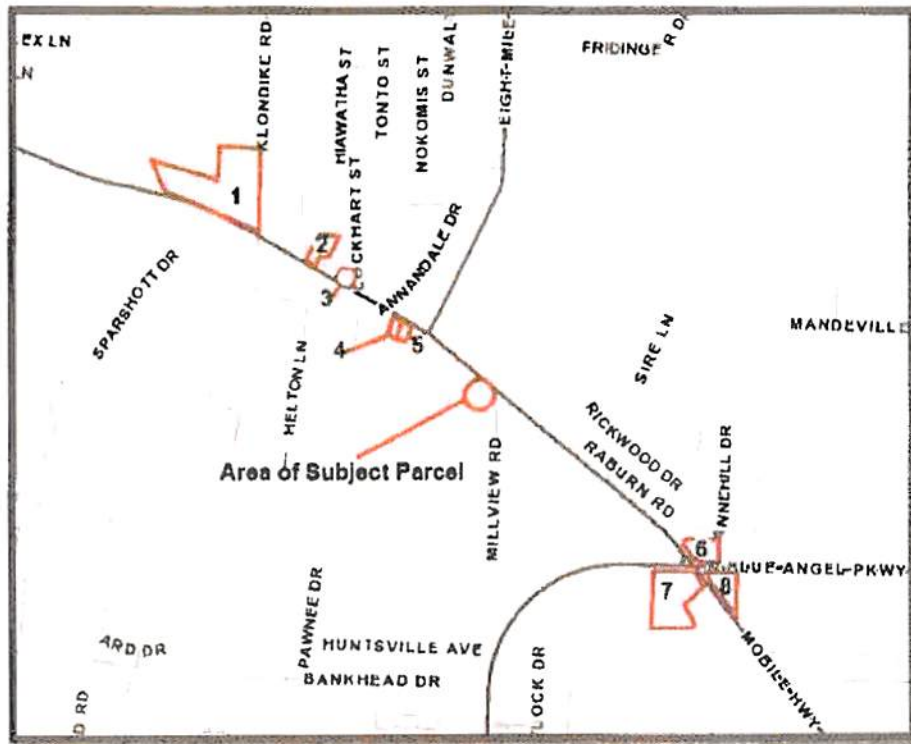
⁶ <http://www.arcgis.com/home/webmap/viewer.html?webmap=4388823ea5fb4feeb4ebb3beb6677129>

Land Use category and the Medium Density Residential (MDR) zoning district. The lots in this subdivision range from 0.20 to 0.25 of an acre in size.

To the west along Mobile Highway is a platted subdivision called Heritage Woods. This subdivision is also within the MU-U Future Land Use category and the MDR zoning district. The lots in Heritage Woods range from 0.25 to 0.33 of an acre in size.⁷

There are several non-residential uses located within approximately one-half mile of the subject parcel. Figure 2 graphically represents these uses in relation to the subject parcel.

Figure 2. Location of Non-residential Uses.



1. 7201 Mobile Highway: Klondike Baptist Church
2. 7150 Mobile Highway: vacant commercial and adjacent store/office
3. 7144 Mobile Highway: U-Save Foods
4. 7115 Mobile Highway: Celebrities Salon and Day Spa
5. 7103 Mobile Highway: Puppy Paradise
6. 6960 Mobile Highway: Tom Thumb gas station with convenience store
7. 6949 Mobile Highway: Deep South Crane Rentals
8. 6920 Mobile Highway: Shell/Circle K gas station with convenience store

⁷ Escambia County Property Appraiser.

Figure 3 is a photograph of the site from Millview Road looking west. The existing use shows stored and derelict vehicles.

Figure 3. Street View of Site from Millview Road.



APPLICABLE POLICIES AND REGULATIONS

The site is currently designated with a Future Land Use category of Industrial and a zoning district of Heavy Commercial and Light Industrial (HC/LI) (See Exhibits 4 and 5). Consequently, no Future Land Use Map amendment or zoning change is required to allow the proposed development. Descriptions of the Future Land Use category and zoning district are provided here:

Future Land Use Category: Industrial⁸

General Description of the Industrial Future Land Use category: "Intended for a mix of industrial development and ancillary office and commercial uses that are deemed to be compatible with adjacent or nearby properties. Industrial areas shall facilitate continued industrial operations within the County and provide jobs and employment security for present and future residents."

Industrial Range of Allowable Uses: The Comprehensive Plan describes the allowable uses as a range. These include: "Light to intensive industrial, ancillary retail and office. No new

⁸ Escambia County Comprehensive Plan 2030 dated August 2017, Policy FLU 1.3.1.

residential development is allowed." The maximum intensity for this category is a floor area ratio of 1.0. No residential development is allowed within this category.

Zoning Designation: Heavy Commercial and Light Industrial District (HC/LI)⁹

The HC/LI zoning district is established to designate "appropriate areas and land use regulations for a complementary mix of industrial uses with a broad range of commercial activities." One of the primary intents of this district is to allow retail uses. This category supports commercial uses such as a retail general store.

The allowable uses within the HC/LI zoning district are conditioned as a result of the Future Land Use category and previous zoning district assigned. This parcel has a limitation of those uses described in Section 3.2.11(b) which include retail sales, retail services, public and civic, recreation and entertainment, agriculture and related and other conditional uses. Residential uses are prohibited at this location because the Future Land Use category assigned to the subject property is Industrial, which precludes such uses.¹⁰

The development standards for a parcel zoned "HC/LI" are shown in Table 1, and are compared to the adjacent zoning district criteria.

Table 1. Zoning District Regulations Assigned to Subject Parcel and Parcels Contiguous to the Site

Criteria	Zoning Designation		
	HC/LI	MDR	LDR
Location	Subject Parcel, West and South	North	East
Max Density	Max 25 d/u per acre	Max 10 d/u per acre	Max 4 d/u per acre
FAR	Max 1.0	Max 2.0 ¹	Max 1.0
Max Height	150 feet	45 feet	45 feet
Lot Area	No minimum	No minimum	No minimum
Minimum Lot Width	No minimum	50 feet for single family; 80 feet for two-family; 80 feet for other	20 feet for cul-de-sac lots; 60 feet for all other lots

⁹ Escambia County Land Development Code

¹⁰ Section 3-2.11 of the Escambia County Land Development Regulations dated February 2018.

Criteria	Zoning Designation		
	HC/LI	MDR	LDR
Lot Coverage	Minimum pervious 15%; 85% maximum semi-impervious and impervious cover. A maximum of 75% for area occupied by principal and accessory buildings	30% minimum pervious; 70% max semi-impervious and impervious	30% minimum pervious; 70% max semi-impervious and impervious
Setbacks Front	15 feet	20 feet	25 feet
Setbacks Rear	15 feet	20 feet	25 feet
Setbacks Side	10 feet for structures less than 35 feet high; then additional 2 feet per each additional 10 feet in height	10 feet for a group of townhouses; 5 feet or 10% of the lot width, whichever is greater, not required to exceed 15 feet	5 feet or 10% of the lot width, not required to exceed 15 feet

¹Maximum is 2.0 since the parcel is designated as MU-U on the Future Land Use Map.

Section 3-2.11(e) of the County's Land Development Regulations includes location criteria for new non-residential uses within the HC/LI zoning district that are not part of a planned unit development or otherwise exempt. At least one of the listed criteria for new non-residential uses proposed within the HC/LI district must be met. The proposed Dollar General retail store fulfills the location criteria pursuant to Section 3-2.11(e)(3), which is labelled as "Documented Compatibility."

This compatibility analysis constitutes competent substantial evidence that the proposed use will achieve long-term compatibility with the existing surrounding uses without any detriment or conflict. Furthermore, the following criteria are met as listed in Section 3-2.11(e)(3)a. and b:

- a. The parcel was not rezoned by the landowner from the mixed-use, commercial, or industrial zoning assigned by the County.
- b. The parcel is not within a County Redevelopment District.

ANALYSIS

As depicted in Table 2 below, the standards of the HC/LI zoning district are far greater in intensity than the actual plan for development. The structure's floor area ratio ("FAR") is approximately 0.14. This is substantially less than the maximum amount allowed of 1.0 FAR in the neighboring LDR zoning district (See Table 1). The building height will be no more than twenty-two (22) feet,

which is similar in height to a two-story residential structure, and well below the maximum allowance for this zoning district.

Table 2. HC/LI Development Standards Comparison to Development Plan

Standard	LDR Requirement	Development Plan
Density	Not applicable	None
Floor Area Ratio (FAR)	Max 1.0	0.14 FAR
Structure Height	Max 150 feet above grade	Max 22 feet above grade
Lot Area	No minimum	1.5 acres (65,681 sq. ft.)
Lot Width	Minimum of 100 feet	Approximately 280 feet at Mobile Highway; 251.5 feet at Millview Road
Lot Coverage	Minimum pervious 15%; 85% maximum semi-impervious and impervious cover. A maximum of 75% for area occupied by principal and accessory buildings	Pervious surface will be approximately 52%, or 48% impervious surface
Structure Setbacks	Front and Rear: 25 feet min.	Front +/- 115 feet; Rear +/- 36 feet
	Side: 15 feet minimum	West side +/- 61.7 feet at shortest distance; East side +/- 83 feet at shortest distance

The County's Land Development Regulations offer some guidance when analyzing compatibility when a new use is introduced. Chapter 3, Zoning Regulations, Section 3-1.6 "Compatibility," contains criteria which describe new non-residential development in relation to existing residential uses. Section 3-1.6(b) states that such criteria are created to allow for residential and non-residential uses to be located in close proximity to each other, specifically "small-scale dispersed neighborhood commercial uses in proximity to residential areas," which is the case here. This site will be developed with a small-scale neighborhood use store to serve the near-by residents with daily necessities.

Section 3-1.6(c) of the County's Land Development Regulations states that other compatibility measures may be required such as landscaping, buffering, and screening to protect lower intensity uses from commercial uses. This criterion will be met. All requirements of the County's Comprehensive Plan and the County's Land Development Regulations pertaining to the development of this site with a retail use will be met by this development.

The planned setbacks are outlined below in Table 3, and are shown against the requirement for the zoning district. These extensive setbacks are an additional measure to ensure compatibility

with the surrounding uses. The distance from the side of the structure to the property line has been greatly increased to provide a large vegetative buffer to the surrounding uses.

Table 3. Setback Comparison

Setback Standard	Commercial Requirement	Development Plan
Front	25 feet	+/- 115 feet
Rear	25 feet	+/- 36 feet
Side (West)	15 feet	+/- 61.7 feet at rear corner
Side (East)	15 feet	+/- 83 feet at narrowest point

Section 2-2.3 of Chapter 2, Article 2 of the Design Standards Manual incorporated in the County's Land Development Regulations states "the buffer shall protect the lower intensity use from the higher intensity use and provide an aesthetically attractive barrier between the uses." Established and newly installed buffers will provide a natural barrier between the uses and will be installed as required by the County's adopted regulations.

Finally, Section 2-2.1 of Chapter 2, Article 2 of the Design Standards Manual requires no less than fifteen (15) percent of the parcel to be landscaped. This requirement will be met by the developer.

FINDINGS AND CONCLUSIONS

The proposed development of a 9,100-square foot retail store on approximately 1.5 acres located on an urban arterial roadway in unincorporated Escambia County will be compatible with the existing surrounding development. In addition, the proposed retail store will not result in any land use conflicts with the adjacent uses, but rather will complement them. No adverse impacts will be generated such as noise, smoke, exhaust, emissions, dust, adverse lighting, vibrations, or odors that would be detrimental to the existing surrounding uses or would otherwise disturb the quiet enjoyment of residents in the vicinity. Additionally, the residents in this area will benefit from the location of this store with daily necessities and other common household items.

The proposed setbacks exceed the minimum requirements of the HC/LI zoning district and are incorporated into the plan for development. The proposed retail store is considerably below the intensity allowed for this parcel with a HC/LI zoning designation. The height of the structure will not be greater than most two-story residential structures. All requirements will be met and no variance will be sought.

The proposed Dollar General retail store is consistent with and furthers the Goals, Objectives, and Policies of the Escambia County Comprehensive Plan and complies with the adopted

requirements of the County's Land Development Regulations. The development of this store will not create a condition that will negatively or adversely impact the surrounding uses over time.

1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific requirements of the task.

1. The first step in the process is to identify the problem or issue that needs to be addressed. This involves gathering information and understanding the context of the situation.

2. Once the problem is identified, the next step is to define the objectives and goals of the project. This helps to clarify what needs to be achieved and provides a clear direction for the team.

3. The third step is to develop a plan or strategy to address the problem. This involves breaking down the problem into smaller, manageable tasks and determining the resources needed to complete each task.

4. The fourth step is to implement the plan. This involves putting the strategy into action and monitoring progress to ensure that the project is on track.

5. The final step is to evaluate the results of the project. This involves assessing the outcomes against the objectives and goals and identifying any areas for improvement.

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155 E. 42ND STREET
NEW YORK 17, N.Y.

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EXHIBIT 3 - Mobile Highway Dollar General - Escambia County Property Appraiser Subdivision Map

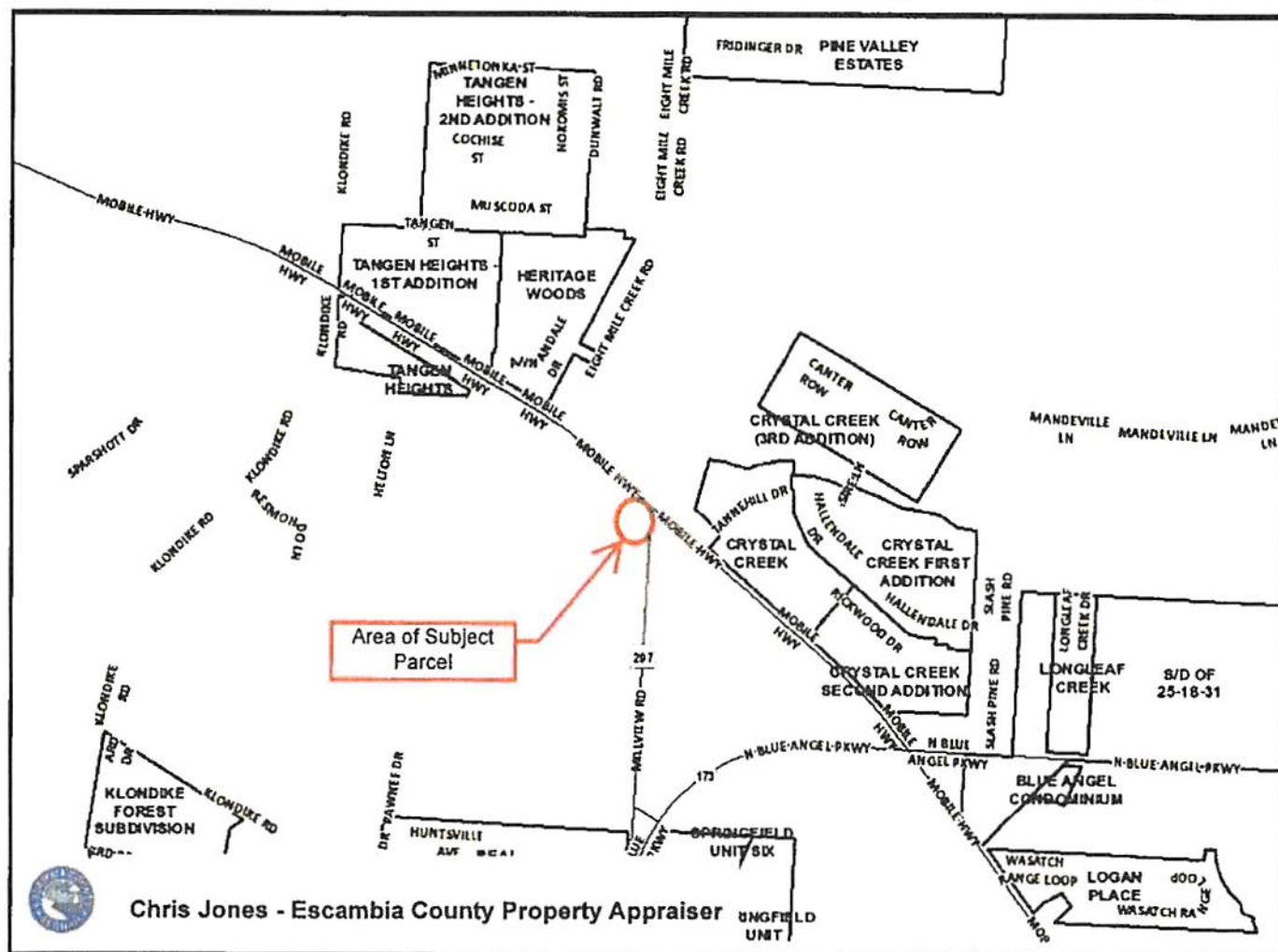
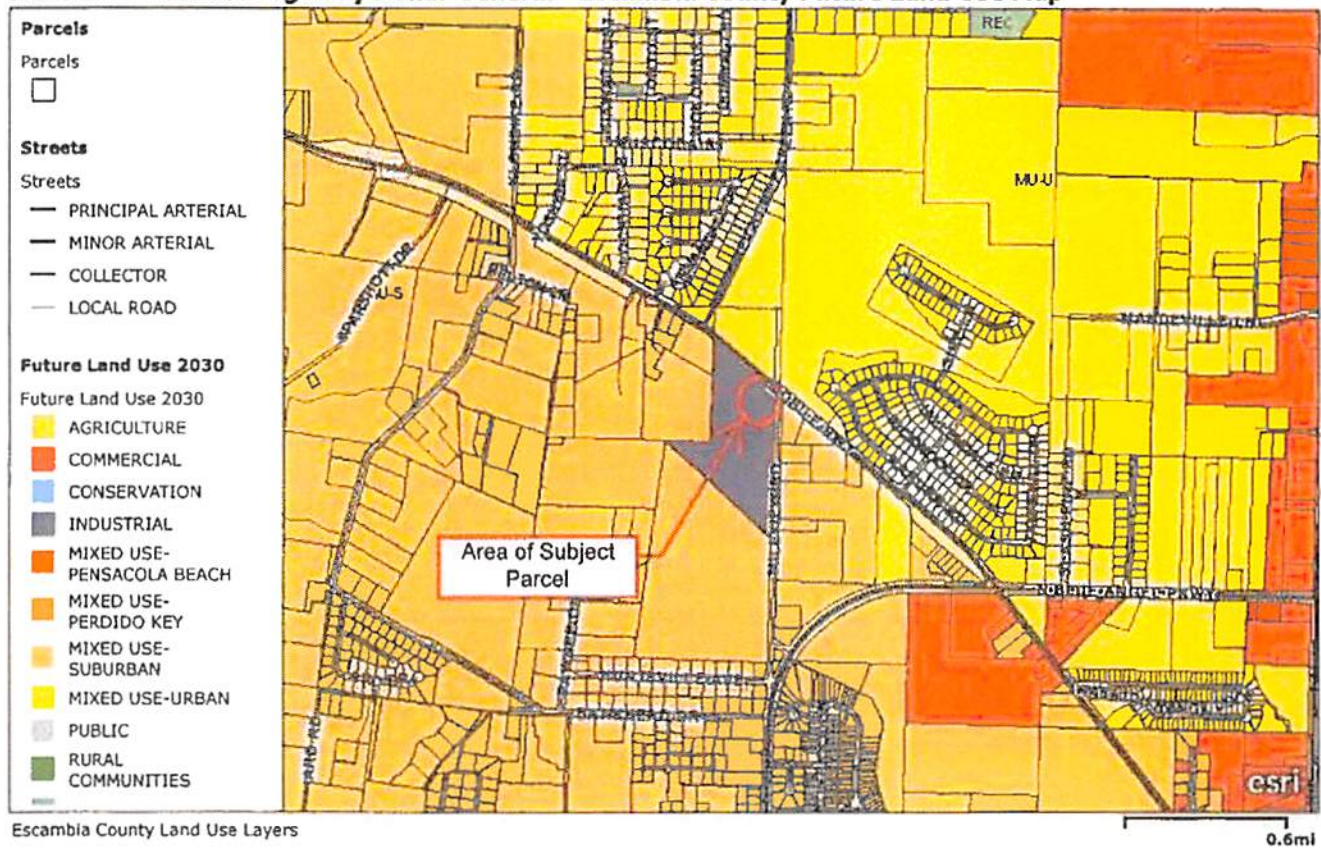
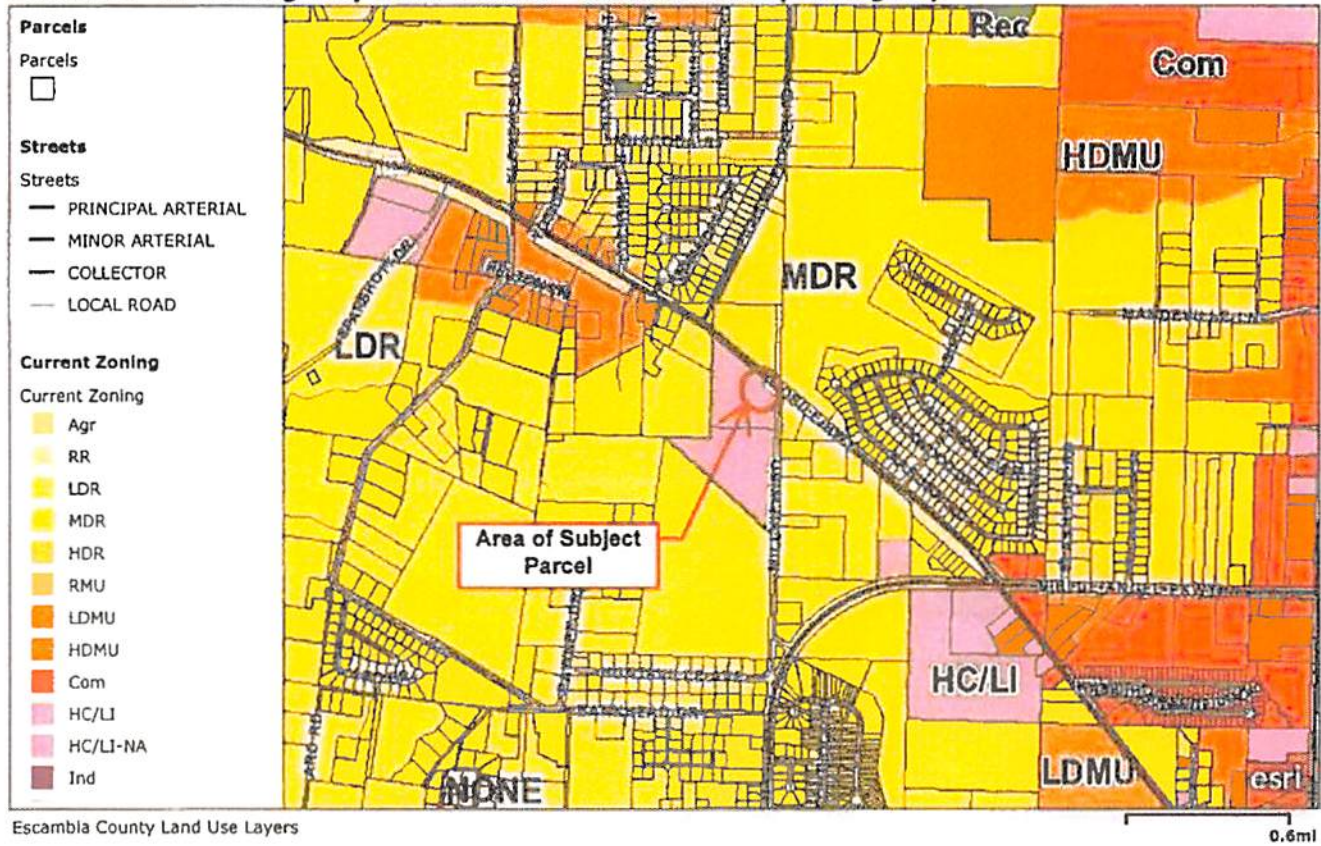


EXHIBIT 4 - Mobile Highway Dollar General - Escambia County Future Land Use Map



Escambia County Development Services Department | U.S. Fish and Wildlife Service | Escambia County GIS | Escambia County Community Redevelopment Agency | Escambia County Property Appraiser | State of Florida, USDA FSA, DigitalGlobe, GeoEye, CNES/Airbus DS | Esri, HERE, Garmin, INCREMENT P, NGA, USGS

EXHIBIT 5 - Mobile Highway Dollar General - Escambia County Zoning Map



Escambia County Development Services Department | U.S. Fish and Wildlife Service | Escambia County GIS | Escambia County Community Redevelopment Agency | Escambia County Property Appraiser | State of Florida, USDA FSA, DigitalGlobe, GeoEye, CNES/Airbus DS | Esri, HERE, Garmin, INCREMENT P, NGA, USGS

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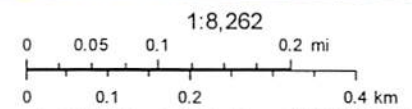


September 25, 2018

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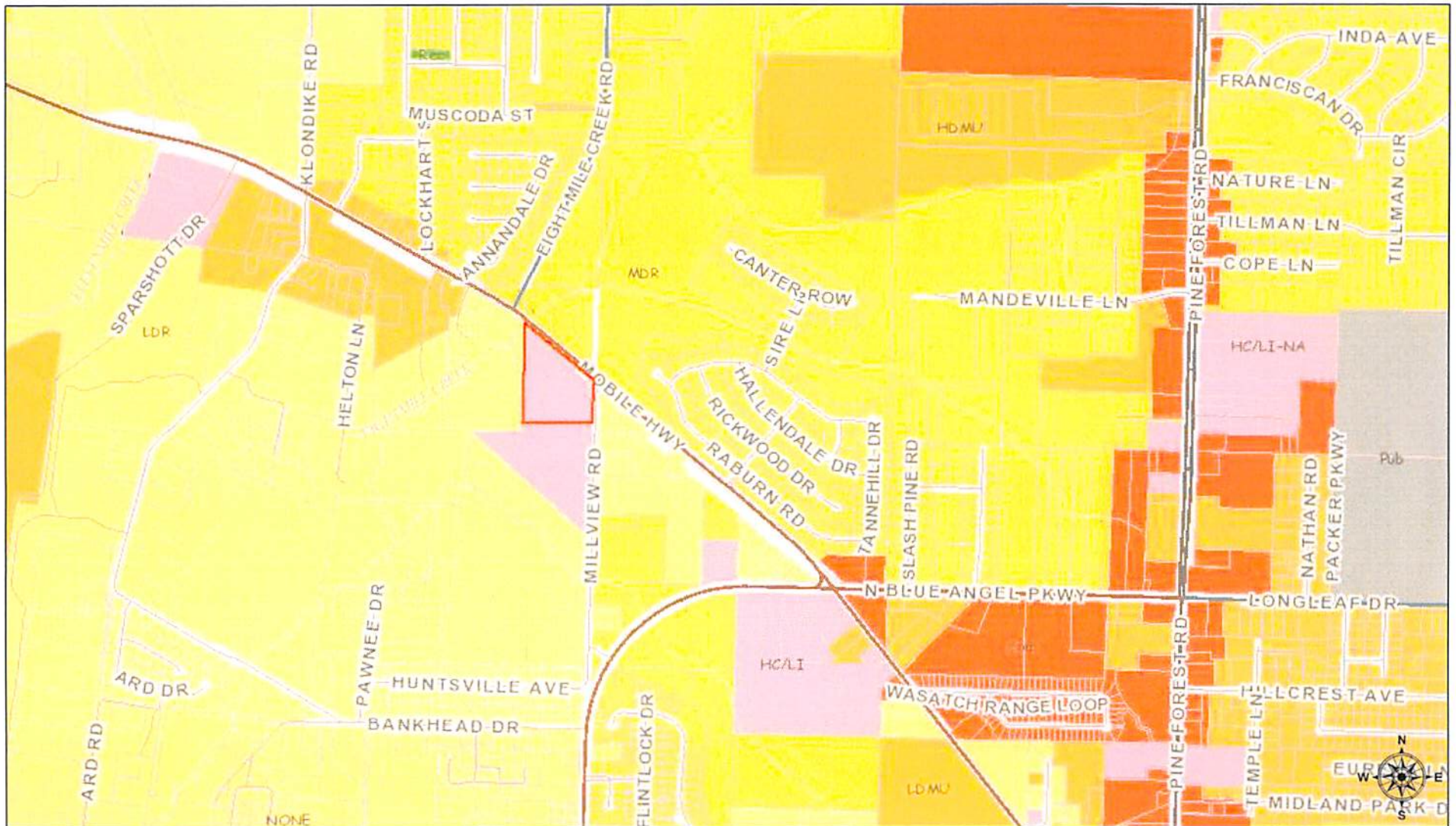
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— MINOR ARTERIAL

— COLLECTOR
— LOCAL ROAD
— Parcels
— Rivers, Creeks, and Streams
— County Outline
— Ocean



Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, © OpenStreetMap contributors, and the GIS User Community

GoMaps



September 25, 2018

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— PRINCIPAL ARTERIAL

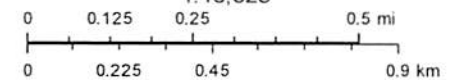
— MINOR ARTERIAL

— COLLECTOR
— LOCAL ROAD

□ Parcels

— Rivers, Creeks, and Streams

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Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, © OpenStreetMap contributors, and the GIS User Community



Escambia County, Florida

3363 West Park Place
Pensacola, FL 32505
(850) 595-1820
www.MyEscambia.com

Date: Thursday, April 12, 2018

Jennifer Bell
Bell Engineering
2650 Tambridge Circle
Pensacola FL 32503

Project Number 18041066PSP
Job Address: 7071 MOBILE HWY, PENSACOLA, FL 32526

Dear Jennifer Bell,

Staff has completed its review of plans for the Dollar General 19555 that is to be located at 7071 MOBILE HWY, PENSACOLA, FL 32526. Comments from this review follow:

Floodplain Management Comments

The following comments have been provided by **Juan Lemos**. Should you have any questions or require additional information regarding any of these comments, please contact **Juan Lemos** at **(850) 595-3467** or by email at **jclemos@myescambia.com**.

1. **Clearly delineate and label the existing flood zones** in the plans.
2. **Insert the following statement** in the plans:
"The subject property as shown hereon is located in **flood zone AE, Base Flood Elevation 37-39.5**, (Areas subject to inundation by the 1-percent-annual-chance flood event determined by detailed methods. BFEs are shown within these zones), **and flood zones shaded X and x**, as determined from the Federal Emergency Management Agency Flood Insurance Rate Map of Escambia County, Florida, Community 120080, FIRM map panel number **12033C0355G**, map revision dated September 29, 2006."
3. Escambia County has a **3-foot freeboard** in addition to FEMA's minimum requirements.

At the time of construction the proposed project must meet all of the construction standards from the Florida Building Code, for structures within a FEMA Special Flood Hazard Area. Contact Escambia County Floodplain Manager/Building Inspections: **Harry T. Gibson, (850)-554-2826**

FYI, FEMA has just released the preliminary flood maps for Escambia County. You can review the current and proposed flood zone changes for any parcel in Escambia County here:

<http://portal.nwfwmdfloodmaps.com/map.aspx?cty=escambia>

Addressing Review Comments

The following comments have been provided by **Shannon Pugh**. Should you have any questions or require additional information regarding any of these comments, please contact **Shannon Pugh** at or by email at **sdpugh@myescambia.com**.

The address is incorrect. The address will be **7071 Mobile Highway**. Use this address on all future forms and applications and correct the address on the site plan.

Fire and Life Safety Review Comments

The following comments have been provided by **Joseph Quinn**. Should you have any questions or require additional information regarding any of these comments, please contact **Joseph Quinn** at **(850) 595-1810** or by email at **jequinn@myescambia.com**.

1. **18.3.1*** An approved water supply capable of supplying the required fire flow for fire protection shall be provided to all premises upon which facilities, buildings, or portions of buildings are hereafter constructed or moved into the jurisdiction. **Provide current flow test data on the indicated fire hydrant.**
2. **18.4.5.2 Buildings Other Than One- and Two-Family Dwellings.** The minimum fire flow and flow duration for buildings other than one- and two-family dwellings shall be as specified in Table 18.4.5.1.2.

ECUA (Water and Sewer Utility) Review Comments

The following comments have been provided by **Andre Calaminus**. Should you have any questions or require additional information regarding any of these comments, please contact **Andre Calaminus** at **(850) 969-5822** or by email at **andre.calaminus@ecua.fl.gov**.

Project will need to submit to ECUA Engineering for review and permitting of water and/or sewer.

Access Management Review Comments

The following comments have been provided by **Jason Walters**. Should you have any questions or require additional information regarding any of these comments, please contact **Jason Walters** at **(850) 595-3422** or by email at **jjwalter@myescambia.com**.

- 1) No comment, ready for final comparison.

Stormwater Review Comments

The following comments have been provided by **Roza Sestnov**. Should you have any questions or require additional information regarding any of these comments, please contact **Roza Sestnov** at **(850) 595-3411** or by email at **risestnov@myescambia.com**.

1. Please provide slope (minimum of 0.3%) on the 18" culvert pipe proposed in Millview Road Right of Way. Currently both inverts are indicated as 44.00.
2. Ensure that proposed drainage ditch in the Right of Way (Millview Road) is no deeper than 3 feet, and a minimum of 6' from the edge of the travel lane with slope no steeper than 6:1 is provided. Please note that drainage ditch side slopes shall be no steeper than 3:1.
3. Suggest at least 2' wide flat top of the pond at the berm location.
4. Sheet C2.0: revise note 2, change the County name, should be Escambia.
5. Please indicate that MES proposed in the County Right of Way shall be from the approved FDOT index.
6. Include a cross section of proposed diversion swale including side slopes, and the proper stabilization notes.
7. Provide a rip-rap at the filter system discharge point.
8. It appears this project may require permitting through ERP, FDOT and NPDES. It is Engineer/Developer's responsibility to obtain all state required permits.
9. Drainage fees shall be paid at the time of the final comparison submittal. Drainage fees will be determined at the time of route sheet sign off.

ADA Review Comments

The following comments have been provided by **Charles Wiley**. Should you have any questions or require additional information regarding any of these comments, please contact **Charles Wiley** at **(850) 554-0265** or by email at **ckwiley@myescambia.com**.

please provide signage with sign reading penalty fine \$250 max

Planning and Zoning Comments

The following comments have been provided by **Barbara Winns**. Should you have any questions or require additional information regarding any of these comments, please contact **Barbara Winns** at **(850) 595-3584** or by email at **bawinns@myescambia.com**.

1. The compatibility analysis is still under review.
2. For the purpose of reviewing for consideration of approval for the locational criteria, we request the following:
 - o All existing vegetation around the perimeter of the property remain.

- A different building facade rather than the typical style.
 - A monument sign instead of a freestanding sign.
3. Exterior Lighting (Sec. 5-9.3)
Exterior lighting in and around buildings and in parking lots is permitted in all districts. Lighting is to be located for safety and visual effect. With the exception of street, it shall be installed so as not to shine directly on adjacent property. Lighting shall avoid annoyance from brightness and glare.
4. On the front cover sheet of the plan, please show the total wall/freestanding signage calculation.
5. Are there any protected trees on the parcel? If so, other provisions of the Land Development Code (LDC) may be required.
6. Provide other supporting information on the site plan per Escambia County LDC, as applicable (2-4.2).

Environmental Review Comments

The following comments have been provided by **Bradley Bane**. Should you have any questions or require additional information regarding any of these comments, please contact **Bradley Bane** at **(850) 595-4572** or by email at **bdbane@myescambia.com**.

1. Please move, or copy, the- "*There are no Protected Trees located onsite*" note on sheet C1.0 to sheet 10 (C5.0) with rest of tree/ Landscaping notes.
2. If not already on site plans, please add note stating "*Wetlands and wetland buffers shall remain unimpaired and in their natural state. Sufficient erosion & sediment controls shall be adequately installed and maintained in good working order (at least) along the upland edge of the buffer until site becomes stabilized.*"
3. Add a "*Wetlands*" label to the wetland *area* shown on plans. Add date of Wetland delineation, acreage, date of & firm who performed the delineation to wetland the JD line and noted on all sheets showing such (for ease of reviewers & contractor awareness).
4. Please contact me with any further questions. Note as project is at the Initial review and commenting phase, be aware additional comments & standards may apply. Please respond to all comments via edits to site plans and written response to comments for review efficiency. Thank you!

Please revise project documents to address each plan review comment, by "clouding" all revisions made in the project documents and submit a written response to comments stating how each of the plan review comments was addressed. Following the revisions, please contact each reviewer to obtain their sign off on the disposition sheet. This can be done in person or via e-mail. **If you are obtaining sign-offs in person it is recommended you call each reviewer prior to make sure they are available to discuss the project.** Please note that subdivision follow a different sign-off process. Contact the DRC coordinator for details.

Once you have obtained all signoffs you will submit for final comparison. Please note that all final submittals must be in by 11:30 am on Friday.

Should you have questions regarding specific comments, please contact the staff member referenced under the section in which the comment occurs.

Thank you,

Christina Smith
Development Services
Attachment
CC:



**SITE PLAN DEVELOPMENT ORDER
with Concurrency Certification**

Project: Dollar General
Location: 7071 Mobile Highway
Development Review #: 18041066PSP
Property Reference #: 23-1S-31-3401-000-001

Zoning District: HC/LI
Future Land Use: I
Flood Zone: X

PROJECT DESCRIPTION

Development on a 1.51-acre parcel to construct a 9,287 sq ft retail business. This is the first split of a lot of record as of February 8, 1996. Therefore, a minor subdivision is not required. Existing vegetation shall remain to the extent possible and buffering for adjoining uses and other required vegetation will be provided. Access will be utilized from Millview Road.

Total Parking Spaces: 30
Potable Water: ECUA
Protected Trees to be removed: None

Handicap Parking Spaces: 2
Sanitary Sewer/Septic: Sewer
Mitigation Trees: None

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


1. The proposed 8'-0 1/2" X 8'-0" monument sign on Mobile Highway/Millview Road shall meet all criteria and be constructed in detail as provided on the site plan which includes all the supplemental site enhancement sheets accordingly.
2. Lighting is to be located for safety and visual effect. With the exception of street, it shall be installed so as not to shine directly on adjacent property. Lighting shall avoid annoyance from brightness and glare.
3. The site contractor shall protect existing vegetation, to the greatest extent possible, outside of the proposed improvements shown within this plan set. It should be noted that there are no protected trees within the subject property limits. See Sheet C5.0 for proposed site landscaping. Offsite vegetation may not be altered.

Development Review Committee (DRC) Final Determination

Having completed development review of the **Dollar General**, 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.

☐ 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.



Director, Development Services Department 5.2.18
Date

SITE CONSTRUCTION PLANS

FOR

DOLLAR GENERAL

STORE # 19555

7071 MOBILE HIGHWAY

ESCAMBIA COUNTY, FLORIDA

APRIL 3, 2018

AGENCY & UTILITY CONTACTS:

LOCAL GOVERNMENT
 ESCAMBIA COUNTY
 PLANNING DEPT.
 12150 N. GULF BOULEVARD
 PALM BEACH, FLORIDA 33410
 CONTACT: JAMES B. BARNES
 PHONE: 561-854-4411
 FAX: 561-854-4411
 E-MAIL: JAMES.BARNES@ESCAMBIAFLA.GOV

UTILITY COMPANIES
 ESCAMBIA COUNTY
 12150 N. GULF BOULEVARD
 PALM BEACH, FLORIDA 33410
 CONTACT: JAMES B. BARNES
 PHONE: 561-854-4411
 FAX: 561-854-4411
 E-MAIL: JAMES.BARNES@ESCAMBIAFLA.GOV

SAFETY NOTICE TO CONTRACTOR:

IN ACCORDANCE WITH FLORIDA STATUTES, THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING UTILITIES AND STRUCTURES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING UTILITIES AND STRUCTURES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING UTILITIES AND STRUCTURES.

WARRANTY/DISCLAIMER:

THE ENGINEER HAS REVIEWED THE PLANS AND SPECIFICATIONS AND HAS FOUND THEM TO BE IN ACCORDANCE WITH THE REQUIREMENTS OF THE FLORIDA DEPARTMENT OF TRANSPORTATION. THE ENGINEER HAS REVIEWED THE PLANS AND SPECIFICATIONS AND HAS FOUND THEM TO BE IN ACCORDANCE WITH THE REQUIREMENTS OF THE FLORIDA DEPARTMENT OF TRANSPORTATION.

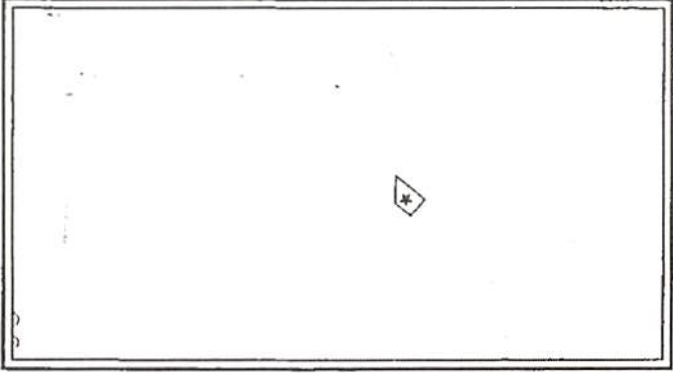
LEGAL DESCRIPTION:

COMMENCE AT THE SOUTHWEST CORNER OF SECTION 22, TOWNSHIP 11 NORTH, RANGE 11 WEST, ESCAMBIA COUNTY, FLORIDA. THENCE SOUTH 89° 15' 00" EAST 110.00 FEET TO THE POINT OF BEGINNING. THENCE SOUTH 89° 15' 00" EAST 110.00 FEET TO THE POINT OF BEGINNING. THENCE SOUTH 89° 15' 00" EAST 110.00 FEET TO THE POINT OF BEGINNING.

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DATE	REVISION	DESCRIPTION
04/03/18	1	ISSUED FOR PERMIT
04/03/18	2	REVISED PER PLAN REVIEW
04/03/18	3	REVISED PER PLAN REVIEW
04/03/18	4	REVISED PER PLAN REVIEW
04/03/18	5	REVISED PER PLAN REVIEW
04/03/18	6	REVISED PER PLAN REVIEW
04/03/18	7	REVISED PER PLAN REVIEW
04/03/18	8	REVISED PER PLAN REVIEW
04/03/18	9	REVISED PER PLAN REVIEW
04/03/18	10	REVISED PER PLAN REVIEW

ESCAMBIA COUNTY
 PLANNING DEPT.
 12150 N. GULF BOULEVARD
 PALM BEACH, FLORIDA 33410
 CONTACT: JAMES B. BARNES
 PHONE: 561-854-4411
 FAX: 561-854-4411
 E-MAIL: JAMES.BARNES@ESCAMBIAFLA.GOV



VICINITY MAP
 APPROXIMATE SCALE: 1" = 900'

OWNER/DEVELOPER
TERAMORE DEVELOPMENT, LLC
 P.O. Box 6460
 THOMASVILLE, GA 31758
 (229) 516-4289

ENGINEER OF RECORD
BELL
 2850 Tenthredine Circle
 Jacksonville, Florida 32203
 (904) 723-7185
 (E) 00029198

NOTICE: THE ENGINEER HAS REVIEWED THE PLANS AND SPECIFICATIONS AND HAS FOUND THEM TO BE IN ACCORDANCE WITH THE REQUIREMENTS OF THE FLORIDA DEPARTMENT OF TRANSPORTATION. THE ENGINEER HAS REVIEWED THE PLANS AND SPECIFICATIONS AND HAS FOUND THEM TO BE IN ACCORDANCE WITH THE REQUIREMENTS OF THE FLORIDA DEPARTMENT OF TRANSPORTATION.

SITE INFORMATION:
 PROJECT ADDRESS: 7071 MOBILE HIGHWAY
 PROJECT ACRES: 15.0
 PROJECT DISTURBED AREA: 1.37 ACRES
 FLOOD MAP: DATED 09-29-2006
 FLOOD ZONE: 1% A.A.F. MAP #12010-000-001
 FUTURE LAND USE: INDUSTRIAL
 PROPOSED ACTIVITY: INDUSTRIAL
 SETBACKS: 15' FRONT YARD, 10' SIDE YARD, 15' REAR YARD

- DRAWING INDEX**
- C1.0 EXISTING SITE, EROSION & EMISSION CONTROL PLAN
 - C1.1 EMISSION CONTROL PLAN
 - C1.2 SITE LAYOUT & DIMENSION PLAN
 - C2.0 MISCELLANEOUS SITE DETAILS
 - C2.1 GRADING & DRAINAGE DETAILS
 - C2.2 UTILITY DETAILS
 - C2.3 LANDSCAPE PLAN
 - C2.4 SUPPLEMENTAL SITE ENHANCEMENTS

Approved
 ESCAMBIA COUNTY DRC PLAN REVIEW
 DRC Chairman Signature: _____
 Date: 5.2.18

This document has been reviewed in accordance with the requirements of applicable Escambia County Regulations and Ordinances, and does not constitute approval of construction. This approval by the DRC prior to the commencement of construction. All additional state/federal permits shall be provided to the county prior to approval of a final plat or the issuance of a building permit.


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ON (FUEL) TO THE
CMB

Diagram illustrating the attachment of a sheet to a compacted basal material. The diagram shows a cross-section of a compacted basal material (labeled 'COMPACTED BASAL MATERIAL') and a sheet (labeled 'SHEET') being attached to it. The sheet is shown being pulled away from the material, with the text 'ATTACHING TO WHEN TIED' indicating the process.

PLACED IN A 8-in.
square, 16-oz.
jar and sealed.

CE BARRIER INSTALL

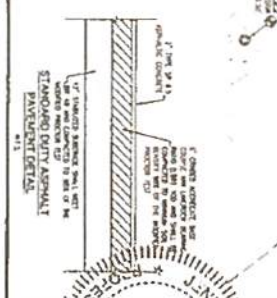
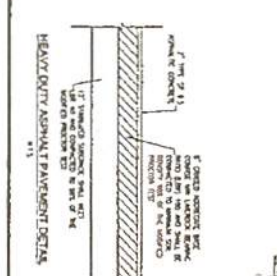
<p>C1.1</p>		<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;">DATE</th> <th style="width: 10%;">#</th> <th style="width: 80%;">REVISION DESCRIPTION</th> </tr> </thead> <tbody> <tr> <td>10/15/18</td> <td>1</td> <td>ESCO REVIEW COMMENTS</td> </tr> </tbody> </table>	DATE	#	REVISION DESCRIPTION	10/15/18	1	ESCO REVIEW COMMENTS	<p>DOLLAR GENERAL</p> <p>STORE #19555 7071 MOBILE HIGHWAY PENSACOLA, FLORIDA</p>	<p>EROSION CONTROL DETAILS & TREE NOTES</p>	<p>BELL THE BELL WE BUILD</p> <p>Jennifer D. Bell, P.E. (FL #64665) Pensacola, Florida 32504 EB 000219198</p>
DATE	#	REVISION DESCRIPTION									
10/15/18	1	ESCO REVIEW COMMENTS									

DOLLAR GENERAL
STORE #19555
7071 MOBILE HIGHWAY
PENSACOLA, FLORIDA

BELL
JENNIFER D. BELL, P.E. (FL #64665)
Pensacola, Florida 32504
EB 00029198



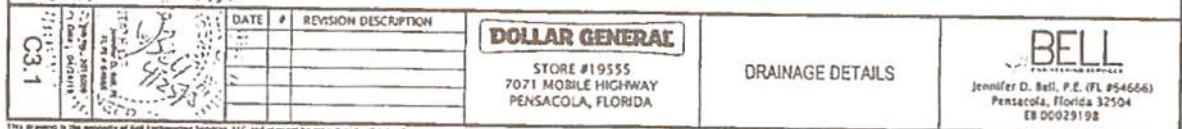
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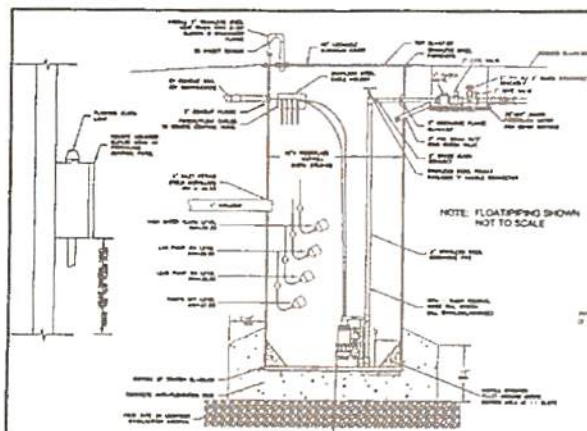
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DOLLAR GENERAL
STORE #19555
7071 MOBILE HIGHWAY
PENSACOLA, FLORIDA

SITE LAYOUT &
DIMENSION PLAN

BELL
Jennifer D. Bell, P.E. (FL #64665)
Pensacola, Florida 32504
EB 00029198





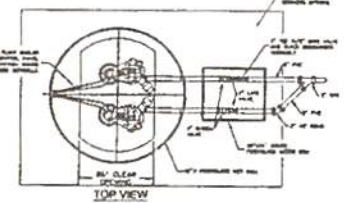
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DESIGN DATA

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2. SHEET NO.	
3. DATE	
4. DRAWN BY	
5. CHECKED BY	
6. APPROVED BY	

WELL DATA

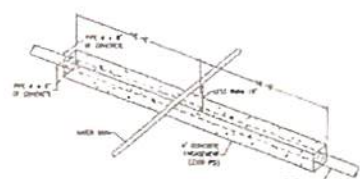
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2. WELL TYPE	
3. WELL DEPTH	
4. WELL DIAMETER	
5. WELL LOCATION	
6. WELL STATUS	



- INSTALLATION AND GENERAL NOTES:**
1. THE PUMP SHALL BE INSTALLED IN A CONCRETE FOUNDATION AS SHOWN ON THE LIFT STATION DRAWING.
 2. ALL WELLS OF 12\"/>

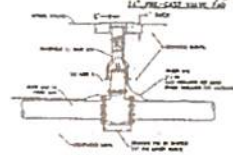
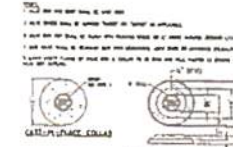
- INSTALLATION AND GENERAL NOTES:**
1. THE PUMP SHALL BE INSTALLED IN A CONCRETE FOUNDATION AS SHOWN ON THE LIFT STATION DRAWING.
 2. ALL WELLS OF 12\"/>

NOTE: FLOATING PUMP SHOWN NOT TO SCALE

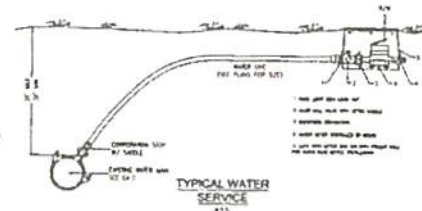


THE PUMP SHALL BE INSTALLED IN A CONCRETE FOUNDATION AS SHOWN ON THE LIFT STATION DRAWING. THE PUMP SHALL BE INSTALLED IN A CONCRETE FOUNDATION AS SHOWN ON THE LIFT STATION DRAWING.

SEWER / WATER SEPARATION & CLEARANCES



TYPICAL VALVE & BOX INSTALLATION



TYPICAL WATER SERVICE



TYPICAL SEWER LATERAL CONNECTION

BELL
 JENNIFER D. BELL, P.E., P.L.L.C. (FL 454664)
 PENSACOLA, FLORIDA 32504
 (904) 433-1111

UTILITY DETAILS

DOLLAR GENERAL
 STORE #1555
 7071 MOBILE HIGHWAY
 PENSACOLA, FLORIDA

REVISION DISCUSSION

NO.	DATE	DESCRIPTION
1		ISSUED FOR PERMIT
2		REVISIONS
3		REVISIONS
4		REVISIONS
5		REVISIONS

C4.1

A black and white line drawing of a multi-story building, possibly a school or institutional structure. The building has several windows and a sign that reads "BELLEROSCHULE". It is surrounded by trees and a fence.

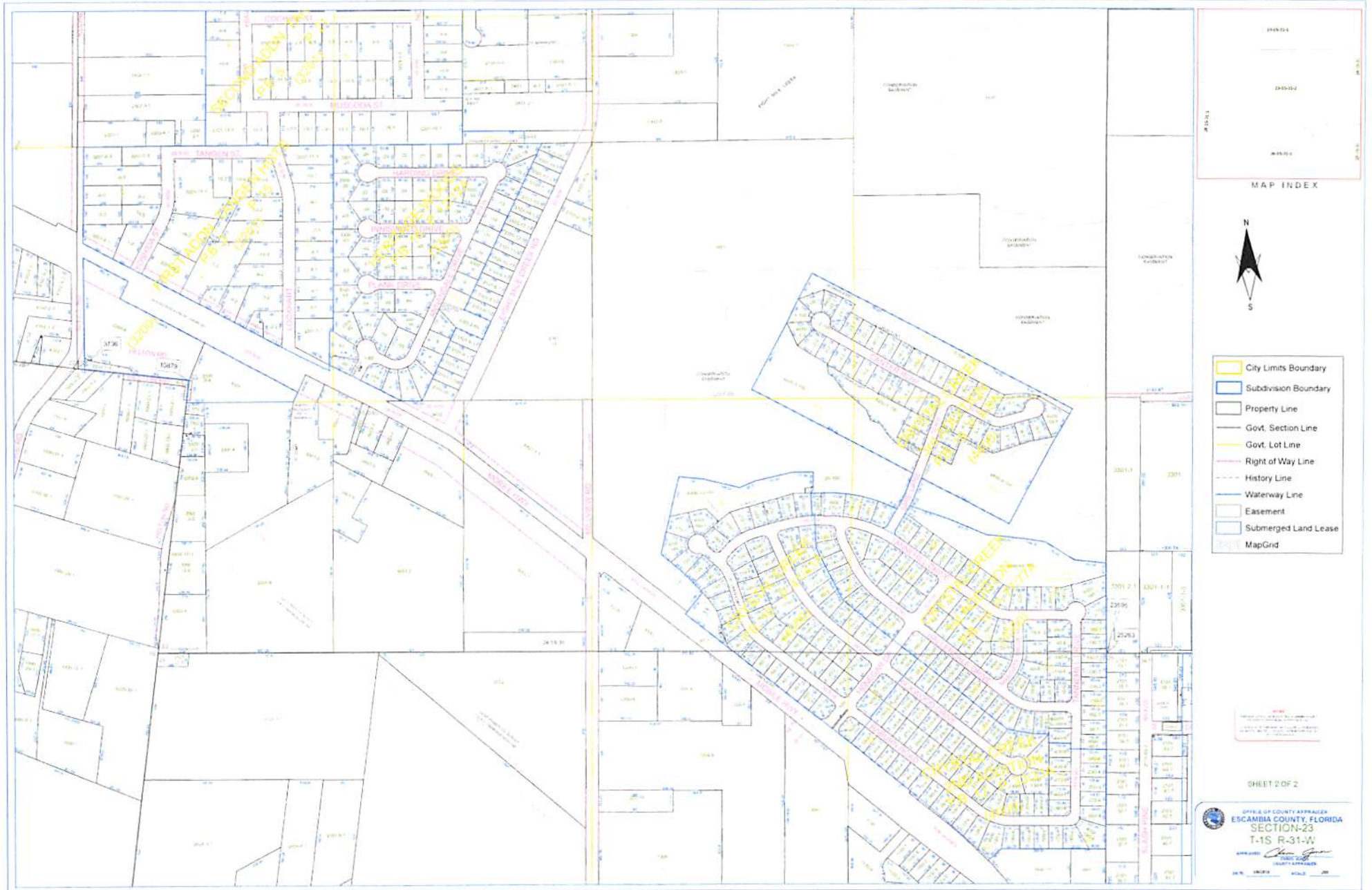
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DATE	#	REVISION DESCRIPTION
08/26/18	1	NRCC REVIEW COMMENTS

DOLLAR GENERAL
STORE #19555
7071 MOBILE HIGHWAY
PENSACOLA, FLORIDA

SUPPLEMENTAL SITE ENHANCEMENTS

BELL
JENNIFER D. BELL, P.E. (FL #64666)
Pensacola, Florida 32504
EB 00029198





Imagery ©2018 Google, Map data ©2018 Google 200 ft



7071 Mobile Hwy
Pensacola, FL 32526





Imagery ©2018 Google, Map data ©2018 Google 200 ft



7085 Mobile Hwy
Pensacola, FL 32526



GoMaps



September 25, 2018

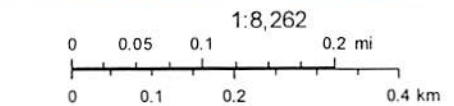
polygonLayer

Streets

Override 1 — PRINCIPAL ARTERIAL
— MINOR ARTERIAL

— COLLECTOR
— LOCAL ROAD
□ Parcels

— Rivers, Creeks, and Streams
□ County Outline
□ Ocean



Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, © OpenStreetMap contributors, and the GIS User Community





Chris Jones

Escambia County Property Appraiser


[Real Estate Search](#)
[Tangible Property Search](#)
[Sale List](#)
[Back](#)

☒ Navigate Mode
 ☐ Account
 ☐ Reference

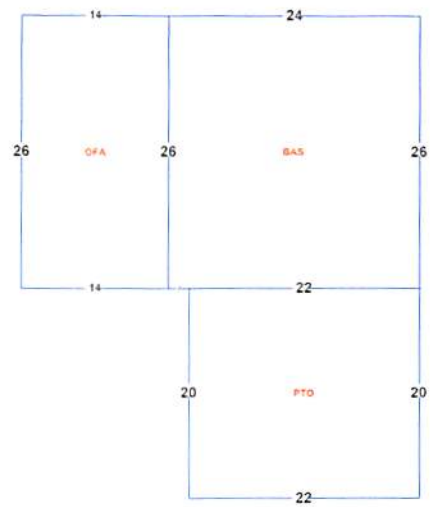
[Printer Friendly Version](#)

General Information Reference: 231S313401000001 Account: 091080100 Owners: RODDY ALAN G Mail: 8900 KLONDIKE RD PENSACOLA, FL 32526 Situs: 7085 MOBILE HWY 32526 Use Code: OPEN STORAGE Taxing Authority: COUNTY MSTU Tax Inquiry: Open Tax Inquiry Window <small>Tax Inquiry link courtesy of Scott Lunsford Escambia County Tax Collector</small>		Assessments <table border="1"> <thead> <tr> <th>Year</th> <th>Land</th> <th>Imprv</th> <th>Total</th> <th>Cap Val</th> </tr> </thead> <tbody> <tr> <td>2018</td> <td>\$87,020</td> <td>\$25,465</td> <td>\$112,485</td> <td>\$112,485</td> </tr> <tr> <td>2017</td> <td>\$87,020</td> <td>\$24,720</td> <td>\$111,740</td> <td>\$111,740</td> </tr> <tr> <td>2016</td> <td>\$87,020</td> <td>\$24,387</td> <td>\$111,407</td> <td>\$111,407</td> </tr> </tbody> </table> <p align="center">Disclaimer</p> <p align="center">Tax Estimator</p> <p align="center">> File for New Homestead Exemption Online</p>		Year	Land	Imprv	Total	Cap Val	2018	\$87,020	\$25,465	\$112,485	\$112,485	2017	\$87,020	\$24,720	\$111,740	\$111,740	2016	\$87,020	\$24,387	\$111,407	\$111,407				
Year	Land	Imprv	Total	Cap Val																							
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2017	\$87,020	\$24,720	\$111,740	\$111,740																							
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Sales Data <div style="float: right;"> MLS Listing #519769 </div> <table border="1"> <thead> <tr> <th>Sale Date</th> <th>Book</th> <th>Page</th> <th>Value</th> <th>Type</th> <th>Official Records (New Window)</th> </tr> </thead> <tbody> <tr> <td>08/18/2015</td> <td>7392</td> <td>1037</td> <td>\$100</td> <td>OT</td> <td>View Instr</td> </tr> <tr> <td>04/15/2015</td> <td>7330</td> <td>597</td> <td>\$100</td> <td>WD</td> <td>View Instr</td> </tr> <tr> <td>08/1992</td> <td>3227</td> <td>658</td> <td>\$99,900</td> <td>WD</td> <td>View Instr</td> </tr> </tbody> </table> <small>Official Records Inquiry courtesy of Pam Childers Escambia County Clerk of the Circuit Court and Comptroller</small>		Sale Date	Book	Page	Value	Type	Official Records (New Window)	08/18/2015	7392	1037	\$100	OT	View Instr	04/15/2015	7330	597	\$100	WD	View Instr	08/1992	3227	658	\$99,900	WD	View Instr	2018 Certified Roll Exemptions None Legal Description BEG AT SE COR OF SEC S 90 DEG 00 MIN 00 SEC W ALG S LI 2685 31/100 FT TO WLY R/W LI OF MILLVIEW RD (66 FT R/W) N 00... Extra Features None	
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Parcel Information <div style="float: right;">Launch Interactive Map</div> <div style="clear: both;"></div> <div style="display: flex;"> <div style="flex: 1;"> Section Map Id: 23-1S-31-2 Approx. Acreage: 9.1700 Zoned: HC/LI Evacuation & Flood Information Open Report </div> <div style="flex: 2;"> </div> </div> <p align="center">View Florida Department of Environmental Protection (DEP) Data</p>																											
Buildings Address: 7085 MOBILE HWY, Year Built: 1993, Effective Year: 1993 <table border="1"> <tr> <td> Structural Elements DECOR/MILLWORK-MINIMUM DWELLING UNITS-0 EXTERIOR WALL-CONCRETE BLOCK </td> </tr> </table>				Structural Elements DECOR/MILLWORK-MINIMUM DWELLING UNITS-0 EXTERIOR WALL-CONCRETE BLOCK																							
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FLOOR COVER-CONCRETE-FINISH
FOUNDATION-SLAB ON GRADE
HEAT/AIR-NONE
INTERIOR WALL-UNFINISHED
NO. PLUMBING FIXTURES-2
NO. STORIES-1
ROOF COVER-CORRUGATED METL
ROOF FRAMING-FLAT/SHED
STORY HEIGHT-10
STRUCTURAL FRAME-MASONRY PIL/STL

 Areas - 1428 Total SF

BASE AREA - 624
OFFICE AVG - 364
PATIO - 440



Images



7/18/13

The primary use of the assessment data is for the preparation of the current year tax roll. No responsibility or liability is assumed for inaccuracies or errors.

Last Updated: 09/29/2018 (11,2466)



Board of County Commissioners • Escambia County, Florida

Horace L. Jones, Director
Development Services

**ESCAMBIA COUNTY DEVELOPMENT SERVICES DEPARTMENT
RESPONSE TO COMPATIBILITY ANALYSIS SUBMITTED BY SHORTLEAF, LLC
Prepared by: Horace Jones, Director**

I. Introduction:

Escambia County Development Services Department reviewed the Application for Variance(s), Supporting Documentation, and Compatibility Analysis submitted by Shortleaf, LLC. Based on County staff's review of Shortleaf's submittals, it is the determination of the Development Services Department that the requested variances for the proposed use as a Construction and Demolition Debris (C&DD) facility will result in the maintenance or creation of a nuisance and will give rise to a use that is incompatible with existing allowable and adjacent uses.

II. County Review:

A. County Staff's Response to Section 1.0 of the Shortleaf Analysis, Introduction.

The County agrees with the historical timeline provided in Section 1.0 of Shortleaf's Compatibility Analysis and that the applicant has accurately cited Section 82-236(b) of the Code of Ordinances which allows for the Board of County Commissioners to consider variances to the standards governing operation of Construction and Demolition Debris (C&DD) Facilities within the County. However, the County rejects Shortleaf's contention that their operation will not result in the maintenance or creation of a nuisance and further rejects Shortleaf's contention that the proposed use is compatible with existing allowable and adjacent uses.

The subject property consists of two parcels. The first parcel is Property Reference No. #41-1S-30-1000-000-000, approximately 29.63 (+/-) acres located at 2022 Longleaf Drive. The second parcel is Property Reference No. #24-1S-30-1600-000-001 approximately 9.38 (+/-) acres located 6841 Kemp Road (See County Staff Map Exhibit A-1).

The current zoning for both parcels is Heavy Commercial and Light Industrial district (HC/LI). However, the parcels have differing Future Land Use (FLU) designations. The larger parcel has a FLU designation of Mixed Use-Urban (29.63 acres). The smaller parcel has a FLU designation of Industrial (9.38 acres). (See County Staff Map, Exhibit B.)

The creation of the "new development" (Shortleaf C&DD Landfill) will result in the creation of a nuisance condition and give rise to the creation of a condition incompatible with the existing or allowable adjacent uses.

[Type here]

From the existing land use, zoning, and aerial maps to be presented, it is evident that the proposed parcels in question, are adjacent to, near, and surrounded by residential zoning categories (High Density Mixed-use district [HDMU] and Medium Density Residential district [MDR] -- few parcels along Longleaf Road), and residential uses; i.e., single-family homes and mobile homes.

In addition to maps and other documentation to be presented by staff, the report prepared by Shortleaf, LLC, concedes that residential uses are adjacent to, near, and surround the subject property.

B. County Staff's Response to Section 2.0 of the Shortleaf Analysis, Applicable Definitions.

The County agrees that the definitions included in Section 2.0 of Shortleaf's Analysis are accurate reflections of *excerpts* of the language included within those definitions. However, the County notes that Shortleaf's analysis failed to include complete definitions nor did it include all relevant definitions. The County would further note that Shortleaf's analysis fails to accurately include and apply all existing regulations.

The following definitions and regulations should also be considered in the Board of County Commissioner's analysis of Shortleaf's request for variances and proposed use:

1. Regulations of Escambia County Code of Ordinances

- a. Chapter 42, Article VIII, Borrow Pits and Reclamations, Section 42-322 through 42-325 of the Escambia County Code of Ordinances (Ordinance # 2015-5).
- b. Chapter 82, Article V, Landfills and Other Disposal Facilities, Division 3, Section 82-224 through 82-240 of the Escambia County Code of Ordinances (Ordinance #2015-31)

2. Definitions and Regulations within the Escambia County Comprehensive Plan

- a. Incompatible development/compatible development as defined by the Comprehensive Plan as new development proposed to be constructed next to existing development wherein the proximity of two kinds of development would each diminish the usefulness of the other or would be detrimental to existing operations. The incompatibility can arise from either land use or structure size and design. Compatible development is new development proposed to be constructed next to existing development in which the proximity of the two kinds of the development would each complement or enhance the usefulness of the other.
- b. FLU 1.1.1 Development Consistency. New development and redevelopment in unincorporated Escambia County will be consistent with the Plan and the FLUM.
- c. FLU 1.1.6 Administrative Appeal Procedure. Consolidation of future land use categories and zoning districts on the 2030 FLUM and associated Zoning Map is intended to simplify administration while respecting private property rights. Any property owner contending that a parcel of land had greater development rights under the future land use and zoning in place prior to the adoption of the 2030 FLUM and

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associated Zoning Map may submit a written request to the County for a determination under the vested rights provisions of the LDC.

d. Chapter 12 Conservation Element Escambia County Comp. Plan 2030
OBJ 1.5 Soil and Mineral Resources

Regulate the extraction of soil and mineral resources and other land disturbance activities to ensure that uses and activities are compatible with site conditions and to prevent adverse impacts to the quality of other resources, land uses, or activities.

- e. CON 1.5.2 Extraction and Reclamation Limitations. Resource extraction and reclamation activities are considered unique non-residential uses due to their transient nature and the eventual restoration of affected lands to post mining land uses. Escambia County will prohibit resource extraction activities within environmentally sensitive areas that cannot be completely restored; within wellhead protection areas; within the CHHA; within one-half mile of aquatic preserves, Class II waters, Shoreline Protection Zone 1, or Outstanding Florida Waters; and within all FLU categories, except Agriculture, Rural Community, Industrial, and Public. *Additionally, resource extraction in the form of borrow pits will be prohibited abutting state and federal parks, within floodplains, or near existing residential uses, residential zoning districts, or subdivisions intended primarily for residential use. Reclamation activities to restore previously mined lands to an intended post-mining land use may be allowed in any future land use category.*
- f. CON 1.5.3 Extraction and Reclamation Compatibility. Escambia County will permit extraction of soils and mineral resources and site reclamation only where compatible with adjacent land uses and where minimal resource degradation will occur. The determination of minimal degradation, if necessary, will be made in cooperation with the appropriate state or federal agencies regulating resource extraction and reclamation activities. The locations where these activities may be allowed, if not otherwise prohibited, will be determined based on geological constraints and will be regulated by the applicable zoning district and performance standards established for such activities within the LDC.
- g. CON 1.5.4 Extraction and Reclamation Review. Escambia County will subject all new or expanded resource extraction and reclamation activities to a mandatory development review process to assess technical standards for public safety, environmental protection, and engineering design.

3. *Definitions and Regulations within the Escambia County Land Development Code.*

- a. Compatible is defined in the Land Development Code as a condition in which land uses, activities or conditions can coexist in relative proximity to each other in a stable fashion over time such that no use, activity, or condition is unduly negatively impacted directly or indirectly by another use, activity, or condition.
- b. Reclamation is defined in the Land Development Code as the restoration or rehabilitation to useful purposes and safe and healthful conditions of lands adversely affected by mining, excavation, erosion, land clearing, or other processes. Reclamation may include filling, reshaping, revegetation and other

[Type here]

activities to achieve the long-term stability of the affected lands and protection of surrounding uses and natural resources.

c. Chapter 2, Section 2-1.3 General Compliance Provisions

(a). Prior county approval required. No land use or development activity regulated by the LDC is allowed prior to obtaining all applicable county approvals according to the provisions of the LDC. No county administrative authority may approve uses, activities, or other actions that do not comply fully with the requirements of the LDC. Additionally, any time the LDC or other regulations require authorizations by the Planning Board, Board of Adjustment (BOA), Board of County Commissioners (BCC), or other local authorities prior to final county approval of an application, those authorizations shall be evidenced in advance of final approval and not deferred in a condition of that approval.

d. Chapter 2, Sec. 2-2.7 (a) – (b) Compatibility.

(a) General. To confirm that proposed land uses and development activities are compatible with adjacent uses or conditions, a review for compatibility is required for rezoning and may be necessary for certain types developments specified herein.

(b) Confirmation for compatibility. Application for land use compatibility confirmation shall be submitted for review to the Planning Official.

The subject parcel (29 +/- acre tract) has a FLU designation of Mixed-Use Urban (MU-U), while the 9.9 +/- acre tract has a FLU designation of Industrial (I). Any new or any expansion of the existing borrow pit on the subject property is not in compliance with provisions of Chapter 12 of the Escambia County Comprehensive Plan, Con 1.5.2 Extraction and Reclamation Limitations. A FLU category of MU-U does not allow for extraction activities. The only FLU Categories that allow extraction activities are AG, RC, Industrial, and Public.

C. County Staff's Response to Section 3.0 of the Shortleaf Analysis, Entitlement History.

A historical overview of the parcels in question shows that a small-scale map amendment [Ordinance 2014-17], from **Mixed-Use Urban (MU-U) to Industrial (I)**, was approved in 2014 to allow for extraction and reclamation on the 9 (+/-) acre tract. The 9 (+/-) acre tract received development approval for borrow pit operations. The 29 (+/-) acre tract retained its existing FLU Category of MU-U and continued existing borrow pit operations.

All permits for mineral extraction/borrow pit operations, given and issued to Shortleaf, LLC, clearly state that reclamation activities will require future permits and approvals from the governing authorities. It is clear that issuance of a development order or borrow pit permit does not guarantee any subsequent approval for reclamation as a C&DD facility, or otherwise. No reclamation permits for C&DD or County approvals have been issued or granted.

The applicant has neither made a claim of any vested right nor has the applicant requested a determination or hearing related to the potential for a vested rights claim, if any.

D. County Staff's Response to Section 4.0 of Shortleaf's Analysis, Compatibility Findings

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The proposed reclamation use as a C&DD facility is not compatible with existing or allowable uses. The proposed C&DD will create a nuisance condition and will result in maintenance of an existing nuisance.

The location of Shortleaf's proposed C&DD facility is adjacent to existing residential zoning and residential developments.

These existing neighborhoods have long suffered adverse impacts from surrounding industrial encroachment. The creation of a C&DD facility in an area already inundated with facilities of a similar nature will exacerbate existing nuisance conditions within the surrounding neighborhoods. While Shortleaf may argue that their operation will be better managed than existing disposal facilities in the area, there is no sound basis for any argument that no noise, dust, H₂S, odor, traffic or other nuisance conditions will ever leave Shortleaf's property. In fact, the alternative is true. Shortleaf's proposed use is certain to emit some level of noise, dust, odor, H₂S, traffic, and other nuisance conditions in the area. The approval of the proposed C&DD reclamation plan will serve to maintain and increase the existing nuisance conditions of truck traffic, noise, dust, H₂S emissions, and odor within the existing neighborhoods. Approval of Shortleaf's requested variances will create a condition incompatible with both the FLU of the parcel and the existing surrounding uses.

Section 82-225, Definitions applicable to Construction and Demolition Debris facilities define "nuisance" as follows: Nuisance generally means anything which annoys or disturbs one in the free use, possession or enjoyment of his or her property, or which renders its ordinary use or occupation uncomfortable, or anything which is detrimental to health or threatens danger to persons or property, facilities, equipment, processes, products or compounds, or the commission of any acts that cause or materially contribute to:

(1). The emission into the outdoor air or dust, fume, gas, mist, odor, smoke, or vapor, or any combination thereof, of a character and in a quantity as to be detectable by the public, at any point beyond the property limits of the premises occupied or used by the person responsible for the source thereof, to interfere with their health, repose, or safety, or cause severe annoyance or discomfort, or tends to lessen normal food and water intake or produces irritation of the upper respiratory tract, or produces symptoms of nausea or is offensive or objectionable to normal to persons because of the inherent chemical or physical properties, or causes injury or damage to real property, personal property or human, animal or plant life of any kind or which interferes with normal conduct of business, or detrimental or harmful to the health, comfort living conditions, welfare and safety of the inhabitants of this county.

(2). Any violation of provisions of this division which becomes detrimental to health or threatens danger to the safety of persons or property, or gives offense to, is injurious to, endangers the public health and welfare, or prevents the reasonable and comfortable uses and enjoyment of property by the public.

Chapter 82 of the Code of Ordinances is written to protect surrounding existing uses from adverse impacts created by Construction and Demolition Debris facilities. The Board of County Commissioners, to protect the health, safety, and welfare of the community, increased the minimum size of the real property site for C&DD facilities to 100 acres and increased the setback from the property boundaries to 500 feet. These amendments were adopted to prohibit noxious uses from residential abutting properties and other incompatible existing uses.

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On December 7, 2017, County staff visited the subject property. The existing vegetative buffer on the site is minimal. The site may be clearly seen from adjoining properties. Photographs of the existing site conditions reflect a failure to fully buffer the site.

In addition to serving to maintain and exacerbate existing nuisance conditions within the proposed area, Shortleaf itself, or any C&DD facility in this location, will result in the creation of the same nuisance conditions enumerated above.

Further, even Shortleaf's own report acknowledges that C&DD facilities may contain hazardous materials which are combustible. The risk of fire and smoke, along with aforementioned nuisance conditions, is incompatible with the surrounding residential uses. Shortleaf's analysis further recognizes that nuisance conditions to be alleviated by requirements such as the County's setback and acreage regulations include views/visual impacts, lighting/glare, noise, vibrations, dust, odors, and any other factors unique to the uses in question.

The proposed use will increase the existing negative conditions plaguing the residents in close proximity to the site. C&DD operations, such as the one proposed by Shortleaf, are visually unpleasant, require lighting, create noise, increase truck traffic, and may emit noise, dust, vibrations, odors and otherwise harm the citizens of the County.

A use is not compatible if the use will negatively impact the surrounding area.

The variances requested by Shortleaf would allow the C&DD operation to be located on a parcel that is smaller than 40 acres located within 100 ft. of existing homes and which parcel is surrounded on two sides by existing residential development. The proposed variances are incompatible with the Escambia County Land Development Code, the Escambia County Comprehensive Plan, and the intent of the Board of County Commissioners to protect the citizens near the proposed use.

E. County Staff's Response to Section 5.0 of Shortleaf's Analysis, Non-nuisance determination.

Based upon the findings above, the granting of the variance will create an unsafe condition and will create a menace to the health, safety, and general welfare of the residents. Granting the requested variances will further create new nuisance conditions and serve to both maintain and increase existing nuisance conditions. Granting the variances will result in an incompatible use.

The proximity of the two kinds of development, a C&DD facility and established residential neighborhoods, diminishes the usefulness of the neighborhood and is detrimental to the citizens within the existing residential uses.

F. County Staff's Response to Section 6.0 of Shortleaf's Analysis, Compatibility Findings, Conclusion.

Granting the requested variances will create incompatible conditions and will serve to maintain and create nuisance conditions. Further, granting the variance will diminish the usefulness of the existing neighborhoods. Reducing the acreage and setback requirements will allow a heavy industrial use within feet of existing homes. The acreage and setback requirements exist specifically to protect the citizens of the County from noxious uses in close proximity to their homes.

[Type here]

III. Conclusion:

The requested variances should be denied.

Alain Espinosa

From: ryan@selanddesign.com
Sent: Wednesday, October 12, 2016 12:30 PM
To: Terry D Williams
Cc: Andrew D. Holmer; John C. Fisher; 'Eli Miller'; tom@selanddesign.com
Subject: FW: J Miller Construction Maintenance Building
Attachments: LocationCriteria_CompatibilityAnalysis.pdf; Reviewer Comments.pdf; Disposition Sheet.pdf; 101216_REV_JMillerMB_PermitReviewPlans.pdf

Terry,

Thanks for meeting with me this morning. We offer the following responses to the comments generated for the J Miller Construction Maintenance Building:

1. The existing J Miller Construction office was once a residential dwelling; however, it has been utilized as a construction office prior to J Miller occupying the structure. It has come to our attention that the previous owners neglected to permit the change of use from a residential structure to a commercial business as required by Escambia County. It is our understanding that this DRC approval will not only permit the construction of the proposed 2,400 sf shop, but it will also permit the required change of use that has never been permitted through the DRC process.
2. It is our understanding that following DRC approval of the plans and supporting documentation, the proposed crushing operation must be approved through the BCC prior to being undertaken.
3. We have attached a location criteria compatibility analysis in accordance with 3-2.11(e)(3) of the Escambia County LDC. The development parcel meets the intent of location criteria and will not promote ribbon commercial development and is compatible with the surrounding area. Furthermore, it should be noted that this parcel has been utilized for commercial uses for a period in excess of 10 years.
4. The provided site plans have been designed to meet the requirements of Section 2-4.2(c) of the LDC.
5. The provided site plan and operation plan include practices to protect adjacent land and resources (*limiting crushing operations to a maximum of 20 working days per calendar year and only at specific times of day. Operations to take place in one area of the site away from existing structures*), minimize erosion (*stabilization practices currently utilized throughout the project parcel will continue...use of a temporary, mobile crushing unit that remains in place for only days at a time and will not cause erosion of the existing soils...limiting use of the crushing machinery to one area of the site where materials are currently stored and permanent vegetative ground cover does not exist*), treat stormwater (*currently, no stormwater management system exists on the project parcel and untreated runoff enters the county conveyance system...a new stormwater treatment and attenuation pond is to be constructed as part of this project and will release treated stormwater to the county's underground conveyance system at a rate lower than the existing rate*), landscaping and buffering of adjacent uses (*preservation of existing mature vegetation found throughout the development parcel...planting of 14 canopy trees along the south property boundary where existing residential structures are located and preservation of the existing timber privacy fence located along the southern boundary*), hours of operation (*No trespassing signs that include hours of operation are to be installed on the existing perimeter fencing every 200 feet*), methods to comply with maximum permissible noise levels (*The crushing operation shall take place in an area previously zoned ID-1 prior to adoption of the HC/LI zoning designation. The maximum permissible sound levels as per Sec. 5-9.2(2) of the LDC in the previously zoned ID-1 designation are 95dB between 6 am and 10 pm and 85 dB between 10 pm and 6 am. The hours of operation are limited to 8 am to 4 pm and the noise level shall remain below 95 dB*), means of access control to prevent illegal dumping (*the entire property is fenced and two access gates that are located on the west and south boundary are locked after business hours*), plans for material storage (*materials will be stored the same way they are currently stored onsite, in designated areas that lack erosion and avoid impacts to adjacent properties*).
6. A note has been added to the plans stating the following: "The facility shall conform to all performance standards governing the containment, collection, and treatment of leachate pursuant to Chapter 403, Florida Statutes and any other applicable regulations promulgated by the FDEP. The violation of any such statute or rule

governing leachate under Chapter 403, Florida Statutes, shall also constitute a violation of the Escambia County land development code enforceable by the Escambia County Office of Environmental Code Enforcement (LDC 4-7.11)"

7. The site plan illustrates the existing perimeter fencing, gates and screening. Additionally, we have called for the installation of no trespassing signs that include hours of operation and planting of a canopy tree buffer along the southern property boundary.
8. The operational footprint setback of 100 feet from the property boundary is not applicable to the proposed operations.
9. We have illustrated the required parking for both the office building and the proposed 2,400 sf shop/warehouse on the revised site plans. The existing parking areas meet the requirements of the LDC.
10. A type C landscape buffer is required along the southern property boundary of the project parcel; however, a county drainage easement measuring 20' in width and containing a 60" RCP drainage pipe exists along the southern boundary. As discussed with county staff, the planting of trees and shrubs within the county easement is discouraged. Additionally, a 6' timber privacy fence exists along this boundary and is to remain in place. In order to provide additional buffering from the neighboring properties, it is the owners intent to plant the 14 canopy trees required by the buffering provisions of the code at the top of the proposed 6:1 side slope pond and outside of the easement. This has been illustrated on the revised plans.
11. No new site signage (other than no trespassing signs) is proposed as part of this project. The applicable signage note has been included on the Cover sheet of the revised plans.
12. No exterior lighting is proposed as part of this project. A note stating the same has been included on the cover sheet of the revised plans.

I have attached a copy of the revised plans, the location criteria compatibility analysis, the reviewer comments and the disposition sheet for your review. The operation plan is currently being prepared by the owner and will be forwarded upon receipt.

Please let me know if you have any questions or if you need additional information.

Ryan L. Sieg
Hammond Engineering, Inc.
3802 North S Street
Pensacola, FL 32505
Ph 850-434-2603
Fax 850-434-2650
Cell 850-698-0203
HammondEngineeringInc.com

From: ryan@selanddesign.com [mailto:ryan@selanddesign.com]
Sent: Friday, October 07, 2016 1:10 PM
To: terry_williams@co.escambia.fl.us; Andrew D. Holmer (ADHOLMER@co.escambia.fl.us)
Subject: FW: J Miller Construction Maintenance Building

Terry/Drew,

I see John is out of the office for the next week +. This is a complicated site plan that you may be aware of but I would like to acquire a sign off if possible. I understand the complexities involved with the proposed crushing operations but want to make sure that the only thing stopping Planning from signing off is the required conditional use approval. My original email to John can be found below, please just let me know when one of you are available.

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To: jcfisher@co.escambia.fl.us
Subject: J Miller Construction Maintenance Building

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Given the abundance of comments and unique circumstances surrounding this project, I feel it is best that we meet to discuss each of your comments. However, in an effort to expedite things, I have attached a copy of our compatibility analysis for your review as well as a copy of the latest plans that have been revised to illustrate revisions requested by yourself and other members of the DRC staff.

Please let me know if you are available this afternoon to discuss or just give me a call after you have had a chance to review.

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Ph 850-434-2603
Fax 850-434-2650
Cell 850-698-0203
HammondEngineeringInc.com



HAMMOND ENGINEERING, INC.
FLORIDA CERTIFICATE OF AUTHORIZATION No. 9130
ALABAMA CERTIFICATE OF AUTHORIZATION No. 3277

October 7, 2016

Mr. John Fisher
Escambia County Planning & Zoning
3363 West Park Place
Pensacola, Florida 32505

**Reference: J Miller Construction Maintenance Building
Locational Criteria Compatibility Analysis**

Mr. Fisher:

As per Section 3-2.11(e) of the Escambia County Land Development Code, "*All new non-residential uses proposed within the HC/LI district that are not part of a planned unit development of not identified as exempt by district regulations shall be on parcels that satisfy...location criteria.*" The proposed J Miller Construction project is not located along an arterial street and therefore must demonstrate compatibility of the proposed use with the surrounding area. Additionally, the development parcel must not have been rezoned from the mixed-use, commercial or industrial zoning assigned by the county and must be consistent with any county redevelopment district plans should the parcel be located within a designated redevelopment district. The project parcel has not been re-zoned and is not located within a county redevelopment district; therefore, evidence shall be provided that the proposed/existing use will be able to achieve long-term compatibility with existing and potential uses.

The project site is located in the northeast quadrant of the Waring Road/Bush Street intersection. The parcel is zoned HC/LI and has not undergone a rezoning. The adjacent properties to the north of the subject parcel as well as the majority of the parcels directly west of the project parcel also have an HC/LI zoning designation. Waring Road can be considered a commercial corridor as it is located off of a major arterial roadway, Nine Mile Road, and provides access to many commercial and industrial businesses. Additionally, Waring Road provides the lone access to Blackbird Lane, another roadway utilized by only commercial businesses. Commercial and light industrial uses that can be found the length of Waring Road and on Blackbird Lane include Mobile Lumber and Millwork (which abuts the subject property on the north side), Town & Country Industries, Selectricity, LLC (electrical contractor), Southern Drill Supply, and Gator Equipment.

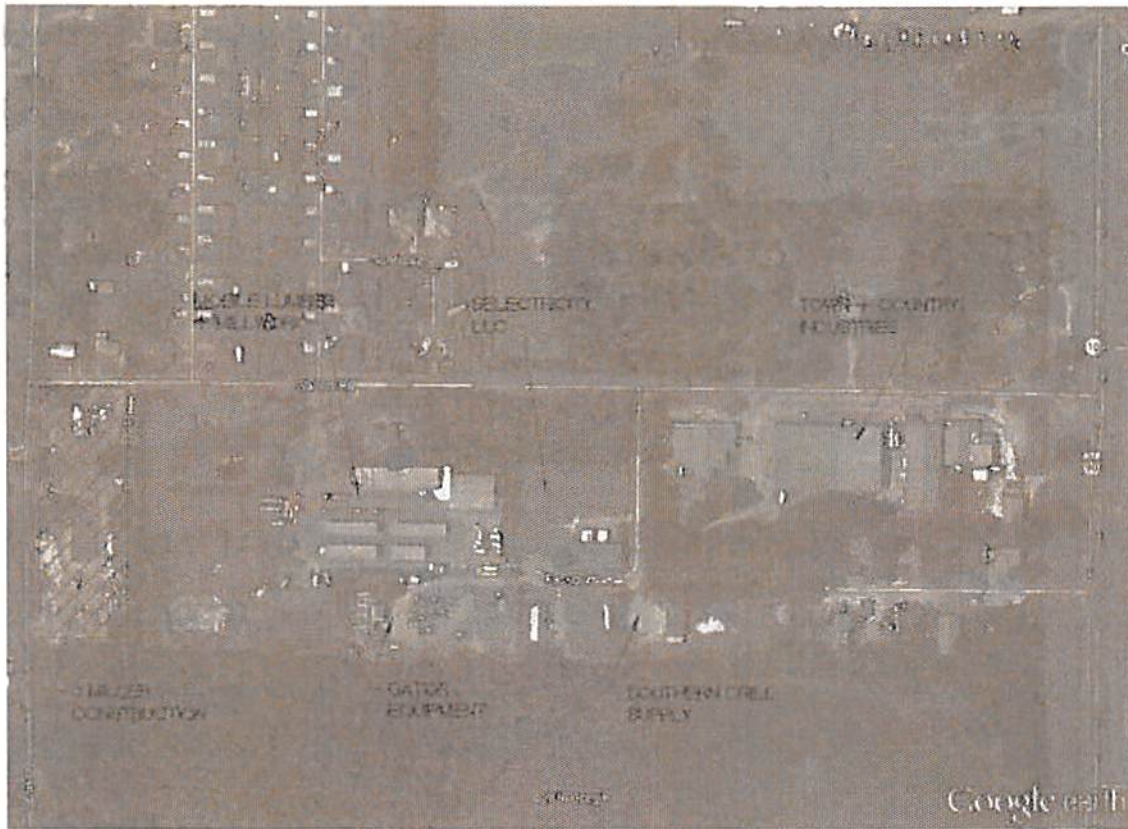
Furthermore, it should be noted that this parcel has been utilized for commercial uses, including multiple construction outfits, for a period in excess of ten (10) years prior to this request for Development Order. Also, the parcel is less than 0.50 miles south of a major arterial roadway, Nine Mile Road.

A map of the project site and its location in relation to the aforementioned commercial developments has been attached to this document. In accordance with the purpose of location criteria, the proposed development does not promote ribbon commercial development and is compatible with the surrounding area. It appears that the project parcel will achieve long-term compatibility with the existing and potential uses in the immediate area.

Sincerely,
HAMMOND ENGINEERING, INC.

Ryan L. Sieg
Project Manager

3802 NORTH "S" STREET PENSACOLA, FL 32505
850 434-2603 PH 850 434-2650 FAX TOM@SELANDDESIGN.COM



HATCH, HILL & ASSOCIATES, INC.
 10000 W. 10TH AVENUE, SUITE 100
 DENVER, COLORADO 80241
 PHONE: (303) 751-1000
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 WWW.HHA-INC.COM

LOCATION CRITERIA MAP FOR
 MILLER CONSTRUCTION MAINTENANCE BUILDING
 COUNTY: SCARBOROUGH

SHEET NO. 1 OF 1
 DATE: 10/2/14

Plan Reviewer Evaluation Comments

Site Plan Reviewer Comments

DRC Meeting Date: September 14, 2016
Project #: PSP160900136
Project Name: J Miller Construction Maintenance Bldg
Project Address: 8900 Waring Rd

Christina
Smith

Digitally signed by Christina Smith
DN: cn=Christina Smith, o=DRC,
email=Christina_Smith@myescamb
ia.com, c=US
Date: 2016.09.15 09:47:01 -05:00

Please Address the Following Comments

Addressing

Reviewer: Shanon Pugh @ 850-595-3034
Shannon_Pugh@co.escambia.fl.us

1. Address approved – **8900 Waring Road**

Access Management

Reviewer: Jason Walters @ 850-595-3422
Jason_Walters@co.escambia.fl.us

- 1) Construct a 5' concrete sidewalk along the Waring Road frontage of the site [LDC 5-5.6 - DSM 2-2.2]. Applicant has the option to contribute funds in lieu of construction at the County's discretion (at the applicant's request). Contributed funds shall be based on the County's latest pricing agreement.

Stormwater

Reviewer: Roza I. Sestnov @ 850-595-3411
Roza_Sestnov@co.escambia.fl.us

1. Please clarify if new concrete crushing operation is going to take place on the currently semi-impervious area(s). If not, this area will have to be considered as new semi-impervious for stormwater calculations.
2. Please note that this concrete crushing operation will require additional permitting through BCC. Coordinate this requirement with Planning and Zoning.
3. Please indicate sizes of the existing drainage pipes located in the R/W-s. Demonstrate that these pipes are adequate for post development condition.
4. Coordinate with Jason Walters a size of the proposed culvert portion.
5. Provide additional sediment control measures at the existing inlets in the R/W.
6. Extend proposed siltation fence along the east property line for the pond width.
7. FYI: It is Engineer/Developer's responsibility to obtain all state required permits (if any).
8. Drainage fees shall be paid at the time of the final comparison submittal. Drainage fees will be determined at the time of route sheet sign off.

Planning

Reviewer: John Fisher 850-595-4651
jcfisher@myescambia.com

The residential structure to a existing office was never permitted through the DRC process. A Change of Use through the DRC, will need to be administer as well.

Sec. 3-2.11 Heavy Commercial and Light Industrial district (HC/LI).

(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:

(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

Plan Reviewer Evaluation Comments

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).

Chapter 2-4.2

(c) Documentation by site plan. Site development compliance review requires the submission of a site plan to provide standardized documentation of compliance with county land development regulations. The form and content of a site plan shall be appropriate to the documentation necessary for the proposed site changes. Once approved, the site plan also documents how completed site changes comply with approved changes. The wide range of site plan content identified in this section is an indication of the types of documentation that may be required for compliance review. In general, as much information as is reasonably necessary to document LDC compliance shall be required on a site development plan, increasing with the complexity of site uses and improvements to be evaluated. The minimum information required for any specific compliance review process shall be according to the adopted procedures.

The plan will include 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.

Recovered materials processing facilities, recycling facilities and operations, resource recovery facilities and operations, and volume reduction plants shall conform to all performance standards governing the containment, collection, and treatment of leachate pursuant to Chapter 403, Florida Statutes, and any other applicable regulations promulgated by the Florida Department of Environmental Protection. The violation of any such statute or rule governing leachate under Chapter 403, Florida Statutes, shall also constitute a violation of this land development code enforceable by the Escambia County Office of Environmental Code Enforcement (LCD 4-7.11).

The site plan shall include but not limited to the following:

Provide detailed illustrations and information on site plan per LDC in reference to: Hours of Operation, Fencing and Gates, Screening, Buffers, and Signs.

Provide on site plan the Operational footprint setback at minimum 100 feet from the property boundary limit per Esc County Code of Ord 82-226.5.b.7. On the plan designate the proposed

Please show the parking for the existing office Building and its calculations.

4. DSM Article 3 – Parking

3-1 Parking and Loading

3-1.1 Stall and aisle design (a) Stall Dimensions Standard parking stalls shall be 9 feet wide by 18 feet long for all but parallel parking. Parallel stalls shall be 9 feet wide by 23 feet long.

3-1.2 Parking Demand

FOR Calculations please see DSM 3-1.2(d) for table.

(c) Space dimensions The minimum dimensions of an individual loading/unloading space shall be 12 feet by 55 feet with an overhead clearance of 14 feet above grade.

2-2.2 Vehicular use areas. No area of vehicular use may be considered landscape area, but parking lots, travel lanes, access ways, loading/unloading areas and other vehicular use areas outside of rights-of-way shall include landscape area according to the following standards:

(a) General design. Interior portions of vehicular use areas not specifically designed for vehicle parking or maneuvering shall not be paved, but maintained as landscape area.

(b) Boundary separation. Vehicular use areas shall be separated from the parcel boundary by a landscape strips no less than five feet wide. Driveways or sidewalks may cross such strips to provide approved site access

(c) Parking row terminations. Except as allowed for large-scale parking, rows of parking stalls shall be terminated at each end with a landscape area having the full length of the adjoining parking stall and containing at least one planted or preserved canopy tree. The remaining dimensions of the landscape area shall be sized to provide no less than the minimum canopy tree planting area for a new tree or minimum root zone for a preserved tree required by this article, whichever is applicable. Where a double row of interior parking stalls ends, the terminating landscape areas shall be combined as one continuous area to maximize rooting space except when a dividing pedestrian and/or handicap accessibility route may be appropriate and approved by the county.

Plan Reviewer Evaluation Comments

(d) Continuous parking stalls. Each row of parking shall contain no more than 15 continuous stalls without interruption by a landscape area, and each landscape area shall have the same minimum dimensions and plantings prescribed above for parking row termination landscape areas. However, if any of the following conditions exist, no more than 12 continuous stalls may be provided:

1. The total number of on-site parking spaces exceeds 50.
2. The total number of on-site parking spaces exceeds the number required by the applicable parking ratios established in DSM Chapter 1 by more than 10 percent.
3. The dimensions of drive aisles and/or parking stalls exceed the standards established in DSM Chapter 2.

DSM

Article 2 – LANDSCAPING

2-1 Exemptions

2-1.1 Tree protection and preservation. The following specific trees and activities are exempt from the tree protection and preservation provisions of this article:

(a) Invasive trees. Any tree species on the most recent Florida Exotic Pest Plant Council list of invasive species.

(b) Selected trees. Any species of pine (*Pinus sp.*), Cherry laurel (*Prunus laurocerasus* and *P. caroliniana*), or Turkey oak (*Quercus laevis*) tree. This exemption does not apply to trees planted or preserved to meet requirements of the LDC.

DSM 2-2 Landscape areas and quantities.

2-2.1 Parcel total. No parcel shall provide less than 15 percent landscape area, regardless of the minimum pervious lot coverage required by the applicable zoning district. On-site permeable retention/detention ponds and permeable swales qualify as landscape area if their maximum depths are no more than three feet and their side slopes are no steeper than 2:1 (horizontal to vertical).

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) and Industrial (Ind) zoning districts shall provide a Type-C buffer supplemented with an opaque fence or wall.

b. **General commercial.** General commercial uses consistent with the Commercial (Com) zoning district shall provide a Type-B buffer supplemented with an opaque fence or wall.

2. **Residential.** All multi-family uses exceeding 10 dwelling units per acre (MDR district max. density) shall provide a Type-A buffer supplemented with an opaque fence or wall for all adjoining single-family and two-family residential uses.

3. **Non-residential.** Heavy commercial and industrial uses shall provide a Type-B buffer for all adjoining general commercial, neighborhood commercial and other non-residential uses less intensive than heavy commercial or industrial.

4. **Condition of approval.** All uses whose conditions of approval include buffering shall provide the buffering according to those conditions.

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.

(b) Location. Where a use is required to provide buffering for adjoining uses, the buffering shall be along all side and rear lot lines where the use abuts the other uses. No buffers are required along front property lines unless buffering is included in screening requirements for outdoor storage and other conditions as prescribed in Chapter 4.

(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
A	12 feet	2.0	1.0	10
B	16 feet	2.5	2.0	20
C	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

Plan Reviewer Evaluation Comments

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.

Sec. 5.8-3 Sign permits.

(a) Permit required. Except as provided for in this article, it shall be unlawful for any person to erect, construct, alter or relocate within the unincorporated area of Escambia County, Florida, any sign without having first obtained a land use certificate and/or a building permit issued by department of growth management (department).

(b) Application for permit. Each application for a permit, with the required fees, shall be filed with the department on a form furnished for that purpose. Application for such permit, describing the work to be done, shall be made in writing to the department by the person, firm, or corporation installing the work, and the permit when issued shall be to such applicant. Only authorized employees or officers of a company or corporation that is qualified as a sign erection contractor can sign for permits by that holder. The holder of the sign erection contractor's certificate shall provide a letter of authorization for such employees or officers. The application shall indicate the location, sign dimensions, and contain such other information as may be required by the department.

State law requires construction to be done by licensed contractors; however, the owner of the particular property in question may sign an owner builder disclosure statement. This allows the owner of the property to act as his/her own contractor in accordance with Florida Statue. Upon receipt of a completed application, the department shall approve or deny the application within 15 days. An applicant who does not receive either a permit or denial within 20 days of submission of a completed application may file an administrative appeal as set forth in this Code. An applicant who is denied a permit may seek prompt judicial determination of such denial.

(c) Review criteria for multitenant centers. For all new construction of multitenant centers, a master sign plan must be submitted as part of the development review process. This plan must include in it the building elevations of the proposed project, the square footage of signs (both freestanding and wall signs). The location and size of each sign allotted to the individual occupants must be determined. Once the criteria have been established for a multitenant center or complex, the criteria shall apply to the entire center, as well as each individual occupant, and shall remain as long as the center exists, regardless of change of ownership or management. The criteria may only be changed if:

- (1) All signs in the center are changed to conform to the new approved criteria; and
- (2) Written consent to the plans and criteria are provided by the owner of the building, structure or land to which or on which the sign structure is to be erected, relocated, maintained or altered.

(d) Permit fees. A permit fee shall be charged and collected in accordance with a schedule of development permit fees established by resolution of the board of county commissioners. A permit shall not be valid until the prescribed fees have been paid. An amendment to a permit will not be approved until the additional fees, if any, have been paid.

Sec. 5-9.3 Exterior lighting.

General. Exterior lighting in and around buildings and in parking lots is permitted in all districts. Lighting is to be located for safety and visual effect. With the exception of street lights, it shall be installed so as not to shine directly on adjacent property. Lighting shall avoid annoyance from brightness and glare. Artificial beachfront lighting should be designed as per the LDC Chapter 4, Article 5, Barrier Island Lighting.

Health Dept

David Pearce 850-595-6700
David_Pearce@doh.state.fl.us

ECUA

Andre Calaminus 850-969-3310
andre.calaminus@ecua.fl.gov

No Comments

ECAT

Ted Woolcock 850-595-3228 ext 225
ted_woolcock@co.escambia.fl.us

1. No comments.

Environmental Permitting

Reviewer: Brad Bane @ 850-595-4572
Bradley_Bane@co.escambia.fl.us

- 1.) Thank you for providing protected tree details & notes. Please just add notes stating, *No protected trees will be removed* (if such is the case), & *No parking of vehicles or equipment under the driplines of protected trees*.
- 2.) As standard, please respond to all comments in writing & note as project is at the beginning, Pre-Application review stage, additional comments & standards may apply upon reapplication.

Floodplain Management

Reviewer: Juan Lemos @ 850-595-3467

Plan Reviewer Evaluation Comments

Juan Lemos@co.escambia.fl.us

Ready for final.

Fire Safety

Reviewer: Joe Quinn @ 850-595-1814

Joe.Quinn@co.escambia.fl.us

1. **18.2.3.2.1** A fire department access road shall extend to within 50 ft (15 m) of at least one exterior door that can be opened from the outside and that provides access to the interior of the building.
2. **18.2.3.4.1.1** Fire department access roads shall have an unobstructed width of not less than 20 ft (6.1 m).
3. **18.2.3.4.1.2** Fire department access roads shall have an unobstructed vertical clearance of not less than 13 ft 6 in. (4.1 m). Please indicate the height of the porte-cochere
4. **18.2.3.4.2 Surface.** Fire department access roads shall be designed and maintained to support the imposed loads of fireapparatus and shall be provided with an all-weather driving surface. Minimum of 40 tons.
5. **18.2.4.1.1** The required width of a fire department access road shall not be obstructed in any manner, including by the parking of vehicles.
6. **18.3.1*** An approved water supply capable of supplying the required fire flow for fire protection shall be provided to all premises upon which facilities, buildings, or portions of buildings are hereafter constructed or moved into the jurisdiction. **Provide location of nearest fire hydrant. Provide current flow test data. A fire hydrant must be located within 500ft of the furthest point of the building as the hose lies.**
7. **18.4.5.2 Buildings Other Than One- and Two-Family Dwellings.** The minimum fire flow and flow duration for buildings other than one- and two-family dwellings shall be as specified in Table 18.4.5.1.2.
8. **30.2.1 Application.** The construction and protection of, as well as the control of hazards in, garages used for major repair and maintenance of motorized vehicles and any sales and servicing facilities associated therewith shall comply with Sections 30.2 and 30.3 and NFPA 30A.
9. **30.2.3 General Construction Requirements.** In major repair garages, where CNG-fueled vehicles, hydrogen-fueled vehicles, LNG-fueled vehicles, or LP-Gas-fueled vehicles are repaired, all applicable requirements of NFPA 52 or NFPA 58, whichever is applicable, shall be met. [30A:7.4.2]

Handicap Access

Reviewer: Charles Wiley @ 850-595-3573

Charles_Wiley@co.escambia.fl.us

No Comments

Please contact each reviewer to schedule an appointment.

19.1.6.2 The AHJ shall be responsible for designating the areas that require hazardous location electrical classifications and shall classify the areas in accordance with the classification system set forth in NFPA 70.

19.1.7 No Smoking.

19.1.7.1 No smoking or open flame shall be permitted in any area where combustible fibers are handled or stored or within 50 ft (15 m) of any uncovered pile of such fibers.

19.1.7.2 "No Smoking" signs shall be posted.

Table 18.4.5.1.2 Minimum Required Fire Flow and Flow Duration for Buildings

Fire Flow Area ft ² (x 0.0929 for m ²)					Fire Flow gpm [†] (x 3.785 for L/min)	Flow Duration (hours)
I(443), I(332), II(222)*	II(111), III(211)*	IV(2HH), V(111)*	II(000), III(200)*	V(000)*		
0-22,700	0-12,700	0-8200	0-5900	0-3600	1500	2
22,701-30,200	12,701-17,000	8201-10,900	5901-7900	3601-4800	1750	
30,201-38,700	17,001-21,800	10,901-12,900	7901-9800	4801-6200	2000	
38,701-48,300	21,801-24,200	12,901-17,400	9801-12,600	6201-7700	2250	
48,301-59,000	24,201-33,200	17,401-21,300	12,601-15,400	7701-9400	2500	
59,001-70,900	33,201-39,700	21,301-25,500	15,401-18,400	9401-11,300	2750	3
70,901-83,700	39,701-47,100	25,501-30,100	18,401-21,800	11,301-13,400	3000	
83,701-97,700	47,101-54,900	30,101-35,200	21,801-25,900	13,401-15,600	3250	
97,701-112,700	54,901-63,400	35,201-40,600	25,901-29,300	15,601-18,000	3500	
112,701-128,700	63,401-72,400	40,601-46,400	29,301-33,500	18,001-20,600	3750	
128,701-145,900	72,401-82,100	46,401-52,500	33,501-37,900	20,601-23,300	4000	4
145,901-164,200	82,101-92,400	52,501-59,100	37,901-42,700	23,301-26,300	4250	
164,201-183,400	92,401-103,100	59,101-66,000	42,701-47,700	26,301-29,300	4500	
183,401-203,700	103,101-114,600	66,001-73,300	47,701-53,000	29,301-32,600	4750	
203,701-225,200	114,601-126,700	73,301-81,100	53,001-58,600	32,601-36,000	5000	
225,201-247,700	126,701-139,400	81,101-89,200	58,601-65,400	36,001-39,600	5250	
247,701-271,200	139,401-152,600	89,201-97,700	65,401-70,600	39,601-43,400	5500	
271,201-295,900	152,601-166,500	97,701-106,500	70,601-77,000	43,401-47,400	5750	
Greater than 295,900	Greater than 166,500	106,501-115,800	77,001-83,700	47,401-51,500	6000	
		115,801-125,500	83,701-90,600	51,501-55,700	6250	
		125,501-135,500	90,601-97,900	55,701-60,200	6500	
		135,501-145,800	97,901-106,800	60,201-64,800	6750	
		145,801-156,700	106,801-113,200	64,801-69,600	7000	
		156,701-167,900	113,201-121,300	69,601-74,600	7250	
		167,901-179,400	121,301-129,600	74,601-79,800	7500	
		179,401-191,400	129,601-138,300	79,801-85,100	7750	
		Greater than 191,400	Greater than 138,300	Greater than 85,100	8000	

*Types of construction are based on NFPA 220.

†Measured at 20 psi (139.9 kPa).

19.1.8 Vehicles or Conveyances Used to Transport Combustible Waste or Refuse.

19.1.8.1 Vehicles or conveyances used to transport combustible waste or refuse over public thoroughfares shall have all cargo space covered and maintained tight enough to ensure against ignition from external fire sources and the scattering of burning and combustible debris that can come in contact with ignition sources.

19.1.8.2 Transporting burning waste or refuse shall be prohibited.

19.1.8.3 Trucks or automobiles, other than mechanical handling equipment and approved industrial trucks as listed in NFPA 505, *Fire Safety Standard for Powered Industrial Trucks Including Type*

Designations, Areas of Use, Conversions, Maintenance, and Operations, shall not enter any fiber storage room or building but shall be permitted to be used at loading platforms.

19.2 Combustible Waste and Refuse.

19.2.1 Rubbish Containers.

19.2.1.1 General. Rubbish containers kept outside of rooms or vaults shall not exceed 40.5 ft³ (1.15 m³) capacity.

19.2.1.1.1 Containers exceeding a capacity of 5½ ft³ [40 gal (0.15 m³)] shall be provided with lids.

Alain Espinosa

From: Karen E. Bohon <IMCEAEX-_O=ESCAMBIA_OU=EXCHANGE+20ADMINISTRATIVE+20GROUP+20+28FYDIBOHF23SPDLT+29_CN=RECIPIENTS_CN=KEBOHON@DM2PR09MB0461.namprd09.prod.outlook.com>
Sent: Monday, October 19, 2015 9:55 AM
To: Horace L Jones; Kayla R. Meador
Cc: Andrew D. Holmer; Allyson Cain
Subject: RE: Rezoning case on Westside pen air
Attachments: Z-2015-15 & Z-2015-17 Staff Findings (138 KB)

Horace,

I sent the staff findings to Tommy Brown on 9/18/15, see attached email.

Thanks,
Karen Bohon
Sr. Office Support Assistant
Development Services Department
3363 West Park Place
Pensacola, FL 32505
kebohon@myescambia.com
T 850.595.2421

 Please consider the environment before printing this e-mail. Think Green.

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-----Original Message-----

From: Horace L Jones
Sent: Monday, October 19, 2015 9:49 AM
To: Kayla R. Meador
Cc: Karen E. Bohon; Andrew D. Holmer; Allyson Cain
Subject: Re: Rezoning case on Westside pen air

Regardless of who is responsible, I need an answer. I made it perfectly clear that this shroud be done. We can discuss accountability later.

Sent from my iPhone

> On Oct 19, 2015, at 9:39 AM, Kayla R. Meador <krmeador@co.escambia.fl.us> wrote:
>
> Karen,
> Please see email below from Horace.

> -----Original Message-----

> From: Horace L Jones

> Sent: Monday, October 19, 2015 9:00 AM
> To: Kayla R. Meador
> Cc: Andrew D. Holmer; Karen E. Bohon; Allyson Cain
> Subject: Re: Rezoning case on Westside pen air
>
> Tom from traffic. We discussed this before. This should be part of the procedures already in place
>
> Sent from my iPhone
>
>> On Oct 19, 2015, at 8:51 AM, Kayla R. Meador <krmeador@co.escambia.fl.us> wrote:
>>
>> Who is Tom?!
>>
>> -----Original Message-----
>> From: Horace L Jones
>> Sent: Monday, October 19, 2015 8:49 AM
>> To: Kayla R. Meador; Andrew D. Holmer; Allyson Cain
>> Subject: Rezoning case on Westside pen air
>>
>> Kayla,
>> Did we send the Rezoning case to Tom? He was not present at the PB case.
>>
>> Sent from my iPhone

Alain Espinosa

From: Karen E. Bohon <IMCEAEX-K@DM2PR09MB0461.namprd09.prod.outlook.com> on behalf of Karen E. Bohon <IMCEAE-KEBOHON@DM2PR09MB0461.namprd09.prod.outlook.com>
Sent: Friday, September 18, 2015 12:47 PM
To: Thomas R Brown
Subject: Z-2015-15 & Z-2015-17 Staff Findings
Attachments: Z-2015-15 Staff Findings.pdf; Z-2015-17 Staff Findings.pdf

Please see attached staff findings for 10-6-15 rezoning cases Z-2015-15 & Z-2015-17. These are the last two.

Thanks,

Karen Bohon

Sr. Office Support Assistant
Development Services Department
3363 West Park Place
Pensacola, FL 32505
kebohon@myescambia.com
T 850.595.2421



Please consider the environment before printing this e-mail. Think Green.

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Planning Board-Rezoning

5. A.

Meeting Date: 10/06/2015

CASE : Z-2015-15

APPLICANT: Wiley C. "Buddy" Page, Agent for Steve Tate, Owner

ADDRESS: 329 & 333 Massachusetts Avenue

PROPERTY REF. NO.: 09-2S-30-1300-020-009; 09-2S-30-1300-040-009

FUTURE LAND USE: MU-U, Mixed-Use Urban

DISTRICT: 3

OVERLAY DISTRICT: Palafox Redevelopment

BCC MEETING DATE: 11/05/2015

SUBMISSION DATA:

REQUESTED REZONING:

FROM: HDMU, High Density Mixed-use district (25 du/acre)

TO: HC/LI-NA, Heavy Commercial and Light Industrial district, designation prohibiting the subsequent establishment of any bars, nightclubs, or adult entertainment uses on the rezoned property. (Dwelling unit density limited to vested residential development.)

RELEVANT AUTHORITY:

- (1) Escambia County Comprehensive Plan
- (2) Escambia County Land Development Code
- (3) Board of County Commissioners of Brevard County v. Snyder, 627 So. 2d 469 (Fla. 1993)
- (4) Resolution 96-34 (Quasi-judicial Proceedings)
- (5) Resolution 96-13 (Ex-parte Communications)

APPROVAL CONDITIONS

Criterion a., LDC Sec. 2-7.2(b)(4)

Consistent with Comprehensive Plan.

Whether the proposed rezoning is consistent with the goals, objectives, and policies of the Comprehensive Plan and not in conflict with any of the plan's provisions.

Comprehensive Plan (CPP) FLU 1.1.1 Development Consistency. New

development and redevelopment in unincorporated Escambia County shall be consistent with the Escambia County Comprehensive Plan and the Future Land Use Map (FLUM).

CPP FLU 1.3.1 Future Land Use Categories. The Mixed-Use Urban (MU-U) Future Land Use (FLU) category is intended for an intense mix of residential and nonresidential uses while promoting compatible infill development and the separation of urban and suburban land uses within the category as a whole. Range of allowable uses include: Residential, Retail and Services, Professional Office, Light Industrial, Recreational Facilities, Public and Civic. The minimum residential density is 3.5 dwelling units per acre and the maximum residential density is 25 dwelling units per acre.

CPP FLU 1.5.3 New Development and Redevelopment in Built Areas. To promote the efficient use of existing public roads, utilities and service infrastructure, the County will encourage redevelopment in underutilized properties to maximize development densities and intensities located in the Mixed-Use Suburban, Mixed-Use Urban, Commercial and Industrial Future Land Use districts categories (with the exception of residential development).

FINDINGS

The proposed amendment to HC/LI-NA is **consistent** with the intent and purpose of Future Land Use category MU-U as stated in CPP FLU 1.3.1 because Mixed-Use Urban allows for retail commercial while providing a separation between existing residential uses. As stated in CPP FLU 1.5.3, the parcel will utilize existing roads and infrastructures while maximizing the use of vacant land.

Criterion b., LDC Sec. 2-7.2(b)(4)

Consistent with The Land Development Code

Whether the proposed amendment is in conflict with any portion of this Code, and is consistent with the stated purpose and intent of this Code.

FINDINGS

The proposed amendment is **not consistent** with the intent and purpose of the Land Development Code. Although there are parcels in the surrounding area that have commercial uses, the subject parcel is on a collector roadway, which does not meet the locational criteria in Chapter 3, Section 3-2.11(e). The applicant has submitted a compatibility analysis providing substantial evidence of unique circumstances regarding the parcel or use. The subject parcel is within the Palafox redevelopment area. CRA has provided comments.

Criterion c., LDC Sec. 2-7.2(b)(4)

Compatible with surrounding uses

Whether all land uses, development activities, and conditions allowed by the proposed zoning are compatible with the surrounding conforming uses, activities and conditions and able to coexist in relative proximity to them in a stable fashion over time such that no use, activity, or condition negatively impacts another. The appropriateness of the rezoning is not limited to any specific use that may be proposed but is evident for all permitted uses of the requested zoning.

FINDINGS

The proposed amendment **is compatible** with surrounding existing uses in the area. Within the 500' radius impact area, staff observed properties with zoning districts HDMU and Com. Along Massachusetts Avenue there are several existing commercial businesses. Rezoning the subject parcel will allow for activities and development that will be able to coexist and avoid undesirable effects on the neighboring properties and residential uses. Any development on the parcel will go through the Development Review process to ensure all buffering standards and other county land development regulations are followed.

Criterion d., LDC Sec. 2-7.2(b)(4)

Changed conditions

Whether the area to which the proposed rezoning would apply has changed, or is changing, to such a degree that it is in the public interest to encourage new uses, density, or intensity in the area through rezoning.

FINDINGS

Staff found a rezoning from R-6 to C-1 that was approved, 2001-44, and a conditional use, CU-2011-12, was granted on a parcel across Massachusetts Avenue. There was a Development Order issued for the westerly portion of the subject parcel in conjunction with the property to the west of "S" Street in 2008.

Criterion e., LDC Sec. 2-7.2(b)(4)

Development patterns

Whether the proposed rezoning would contribute to or result in a logical and orderly development pattern.

FINDINGS

The proposed amendment **would** result in a logical and orderly development pattern. The parcels along Massachusetts are primarily used as commercial and the parcel is in close proximity to "W" Street which is a major commercial corridor. The location is in an area where already established non-residential uses are consistent with HC/LI, and the requested rezoning would constitute infill development of similar intensity as the conforming development on surrounding

parcels.

Criterion f., LDC Sec. 2-7.2(b)(4)

Effect on natural environment

Whether the proposed rezoning would increase the probability of any significant adverse impacts on the natural environment.

FINDINGS

According to the National Wetland Inventory, wetlands and hydric soils **were not** indicated on the subject property. When applicable, further review during the Site Plan Review process will be necessary to determine if there would be any significant adverse impact on the natural environment.

Attachments

No file(s) attached.

Alain Espinosa

From: Terry D Williams <TDWILLIA@myescambia.com>
Sent: Thursday, July 16, 2015 1:51 PM
To: Lucie Ghioto
Subject: RE: Compatibility Analysis for site within HC/LI district
Attachments: Compatibility_Analysis.pdf; Compatibility_Study-Request_for_Exemption.pdf

Here are a couple of examples.

Terry

From: Lucie Ghioto [mailto:lucie@hciplanning.com]
Sent: Wednesday, July 15, 2015 11:33 AM
To: Terry D Williams
Subject: Compatibility Analysis for site within HC/LI district

Good afternoon Terry,

Thanks for talking with me today. I would appreciate any examples or guidance you can provide for what would be required within a compatibility analysis. The project is Empire Truck Center at 2255 West Detroit Blvd. I understand there is also a requirement that the property has not been rezoned from mixed use, commercial or industrial by the owner. Are you able to confirm that the property has not been rezoned by the landowner? Thank you again for all of your help!



Lucie Ghioto, AICP
Director of Planning
100 E Sybelia Avenue, Suite 375
Maitland, FL 32751
407.622.7500 O • 407.739.8472 C
www.hciplanning.com

Compatibility Analysis

for
Country Inn & Suites
HMM# 227777
2607 Wilde Lake Blvd.
Pensacola, FL

Project Summary

The Country Inn & Suites project proposes development of a 63-unit four-story hotel building with amenities on a 3.05 acre parcel of land located on Wilde Lake Blvd approximately 900 feet west of Pine Forest Rd.

The designated zoning of the referenced parcel is C-1(Retail Commercial District). The property is surrounded by C-1 zoning to the East and West and C-2 (General Commercial and Light Manufacturing District) to the North. The property to the South of the project is zoned R-1 (Single-Family District, Low Density) and is currently Single-Family Residential in use. Please see Appendix A – Location Map attached. The property directly west of the project is a private driveway that provides access to the Single Family Residence South of the project as well as several Single Family Residences to the West of the Subject Property.

The project is designed according to the Escambia County Land Development Code (LDC) Section 6.05.14, which governs development in C-1 zoning. The project is also designed to meet all criteria set forth by the Florida Department of Environmental Protection (FDEP) and the Emerald Coast Utilities Authority (ECUA) and will be permitted by both agencies.

Surrounding Conditions

The development pattern in the area is primarily Commercial to the North and East of the Project Site and Residential to the South and West. The proximity of the interchange between Interstate 10 and Pine Forest Road (See Location Map attached) makes the area a logical place for Commercial Development. There are three Hotels, two Gas Stations and five restaurants in the general vicinity of the Project Site. Two Existing Hotels (Microtel Inn & Suites and Sleep Inn) are less than 500 feet from the Project Site.

The development at the intersection of Wilde Lake Blvd. and Pine Forest Road is almost completely Commercial in nature. The Project Site is a natural extension of this development. The following Images illustrate the nature of development in the project area.

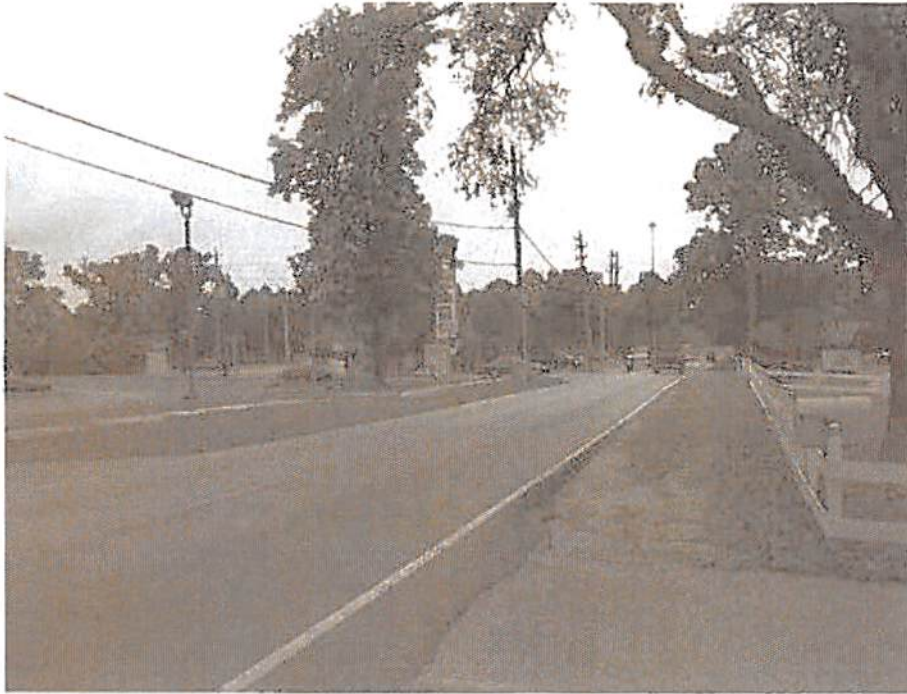


Figure 1 - Looking East on Wilde Lake Blvd. from proposed site of Country Inn & Suites



Figure 2 - Looking West on Wilde Lake Blvd. towards proposed project from BP/McDonald's

Project Compatibility

The project is designed to comply with the Escambia County Buffering Standards as described in LDC Section 7.01.06 and the Escambia County Comprehensive Plan Policy 7.A.3.8. In addition to the required Buffer Plantings, the project will add a security fence with a height of 6' and will exceed A-2 planting requirements by locating mitigation trees in the Landscape Buffer area.

The project will also achieve long-term compatibility by reducing stormwater flow from the project to the residential property south of the site. The runoff resulting from the 25-year 24-hour storm event will be reduced from 4.11 cubic feet per second to 2.38 cubic feet per second from the south portion of the site. Please see the Stormwater Management Plan submitted for Country Inn & Suites for calculations.

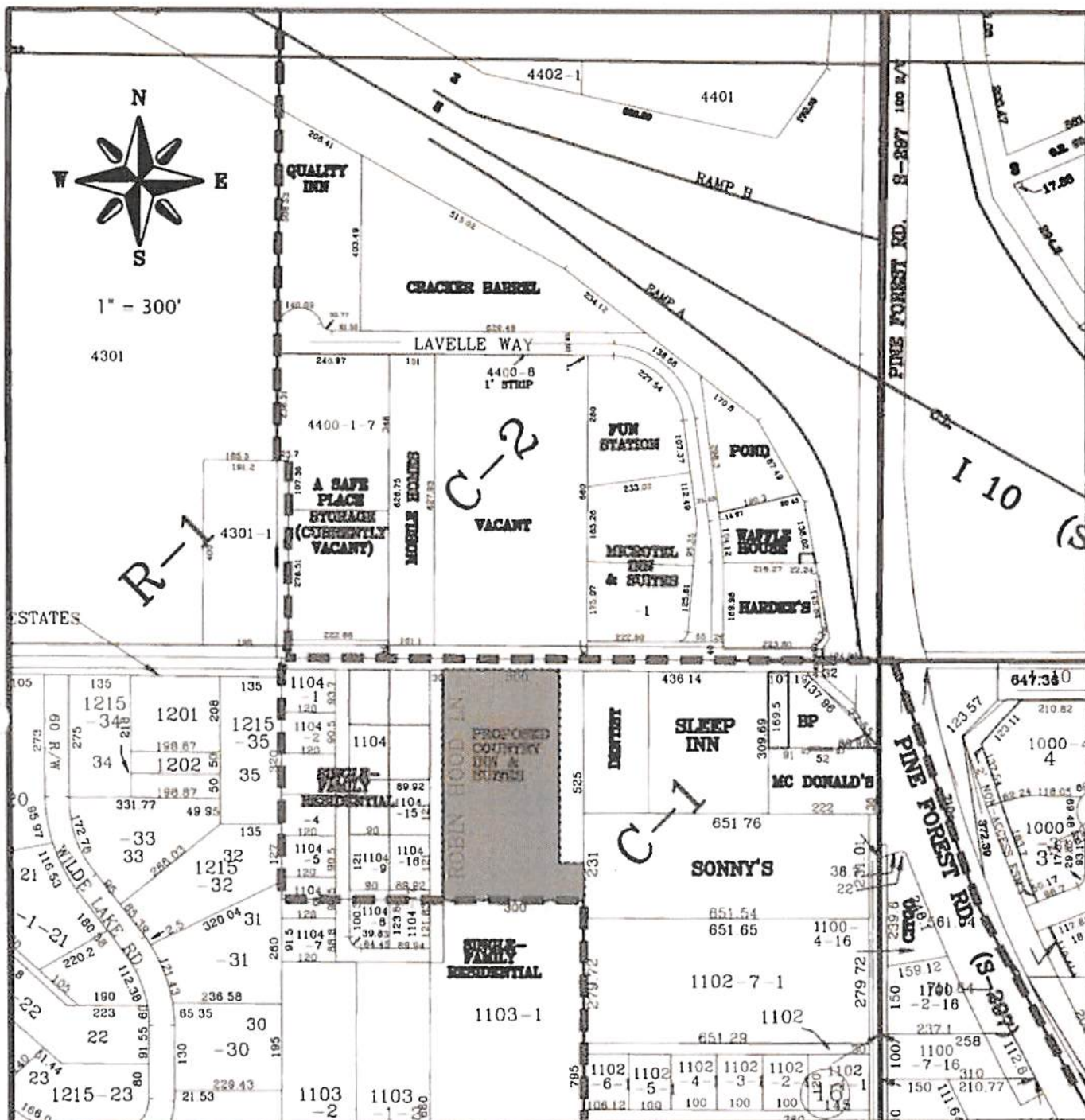
The location of other hotels in the area and the proximity to Interstate 10 indicate that the proposed location of the Country Inn & Suites project is logical and compatible with the surrounding area.

The subject property has the original commercial zoning assigned by Escambia County (LDC 7.20.02.A.1) and is compatible with the surrounding area as described above. Therefore, we respectfully request that the County grant a Waiver to the Roadway Requirement of the Locational Criteria as specified in LDC 7.20.02.

Mitigation

To improve the compatibility of the project in relation to the residential properties to the west of the project site, the site was redesigned to center the building on the site. The site design revision increased the distance from the western property line of the proposed project to the proposed building from 15.33 feet to 70 feet.

This distance will greatly reduce the negative impacts of a four-story building neighboring single-family residential properties. In addition to the 70 feet setback, the 30 feet access driveway for the residential properties further separates the building from the neighboring single-family residences. As a result, the redesigned site plan allows for 100 feet of separation from the proposed building (approximately 52 feet in height) to the property line of the neighboring residential properties.



COUNTRY INN & SUITES
2607 WILDE LAKE BLVD.

LOCATION MAP



**Hatch Mott
MacDonald**

Hatch Mott MacDonald Florida, LLC

DATE: 8/17/2006
LAST REVISED:
H.M.M. PROJECT NUMBER: 227777
SHEET:

DESIGNED BY:
DRAWN BY: HJ
PROJECT ENGINEER: H. JENKINS
PROJECT MANAGER: D. SKIPPER

Architects Engineers Surveyors
AA - C0000035 EB - 00000155 LB - 00006783
5111 North 12th Avenue (32504)
P. O. Box 2518 (32513-2518)
Pensacola, Florida
Telephone: (850) 484-6011 Fax: (850) 484-8199



REC'D MAY 20 2011

Compatibility Study Request for Exemption

**Dollar General
Nine Mile Road - Beulah
Escambia County, Florida**

OWNER/DEVELOPER
Teramore Development, LLC
P.O. Box 6460
Thomasville, GA 31757

ENGINEER
Bell Engineering Services, LLC
Jennifer D. Bell, P.E.
4212 Rosebud Court
Pensacola, FL 32504
(850) 723-7185

DATE
May 18, 2011

Project Description:

This proposed development is a 1.41 acre parcel, located on the south side of Nine Mile Road (Highway 90/SR 10), approximately 0.20 miles west of the intersection of Beulah Road in Escambia County, Florida. The proposed improvements will consist of the construction of a 9,026 sf freestanding Dollar General store with 36 paved parking stalls, asphalt drive aisles, landscaping and a stormwater management facility. The subject property is approximately 1.41 acres in size, zoned ID-CP with a future land use category of MU-S.

Surrounding Properties:

This project appears to qualify for exemption to the roadway requirements criteria set forth in Section 7.20.03 B (Infill Development) of the Escambia County Land Development Code. This section states that "In areas where over 50% of a block is either zoned or used for commercial development, new commercial development or zoning may be considered without being consistent with the roadway requirements. The intensity of the proposed development or new zoning district must be of a comparable intensity of the zoning and development on the surrounding parcels. Typically, a block is defined as the road frontage on one side of a street between two public rights-of-way."

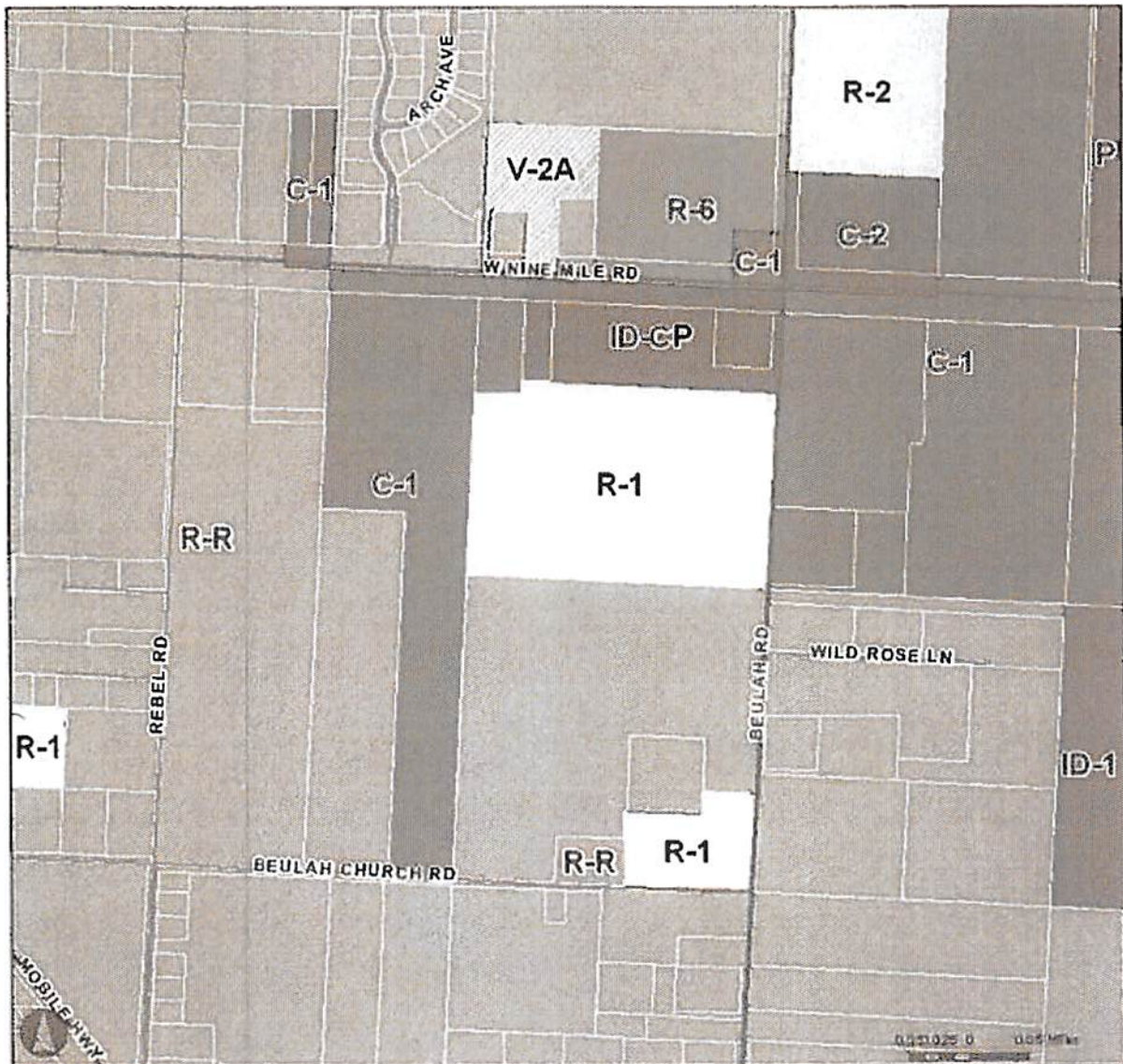
The proposed project is located on the south side of West Nine Mile Road, between Beulah Road and Rebel Road. The total block length between these two intersecting blocks is approximately 2,650 feet and consists of seven parcels, as described below:

Parcel I.D. 07-1S-31	Zoning	Use Description	Parcel Area (ac)	% of block based on parcel Area	Frontage Length (ft)	% of block based on parcel frontage
-1220-000-003	R-R	SFR	3.96	9.1%	324	12.2%
-1220-001-001	R-R	SFR	3.86	8.9%	320	12.1%
-1210-000-000	C-1	Airport/Marina/Term.	24.49	56%	655	24.7%
-1101-000-001	C-1	Warehouse/Distrib.	2.00	4.6%	209	7.9%
-1101-000-002	ID-CP	Vacant Commercial	1.00	2.3%	125	4.7%
-1101-000-000*	ID-CP	Proposed Development	1.41	3.2%	175	6.6%
-1101-000-000*	ID-CP	Vacant Commercial	5.31	12.2%	591	22.3%
-1101-000-003	ID-CP	Store	1.43	3.3%	250	9.4%

** The subject site is currently seeking subdivision approval from parent parcel 07-1S-31-1101-000-000. The overall parent parcel is zoned ID-CP and R-1, however for purposes of this compatibility study, only the portion of the property that has frontage along West Nine Mile Road was utilized. The rear portion of the property is zoned R-1 and was excluded from the study since the limits of the residential zoning district were beyond the limits of the proposed development.*

The table above indicates that with the proposed development 81.6% of the block area (and 75.6% of the block based on frontage) will consist of commercial use which complies with the exemption criteria set forth in the above referenced Article of the LDC. In summary, the proposed development is located in an area of comparable intensity of the zoning and development of the surrounding parcels and therefore will not promote ribbon commercial development.

Current Zoning



Disclaimer

This map is provided for information purposes only. The data is not guaranteed accurate or suitable for any use other than that for which it was gathered.

1802440PSP-PA

PROJECT INFORMATION FORMDevelopment Services Department, 3363 West Park Place, Pensacola, FL 32505 (Phone) 850-595-3475 (Fax) 850-595-3703
www.invescambia.com**Allow 2 working days for the return of this form****SECTION 1-A: MANDATORY - THIS SECTION TO BE COMPLETED BY APPLICANT**Applicant/Company Name: Bill Flannigan Phone: (850) 253-1557 Fax: N/AMailing Address: 400 Mayberry Street State: FL Zip Code: 32533Project Name: Interstate R.V. Park Proposed Use: R.V. ParkProperty Reference Number(s): 13-15-31-1100-001-011Project Address: 2400 BIK Interstate Circle 32526 Estimated Parcel Acreage: 5.5 ac.Is Site currently developed? NO ☒ YES ☐ IF YES, describe existing development _____Is a Conditional Use, Variance, Rezoning or Future Land Use Amendment required for the Proposed development? NO ☒ YES ☐

*If you would like to apply for a Variance (as required by the Land Development Code) prior to the issuance of a Development Order, please contact (850) 595-3475.

Select Type of Submittal:

Site Plan: ☒ Site Plan Minor: _____ Minor Subdivision: _____
Master Plan: _____ Preliminary Plat: _____ Construction Plans: _____ Final Plat: _____

Would you like a Project Champion (Optional Customer Service Program)? _____ Yes _____ No

Site Plan Project Submittals	Subdivision Project Submittals
Estimated SQ. FT. of Building Footprint: <u>0</u>	Total # of Phases: _____ Total # of Lots: _____
Estimated SQ. FT. of Impervious Surface (Including Bldg Footprint): <u>Beck Driveway</u>	# of Lots in Phase 1: _____ # of Lots in Phase 2: _____
	# of Lots in Phase 3: _____ # of Lots in Phase 4: _____

SECTION 2: This section to be completed by County Staff.Parcel Future Land Use(s): C Surrounding Future Land Use(s): CParcel Zoning District(s): Com Surrounding Zoning Districts: ComAirport Environment(s): NO Overlay District(s): NO Commissioner District: 1Drainage Basin: 13 Hurricane Evacuation Zone: NO Flood Zone: NO

Notes: _____

Checked by: [Signature] Date: 2/16/18

Planner/Project Champion Verified: _____ Date: _____

Interstate RV Park

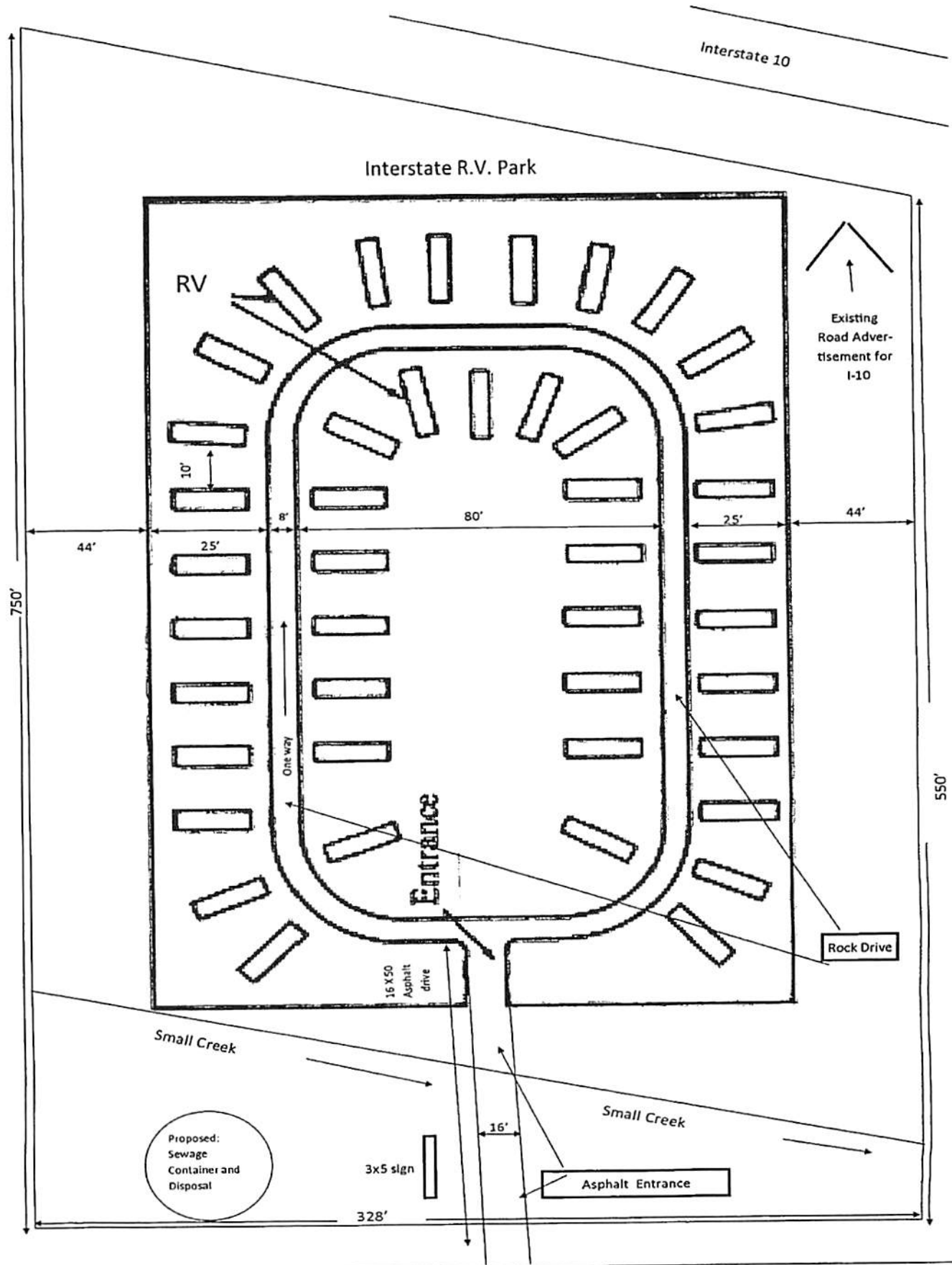
The proposal is located on a wooded and vacant 5.5 acres (328X730) commercial zoned land at the location of 2400 Blk Interstate Circle, Pensacola, FL 32526. The parcel is a commercial lot with future land use being Commercial (2030) with approximately 328' of frontage on Interstate Circle. There is an existing Advertising sign on the North-East corner of the property. There is a small creek that divides the property toward the front of property at Interstate Circle.

The propose sight will have 43 RV sites signed to the above location. Each lot will be the size of 25 square feet (5X25). There will be a rock driveway to each lot that will be parking for one individual vehicle. This park will only be for Recreational vehicles with self-contained or non-self-contained sanitary fixtures. A maximum one toilet, shower and sink in bathroom. A sink in the kitchen. No one living in a tent will be permitted on sight. Each lot will have a 50 amp breaker service. There is an ECUA water and sewage available (approx. 150 yards from sewage containment and disposal tank at front of property).

There are no wetlands recorded by the Escambia County web site on the 5.5 acres. Dorovan and Muckalee soils, Trout-Poarch complex, 5 to 8 percent slopes. The drainage basin is Eight Mile Creek.

Parking will have a total of 43 spaces that will be covered with gravel. The actual RV (43 spaces) will be parked on grass/ground. The asphalt area will cover approximately (16X50) 800 sq. ft.

The gravel drive will be 10 feet wide on a one direction going left to right throughout the park.



2400 Blk Interstate Circle, 32526



Escambia County, Florida

3363 West Park Place
Pensacola, FL 32505
(850) 595-1820
www.MyEscambia.com

Date: Wednesday, April 18, 2018

ENTERPRISES LLC WOS

PO BOX 422
MILTON FL 32572

Project Number 1802460PSP-PA
Job Address: 2460 INTERSTATE CIR, PENSACOLA, FL 32526

Dear ENTERPRISES LLC WOS,

Staff has completed its review of plans for the Interstate R. V. Park that is to be located at 2460 INTERSTATE CIR, PENSACOLA, FL 32526. Comments from this review follow:

Floodplain Management Comments

The following comments have been provided by **Juan Lemos**. Should you have any questions or require additional information regarding any of these comments, please contact **Juan Lemos** at **(850) 595-3467** or by email at **jclemos@myescambia.com**.

- i. Please insert the following statement in your plans:

"The subject property as shown hereon is located in **flood zone X (shaded)**, moderate flood hazard **and flood zone X**, (Minimal risk areas outside the 1-percent and .2-percent-annual-chance floodplains. No BFEs or base flood depths are shown within these zones), as determined from the Federal Emergency Management Agency Flood Insurance Rate Map of Escambia County, Florida, Community 120080, FIRM map panel numbers **12033C00295G**, map revision dated September 29, 2006."

FYI, FEMA released the preliminary flood maps for Escambia County. You can review the current and proposed flood zone changes for any parcel in Escambia County here: <http://portal.nwfwmdfloodmaps.com/map.aspx?cty=escambia>

Based on FEMA's preliminary maps, the following information is available for planning purposes:

Flood Zone Information Geographic Entity **Effective Flood Zone (adopted)** **Preliminary Flood Zone (new)** Location of Interest **X X** Parcel **X:94% 0.2PCT:6% A:24%X:74% 0.2PCT:2%**

Addressing Review Comments

The following comments have been provided by **Shannon Pugh**. Should you have any questions or require additional information regarding any of these comments, please contact **Shannon Pugh** at or by email at **sdpugh@myescambia.com**.

The address is incorrect. The address will be **2460 Interstate Circle**. Use this address on all future forms and applications and show the address on the site plan.

Fire and Life Safety Review Comments

The following comments have been provided by **Joseph Quinn**. Should you have any questions or require additional information regarding any of these comments, please contact **Joseph Quinn** at **(850) 595-1810** or by email at **jequinn@myescambia.com**.

1. **18.1.1.1 Fire Apparatus Access.** Plans for fire apparatus access roads shall be submitted to the fire department for review and approval prior to construction.
2. **18.1.1.2 Fire Hydrant Systems.** Plans and specifications for fire hydrant systems shall be submitted to the fire department for review and approval prior to construction.
3. **18.2.3.4.1.2** Fire department access roads shall have an unobstructed vertical clearance of not less than 13 ft 6 in. (4.1 m).
4. **18.2.3.4.2 Surface.** Fire department access roads shall be designed and maintained to support the imposed loads of fire apparatus and shall be provided with an all-weather driving surface capable of supporting 40 tons.
5. **18.2.3.4.3.2** Turns in fire department access roads shall maintain the minimum road width.
6. **18.2.3.4.6.3** Fire department access roads connecting to roadways shall be provided with curb cuts extending at least 2 ft

(0.61 m) beyond each edge of the fire lane.

7. **18.2.4.1.1** The required width of a fire department access road shall not be obstructed in any manner, including by the parking of vehicles.

8. **18.3.1*** An approved water supply capable of supplying the required fire flow for fire protection shall be provided to all premises upon which facilities, buildings, or portions of buildings are hereafter constructed or moved into the jurisdiction. **Hydrants and spacing per the LDC. The system must be capable of supplying a minimum of 1000 gpm. (See Below) Provide the location of the nearest hydrant. Provide current fire hydrant flow test data.**

9. **18.4.5.1.1** The minimum fire flow and flow duration requirements for one- and two-family dwellings having a fire flow area that does not exceed 5000 ft² (334.5 m²) shall be 1000 gpm (3785 L/min) for 1 hour.

10. **The site shall meet the requirements of NFPA 1194, The Standard for Recreational Vehicle Parks and Campgrounds. Please see the attached link below.**

11. **The site shall meet the requirements of Florida State Administrative Code 69A-42 Please see the fire safety attachment.**

12. **18.3.1*** An approved water supply capable of supplying the required fire flow for fire protection shall be provided to all premises upon which facilities, buildings, or portions of buildings are hereafter constructed or moved into the jurisdiction. **Provide location of nearest fire hydrant. Provide current flow test data. A fire hydrant must be located within 500ft of the furthest point of all sites as the hose lies.**

Simply follow the information for access. You will need to sign-in and create a profile. Please contact me if you have any questions.

<http://www.nfpa.org/codes-and-standards/free-access>

Access Management Review Comments

The following comments have been provided by **Jason Walters**. Should you have any questions or require additional information regarding any of these comments, please contact **Jason Walters** at **(850) 595-3422** or by email at **jjwalter@myescambia.com**.

- 1) Standard width for one way drive aisle is 16 feet when accessing 60 degree stalls. However, maneuvering the RV into the proposed site(s) without leaving the gravel aisle will be virtually impossible with the minimum width. Applicant should consider angling all sites to allow the anticipated RV's to safely and conveniently back into the site(s) without leaving the gravel drive.
- 2) Minimum two-way driveway width is 20'. The driveway shall be paved within the right-of-way.
- 3) All vehicular use areas shall be finished with an all-weather surface (i.e., gravel).
- 4) Is a sewer pump station proposed? If so, show its intended location and describe how the RV's will access such.
- 5) Is an office proposed? If so, show the intended location.
- 6) Additional comments may be forthcoming after your next submittal.

ECUA (Water and Sewer Utility) Review Comments

The following comments have been provided by **Andre Calaminus**. Should you have any questions or require additional information regarding any of these comments, please contact **Andre Calaminus** at **(850) 969-5822** or by email at **andre.calaminus@ecua.fl.gov**.

Project will need to submit to ECUA Engineering for review and permitting of water and/or sewer.

Planning and Zoning Comments

The following comments have been provided by **Caleb MacCartee**. Should you have any questions or require additional information regarding any of these comments, please contact **Caleb MacCartee** at **(850) 595-3473** or by email at **cgmaccartee@myescambia.com**.

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

- a. **Proximity to intersection.** Along an arterial or collector street and within one-quarter mile of its intersection with an arterial street.
- b. **Proximity to traffic generator.** Along an arterial or collector street and within a one-quarter mile radius

of an individual traffic generator of more than 600 daily trips, such as an apartment complex, military base, college campus, hospital, shopping mall or similar generator.

- c. **Infill development.** Along an arterial or collector street, in an area where already established non-residential uses are otherwise consistent with the Commercial district, 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.
- d. **Sitedesign.** Along an arterial or collector street, no more than one-half mile from its intersection with an arterial or collector street, not abutting a single-family residential zoning district (RR, LDR or MDR), and all of the following site design conditions:
 - 1. Any Intrusion into a recorded subdivision is limited to a corner lot.
 - 2. A system of service roads or shared access is provided to the maximum extent made feasible by lot area, shape, ownership patterns, and site and street characteristics.
 - 3. 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. **Documented compatibility.** A compatibility analysis prepared by the applicant provides competent substantial evidence of unique circumstances regarding the potential uses of parcel that were not anticipated by the alternative criteria, and the proposed use, or rezoning as applicable, will be able to achieve long-term compatibility with existing and potential uses. Additionally, the following conditions exist:
 - 1. The parcel has not been rezoned by the landowner from the mixed-use, commercial, or industrial zoning assigned by the county.
 - 2. 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).
- i. General commercial. General commercial uses consistent with the Commercial (Com) zoning district shall provide a Type-B buffer supplemented with an opaque fence or wall.

Buffer Type

Buffer width

Canopy trees

Understory trees

Shrubs

B

16 feet

2.5

2.0

20

- i. Please provide the list below:

- a. On the plan provide the property reference numbers of the development site and adjoining parcels. Show any intersection of adjoining parcel boundaries with the development site parcel.
 - b. On the plan provide the zoning district(s), future land use category (FLU), and existing uses of the development site and adjoining parcel(s)
 - c. Show setbacks and size dimensions of parking spaces, buildings, lot width, dock out from water, and other spaces as needed please be detailed as possible.
 - d. Provide a scaled drawing of exterior building elevations and a generalized floor plan identifying uses and areas (sq.ft.) within the proposed buildings.
- ii. Draw or sketch the property boundaries to scale or, in as much as possible, proportionally to its dimensions. Include the actual dimensions (length) or each side of the property. Using a dotted line, show the required building setback distance.
 - iii. Draw and label all structures that are located on the property, both existing and proposed
 - iv. List the current and proposed use of the structures.
 - v. Show the total square footage (length x width) of existing or proposed structures.
 - vi. Show the total square footage (length x width) of existing or proposed impervious areas (area that cannot absorb water: e.g., concrete, asphalt, buildings, other structures). Show these dimensions on the site plan (distances of length and width). Include distances of impervious areas to the property line.
 - vii. Show the driveways and parking area dimensions, label an existing or proposed, and indicate the type of material that they are constructed or will be constructed of (concrete, asphalt, dirt, gravel, grass, etc.).
 - viii. Include the number of parking spaces existing and proposed.
 - ix. Show distances of all structures to the property line.
 - x. Show, with arrows, the direction that water flows across the property. If the site is flat, state this on the plan.
 - xi. Show all existing drainage systems on the site (retention ponds, swales, culverts, pipes). Include any existing drainage systems in the right-of-way (roadside ditches, curbs, drainage inlets). If there are no drainage systems adjacent to the site, indicate, as best as possible, where the stormwater from the property flows.
 - xii. Show all outside waste facilities. This would include dumpsters, storage areas, proposed or existing septic.
 - xiii. Show all proposed sign locations and sign calculations on the site plan.
 - xiv. Sec. 5-9.3 Exterior lighting. General. Exterior lighting in and around buildings and in parking lots is permitted in all districts. Lighting is to be located for safety and visual effect. With the exception of street lights, it shall be installed so as not to shine directly on adjacent property. Lighting shall avoid annoyance from brightness and glare. Artificial beachfront lighting should be designed as per the LDC Chapter 4, Article 5, Barrier Island Lighting.

ADA Review Comments

The following comments have been provided by **Charles Wiley**. Should you have any questions or require additional information regarding any of these comments, please contact **Charles Wiley** at **(850) 554-0265** or by email at **ckwiley@myescambia.com**.

no comment

Health Department Review Comments

The following comments have been provided by **Christina Smith**. Should you have any questions or require additional information regarding any of these comments, please contact **Christina Smith** at **(850) 595-3472** or by email at **clsmith1@myescambia.com**.

Please contact reviewer for comments.

Stephen C. Metzler, REHS / Environmental Supervisor II, SES

Florida Department of Health in Escambia County

1300 West Gregory Street, Pensacola, FL 32502

• Main: 850.595.6700 x2020 | 7 850.595.6774 | 📞 Cellular: 850.554.4317 | stephen.metzler@flhealth.gov

Mobile Home and RV park permitting is accomplished through the Florida Department of Health in Escambia county. You will need to contact Mr. David Pearce by phone at (850) 595-6700 X2050 or by email at david.pearce@flhealth.gov

Environmental Review Comments

The following comments have been provided by **Bradley Bane**. Should you have any questions or require additional information regarding any of these comments, please contact **Bradley Bane** at **(850) 595-4572** or by email at **bdbane@myescambia.com**.

- i. Please be aware that Escambia County's Website, GIS maps, aerial maps, or other online resources, do not accurately depict the presence or location of Wetlands or any other "Environmentally Sensitive Lands" on properties within the County. Therefore, and per Escambia County's Land Development Code (LDC) code:
- ii. **Environmentally Sensitive Lands" (ESLs):** According to these maps however, it does indeed appear the site contains, or has the *potential* to contain "Environmentally sensitive lands" (ESLs). Such as Wetlands, Hydric Soils (a Wetland indicator), Threatened & Endangered Species &/or their Habitats, surface water features, etc. Therefore, per Escambia County Land Development Code (LDC/ "code"), **a complete and current "Site Specific Survey" for the parcel(s) proposed for development will be required.** *Note if found, any other ESLs or surface waters shall be mapped and properly identified *along with* any standard "Wetland" areas. **Therefore, it is best that all such land features be reviewed for in the field by a local Environmental Consultant/ professional at the time of the Site Specific Survey** (comprehensive survey). The "Survey" should identify and delineate all ESLs onsite as defined in the LDC then transposed to scale from such to all revised Escambia County DRC development site &/or permitting plans. Per code, the Survey(s) will be used to determine the buildable or developable area of the parcel(s) or lot(s). Please be aware, depending on the results of the survey, additional comments & standards may apply in the future. If any similar surveys or reports already exist, please provide copies for review but be advised the County's *Site Specific Survey* may be required in addition to those, if needed, to clarify/ verify the ESL code requirements. (LDC, Chap. 4, Art. 5 *Natural Resources, Sec. 4-5.2 (2) (d) Resource Identification* (and all other applicable sections); LDC, DSM, Chapter 2 Environmental, 1-1.1. *Protection Measures, Avoidance and Minimization*); others.
- iii. If found onsite: All ESL features identified in the Survey, or otherwise, will then need to be delineated to scale on revised plat/ plans & in relation to all existing & proposed parcels/ layouts, stormwater ponds, or related features, structures, any proposed protected tree removal, land disturbing activities, etc.
- iv. Please detail the Wetlands/ESLs areas & delineation lines (labels), noting: all jurisdictional agencies

(Escambia County, ACOE, DEP, etc.); the date of delineation; the firm who delineated these areas/ performed the survey; the acreages(s) of each ESL; etc. (as derived from survey or otherwise).

- v. Label the appropriate wetland buffers & provide width measurement(s). Clarify any proposed stormwater ponds, outfalls, or other features and/ or adverse impacts proposed in relation to buffers and MER Setbacks as well, if proposed.
- vi. **MERS:**As they are similar but separate buffer/ setback requirements, label on plans to scale the 15' Riverine Setback from Pensacola Bay and 30' for any surface waters onsite such as creeks, streams (flowing or intermittent), etc. as well, if found in survey/ report. Identification of any such surface water features would be best accomplished at time of, and included within the written, the "Site Specific Survey" to avoid additional site visits, surveys, etc. If these exist and are *not* considered man-made ditch(s), conveyance system(s), etc. such should be clearly noted withing the SS Survey per MERS code requiremet. Please review LDC, Chap. 4, Art. 5, Sec. 4-5.5 MERS, subsection (c) *Riverine shorelines* carefully as, "provisions of this section apply to all shorelines of surface waters habitats that periodically or continuously contain flowing water and their associated wetlands."
- vii. Once all ESLs, wetlands, surface waters, etc. are delineated, add all to proposed plans/ plats to scale and provide wetland buffers per code; MER setbacks; proposed lot development and boundaries; roadways; stormwater ponds, outfalls and related features; driveways, etc. Such should be designed outside of any environmentally sensitive lands, setbacks, buffers, etc. as much as practicable to avoid adverse impacts, additional permitting, mitigation, etc.
- viii. Please note that per County code & other JD agency requirements, any proposed adverse impacts to Wetlands/ESLs, if allowed/ permitted, will require mitigation through the agencies excerpting jurisdiction. This will likely include the permits obtained from jurisdictional agencies for proposed impacts to ESLs. Please clarify all proposed Wetland/ ESL impacts on plans and all avoidance & avoidance measures (per code). Provide copies of permits, permit applications, correspondence, etc. related to the wetland (or other ESL) impacts as stated in project narrative for County review and DRC files. Conservation Easement(s) or other protective measures maybe required over unimpacted Wetlands, Wetland Buffers, ESLs, creeks/tributaries, MERS, etc. to offset potential negative impacts from development. If so, each easement may need to be recorded as separate parcels & labeled as such on revised plats; please check with Esc. Co. Engineering, Survey Dept. For CEs, label the ESL feature (Wetlands, creek, stream, other surface waters, lakes, etc.). If required, label easement(s) as "*Private Conservation Easement*"; provide OR Book & Pg. number(s); acreages; etc. Eventually the same detailed on the Final Plat (FP) itself and within the FP's dedication block (if consistent with Es. Co. Engineering/ Survey/ Platting requirements).
- ix. A table quantifying acreages of all ESLs onsite (wetlands, T& E Habitat, etc.) pre- and- post development, approved impacts or mitigation areas (if proposed or required by the agencies), etc. included on site plan would be very helpful as Escambia County is required to track such information per Planning Board & County Permitting Systems (Accela).
- x. **"Protected Trees":**Please be aware certain "Protected tree" standards of the County's Land Development Code (LDC) will apply to this proposed development project. Therefore, please provide a "*tree inventory and assessment*" per code identifying the protected trees onsite. Protected trees are most species 12' DBH (Diameter at Breast Height) or larger. If found to be "protected" or of Heritage tree status (60" DBH or greater), and deemed viable by County staff, per code, "*reasonable measures to design and locate proposed improvements so that protected tree removal is minimized*" will be required to be demonstrated per code. LDC, DSM, Chap. 2 *Environmental*, Art. 2 *Landscaping*, Sec. 2-5/ 2-5.1 *Removal criteria...* "*conditions*" (a)-(f), etc; LDC, Chap. 5, Art. 7 *Landscaping*, etc. **Furthermore, per code, all viable, protected trees shall remain onsite until such time as appropriate permit(s) are issued for the proposed development, or otherwise.**
- xi. Please label all protected trees on the revised plans/ plats accordingly (T-1, T-2, etc.) and provide their information in a corresponding tree table (tree number, species, DBH, proposed protection, proposed removal, etc).
- xii. Note location of all proposed grading activities & any other "Land Disturbing Activities" in reference to all

protected/Heritage tree(s) & potential impacts to their critical root zones, structural root plates, etc. once a design is agreed upon by County staff and EOR.

- xiii. Add note to plans for the trees to be retained stating, *"All adequate tree protection measures and barricades shall be installed prior to site disturbance and maintained in good working order until project is complete and site becomes stabilized."* Show adequate tree barricades diagrams, etc. as well per code (see DSM, etc).
- xiv. Please contact me with any further questions. Note as project is at the beginning, Pre-Application review and commenting phase, please be aware additional comments & standards may apply. Please respond to all comments via edits to site plans and written response to comments for review efficiency. Thank you.

Stormwater Review Comments

The following comments have been provided by **Roza Sestnov**. Should you have any questions or require additional information regarding any of these comments, please contact **Roza Sestnov** at **(850) 595-3411** or by email at **risestnov@myescambia.com**.

- i. The increase in impervious surface resulting from modifications to existing development with a net increase of less than 1000sf would result in a stormwater exemption. Any additional gravel area or other semi-impervious area, subject to traffic, proposed to the site will be considered as semi-impervious and will have to be included in impervious area with a coefficient of 0.6. In this case less than 1666sf of semi-impervious would result in a stormwater exemption. It appears that this project will not qualify for this exemption.
- ii. Provide a Stormwater Management Plan signed and sealed by a professional engineer registered in the State of Florida. Provide drainage calculations for retention/detention facilities, at minimum, must satisfy one of the following:
 - a. For a positive drainage outfall system, $Q_{post} < Q_{pre}$ for a 100-year frequency of critical duration, up to and including a 24-hour duration storm event, with metered positive discharge into an approved functioning drainage system. Positive outfall has to be demonstrated for this site. The entire pond has to be recovered in no more than 7 days.
 - b. For retention facilities designed with no positive outfall, the retention volume must be adequate to collect and percolate runoff from up to and including a 24-hour, 100-year design storm frequency including upland acreage runoff. The entire pond has to be recovered in no more than 10 days.
- iii. Please note that the "small creek" indicated in the narrative has been naturally created as overflow discharge from the existing pond(s) and wetlands located to the west and northwest. The engineer will have to analyze the actual flow and accommodate it into design. Adjacent properties shall be protected from negative impact.
- iv. Please coordinate driveway width and RV parking dimensions with Access Management and Planning and Zoning.
- v. Please coordinate wetland existence with Bradley Bane, environmental specialist.
- vi. When applicable please provide the following notes on the plans:
- vii. "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"
- viii. "All aspects of the stormwater/drainage components and/or transportation components shall be completed prior to issuance of a final certificate of occupancy."
- ix. "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."
- x. "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."
- xi. "Retention/detention areas shall be substantially completed 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."

- xii. "All disturbed areas which are not paved shall be stabilized with seeding, fertilizer and mulch, hydroseed and/or sod."
- xiii. "All new building roof drains, down spouts, or gutters shall be routed to carry all stormwater to retention/detention areas."
- xiv. "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."
- xv. "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."
- xvi. "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."
- xvii. "Prior to construction a separate Building Inspection Department permit(s) shall be obtained for all Retaining wall(s) higher than 2 feet."
- xviii. "Notify Sunshine utilities 48 hours in advance prior to digging within R/W; 1-800-432-4770."
- xix. "Any damage to existing roads during construction will be repaired by the developer prior to final "as-built" sign off from the county."
- xx. "The contractor shall notify FDOT 48 hours in advance prior to initiating any work in the state rights-of-way."
- xxi. Show applicable locations of erosion/sediment control measures and label on plans.
- xxii. If applicable, include on plans energy dissipaters at discharge points of all pipes and flumes based upon applicable design velocities. Rip-rap dissipater detail(s) should include minimum stone weight (suggest 50 #), spread and depth dimensions. Splash pad dissipater detail(s) should include construction specifications, dimensions, material etc.
- xxiii. Include cross-section detail(s) of proposed pond(s) including side slopes, the top and bottom elevations, pond embankment stabilization notes, associated inflow/outflow structures, etc.
- xxiv. Detention and retention basins (ponds), designed to impound more than two feet of water, must contain side slopes that are no steeper than 4:1 (horizontal to vertical) out to a depth of two feet below control elevation. Alternatively, the basin can be fenced with a perimeter fence to restrict public access.
- xxv. If applicable, include a cross section of all proposed swales/open ditches including side slopes, and the proper stabilization notes if applicable. Plan view should include % slope, elevations, contours, and grading requirements as necessary for construction purposes.
- xxvi. Provide a complete grading/drainage plan by tying existing contours to proposed contours.
- xxvii. A geotechnical soil analysis report is required for projects > 9,000 total sq ft of impervious area.
- xxviii. Demonstrate on plans how stormwater runoff is conveyed to receiving drainage system.
- xxix. Provide a copy of a Maintenance Plan to both the County and the entity/owner responsible for maintenance which includes a listing setting forth scheduled maintenance needs and operation/maintenance instructions for the stormwater facilities and erosion repairs.
- xxx. Provide a general description of drainage for on site, abutting property and adjacent roadway, the project objectives and conclusions, pertinent information critical to the project, etc.
- xxxi. Include a brief summary of impacts to adjacent properties, receiving drainage system, and area-wide drainage systems for post development conditions. The stormwater design must provide reasonable assurance to protect adjacent properties.
- xxxii. FYI: It is Engineer/Developer's responsibility to obtain all state required permits.
- xxxiii. Drainage fees shall be paid at the time of the final comparison submittal. Drainage fees will be determined at the time of route sheet sign off.
- xxxiv. Please provide on the drawings a table listing existing and proposed impervious, semi-impervious, and pervious areas.

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Page 11

This is a preliminary review designed to provide information and guide the applicant through the Development Review Process. Once your project has been formally submitted (fees paid and application processed) to Escambia County for review, there may be additional Land Development Code and Comprehensive Plan regulations that may be applicable.

Please contact the DRC Coordinator for submittal timelines, fees, and the submittal checklist for the project.

Thank you,

Gwendolyn Robinson
Development Services
Attachment
CC:



REPLY TO: TALLAHASSEE

November 9, 2018

VIA ELECTRONIC MAIL & UNITED STATES MAIL

Auby Smith, Chairman
Escambia County Board of Adjustment
3363 West Park Place
Pensacola, Florida 32505

**Re: *Shu Cheng Shurett, Leo Huang, and Teramore Development, LLC --
Parcel Number 23-3S-31-2001-0000-000
Administrative Appeals of Horace Jones' Determination on July 24, 2017***

Dear Chairman Smith:

On October 18, 2017, the Escambia County Board of Adjustment ("BOA") denied the above-referenced Administrative Appeals. On November 16, 2017, Shu Cheng Shurett, Leo Huang, and Teramore Development, LLC (collectively, "Petitioners"), sought judicial review of the BOA's decision to deny their Administrative Appeals. On August 3, 2018, Escambia County Circuit Court Judge Scott Duncan ruled in favor of the Petitioners and entered an "Order Granting Petition for Writ of Certiorari" ("Court Order"), concluding, in part, as follows:

The record presented to this Court reveals that the BOA's denial of the Petitioner's [sic] Administrative Appeal *was not supported by competent substantial evidence.*

* * * *

The Court finds the BOA's decision to find that Petitioners' proposed retail store is not compatible with existing and potential uses is not supported by competent substantial evidence. *The evidence presented at the hearing in support of the County's request that the proposed use be denied can only be characterized as speculative and conclusory.* The record reveals that the Planning Official's determination that the proposed development did not meet the criteria set forth in (e)(5) was not supported by any facts or evidence. . . . The record indicates that the County simply disagreed

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WINDERMERE, FLORIDA 34786
(407) 258-3733
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with the Petitioners' expert without presenting facts that contradicted the opinions set forth in her compatibility analysis. . . . *The County's opinion that the proposed development was not compatible and would not achieve long term compatibility was simply a bald conclusion and without more has no evidentiary value.*

(Court Order at page 4-5) (citation omitted) (emphasis supplied).

The Court also finds that the BOA *departed from the essential requirements of law* by ignoring the code's language that a petitioner's compatibility analysis provides competent substantial evidence of unique circumstances regarding the potential uses of a parcel that were not anticipated by the alternative criteria. . . . Nothing in the plain language of Section 3-2.10(e)(5) of the County's LDC authorizes the County Staff or the BOA to simply disregard the Petitioner's compatibility analysis. . . . The County never considered that proposition when rendering its opinion, and neither did the BOA when it rejected the Petitioners' appeal. *This is not a mere simple legal error, but rather a failure to apply the plain language of the Code.*

* * * *

For the reasons set forth above, *the Court finds that the BOA's decision denying the Petitioners' Administrative Appeal was not supported by competent substantial evidence, and that the BOA departed from the essential requirements of the law.*

(Court Order at page 7) (emphasis supplied).¹ Consequently, the Circuit Court quashed the BOA's October 18 decision.

The BOA is scheduled to consider the Petitioners' Administrative Appeals on remand from the Circuit Court at the BOA's meeting scheduled for November 14, 2018. It is our understanding that the County Staff desires to introduce new evidence during the BOA's November 14 meeting. *For the following reasons, the BOA is legally precluded from accepting such new evidence.*

¹ A copy of the Circuit Court's Order Granting Petition for Writ of Certiorari is attached hereto as Exhibit "A." The above-referenced quotes from the Circuit Court's Order Granting Petition for Writ of Certiorari are highlighted in yellow.

The Circuit Court's holding that the BOA departed from the essential requirements of law in denying the Petitioners' Administrative Appeals and that the BOA's decision was not supported by competent substantial evidence does *not* grant the BOA a "second bite at the apple" to devise new grounds to deny the Petitioners' Administrative Appeals on remand. Indeed, to hold otherwise would run afoul of the legal principles of estoppel and the law of the case doctrine. *See Parker Family Trust I v. City of Jacksonville*, 804 So. 2d 493, 498 (Fla. 1st DCA 2001) (holding local governmental boards are required to adhere to the law of case established by circuit court's ruling on certiorari review).

Moreover, permitting the BOA to conduct a second *de novo* hearing on the Petitioners' Administrative Appeals is contrary to *Broward County v. G.B.V. International, Ltd.*, 787 So. 2d 838 (Fla. 2001), wherein the Florida Supreme Court stated:

When the order is quashed, as it was in this case, it leaves the subject matter . . . pending before the . . . commission . . . and *the parties stand upon the pleadings and proof as it existed when the order was made.* . . .

Id. at 844 (emphasis supplied); *see also Tamiami Trail Tours, Inc. v. R.R. Comm'n*, 174 So. 451, 454 (Fla. 1937) ("When the order is quashed, as it was in this case, it leaves the subject matter, that is, the controversy pending before the tribunal, commission, or administrative authority, as if no order or judgment had been entered and the parties stand upon the pleadings and proof as it existed when the order was made with the rights of all parties to proceed further as they may be advised to protect or obtain the enjoyment of their rights under the law in the same manner and to the same extent which they might have proceeded had the order reviewed not been entered.").

More recently in *Department of Highway Safety & Motor Vehicles v. Azbell*, 154 So. 3d 461 (Fla. 5th DCA 2015), the Fifth District Court of Appeal rejected the department's argument that it was entitled to conduct a new evidentiary hearing after the circuit court on certiorari review had determined that the department's decision was not supported by competent substantial evidence. In so doing, the Fifth District held:

Petitioner contends that the law is "well settled" that "when a circuit court determines that there has been an evidentiary error in an administrative hearing *and/or* that there is not substantial competent evidence in the record to support the administrative order, the circuit court is limited to quashing the administrative order and remanding the matter to Petitioner for further proceedings." It cites three precedents from this court in support of this proposition. *Contrary to Petitioner's representation, however, none of the cited authorities supports the latter part of its argument – that a new*

hearing is required when the evidence is lacking because of the unexcused failure of Petitioner to present sufficient proof.

* * * *

All of these cases involved situations where the merits of the controversy were not reached because one party or the other was denied the right to present pertinent evidence. The instant case involves a simple failure by Petitioner to meet its evidentiary burden. To grant a new hearing in situations like this simply affords Petitioner another bite at the apple and could result in an endless series of hearings until it finally presents sufficient evidence to support suspension. Absent circumstances where Petitioner is prevented from presenting material evidence it should only get one opportunity to present its proof. See *Doll v. Dep't of Health*, 969 So.2d 1103, 1107 (Fla. 1st DCA 2007), and cases cited therein (in administrative proceeding, upon failure of agency to present sufficient proof of costs, no entitlement to second opportunity).

Azbell, 154 So. 3d at 462 (emphasis supplied); cf. *St. Joe Paper Co. v. Connell*, 299 So. 2d 92, 93 (Fla. 1st DCA 1974) ("A second bite at the apple may not be granted simply because the plaintiffs have failed to meet their burden of proof. The flame has flickered out!").²

Thus, we respectfully submit that the BOA must deny the County Staff's request to introduce new evidence at the BOA's November 14 meeting, and enter an Order granting the Petitioners' Administrative Appeals. To do otherwise would violate our clients' fundamental due process rights and would also constitute a departure from the essential requirements of the law.

Sincerely,



David A. Theriaque

Enclosures

² A copy of the Fifth District Court of Appeal's opinion in *Department of Highway Safety & Motor Vehicles v. Azbell*, 154 So. 3d 461 (Fla. 5th DCA 2015), is attached hereto as Exhibit "B." The above-referenced quotes from the Fifth District Court of Appeal's opinion are highlighted in yellow.

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

TERAMORE DEVELOPMENT, LLC,
SHU CHENG SHURETT, and LEO
HUANG,

Petitioners,

vs.

Case No. 17-CA-1778

ESCAMBIA COUNTY, FLORIDA,

Respondent.

_____ /

ORDER GRANTING PETITION FOR WRIT OF CERTIORARI

This case is before the Court on the Amended Petition for Writ of Certiorari (“Amended Petition”) that the Petitioners filed on January 5, 2018. Respondent Escambia County, Florida (“County”), filed its Response on February 1, 2018. The Petitioners filed their Reply on March 5, 2018. The Court conducted oral argument on May 7, 2018.

FACTUAL BACKGROUND

The subject property is a 3.4-acre vacant parcel that is zoned Commercial (C) with a future land use designation of Mixed-Use Suburban (MU-S). The surrounding areas are zoned Low Density Residential (LDR) and High Density Residential (HDR), and the surrounding land uses are single family residential. The Petitioners proposed to build a 9,100-square foot retail store on the site to, in turn, lease to the Dollar General Corporation.

In mid-2017, the Petitioners requested confirmation of compatibility from the County’s Planning Official with regard to the proposed retail store pursuant to Section 3-2.10(e)(5) of the County’s Land Development Code (LDC), which provides:



All new non-residential uses proposed within the commercial district that are not part of a planned unit development or not identified as exempt by the district shall be on parcels that satisfy at least one of the following location criteria:

* * * *

(5) Documented compatibility. A compatibility analysis prepared by the applicant provides competent substantial evidence of unique circumstances regarding the potential uses of parcel 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. . . .

The Petitioners submitted a compatibility analysis prepared by a certified land use planner in support of the request. In the compatibility analysis, the Petitioners' land use planner analyzed the proposed retail store and factors such as the surrounding uses, building setbacks, building height, building orientation, building mass, open space ratios, buffers, lighting, noise, and hours of operation in evaluating whether the proposed retail store would be "compatible" with the surrounding area. On July 24, 2017, the Planning Official issued a written decision concluding the proposed development, which is surrounded by existing residential uses, did not satisfy the alternative location criteria (1-4), and the Petitioners' written analysis did not provide evidence of "unique circumstances" that were not anticipated by the alternative criteria so as to otherwise conclude that the proposed use would achieve long-term compatibility with the surrounding existing residential uses. The Petitioners timely appealed the Planning Official's compatibility determination to the Board of Adjustment (BOA) pursuant to the County's LDC ("Administrative Appeal"). On October 18, 2017, the BOA conducted a quasi-judicial hearing on the Petitioners' Administrative Appeal. The BOA heard testimony from the Petitioner's expert land use planner, Allara Gutcher, whom they recognized as an expert witness. The BOA also heard testimony from Teramore's corporate representative, the County's Planning Official,

the County's Planning Manager, and several citizens from the surrounding area of the proposed development. At the conclusion of the October 18 hearing, the BOA unanimously voted to deny the Petitioners' Administrative Appeal and to uphold the Planning Official's determination that Teramore's proposed retail store is not "compatible." Thereafter, the Petitioners timely sought certiorari review of the BOA's October 18, 2017 decision in this Court.

LEGAL ANALYSIS

Upon first tier review of a quasi-judicial proceeding, a court must determine whether the Petitioners were accorded procedural due process, whether the essential requirements of the law have been observed, and whether the administrative findings and judgment are supported by competent substantial evidence. Florida Power & Light Co. v. City of Dania, 761 So. 2d 1089, 1092 (Fla. 2000) (citing City of Deerfield Beach v. Vaillant, 419 So. 2d 624, 626 (Fla. 1982)). Such review is not *de novo*. Rather, a circuit court is limited to reviewing the record that was created before the lower tribunal. Florida Power & Light Co. v. City of Dania, 761 So. 2d at 1092.

Petitioners did not contest whether they were accorded procedural due process. However, Petitioners do contest whether the essential requirements of the law have been observed and whether the BOA's decision was supported by competent substantial evidence. They argue that because the essential requirements of law were not observed and competent substantial evidence did not exist to support the BOA's decision, the Court should quash the denial of Petitioners' administrative appeal.

Frankly, the code provision at issue in this case is difficult to comprehend and lacks clarity in how it should be applied in many respects.¹ It never defines what a "compatibility analysis" should contain or who is qualified to prepare such analysis, but yet explicitly states that

¹ The Petitioner has not asserted that the code provision is ambiguous.

such "compatibility analysis" is competent substantial evidence of unique circumstances regarding the potential uses of parcel that were not anticipated by the alternative criteria. It can be argued also that the code provision does not communicate to property owners sufficient notice of what the County expects in a compatibility analysis, other than if you have one, it constitutes competent substantial evidence to support your application, until, like in this case, the County says it does not. Better said in Park of Commerce Associates v. City of Delray Beach, 606 So.2d 633, 635 (Fla. 4th DCA 1992), "(P)roperty 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."

The record presented to this Court reveals that the BOA's denial of the Petitioner's Administrative Appeal was not supported by competent substantial evidence. Competent substantial evidence is that which is "sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached." De Groot v. Sheffield, 95 So. 2d 912, 916 (Fla. 1957). "For the action to be sustained, it must be reasonably based in the evidence presented." Town of Indialantic v. Nance, 400 So. 2d 37, 40 (Fla. 5th DCA 1981). "Surmise, conjecture or speculation have been held not to be substantial evidence." Fla. Rate Conference v. Fla. R.R. and Pub. Utils. Comm'n, 108 So. 2d 601, 607 (Fla. 1959).

The Court finds the BOA's decision to find that Petitioners' proposed retail store is not compatible with existing and potential uses is not supported by competent substantial evidence. The evidence presented at the hearing in support of the County's request that the proposed use be denied can only be characterized as speculative and conclusory. The record reveals that the

Planning Official's determination that the proposed development did not meet the criteria set forth in (e)(5) was not supported by any facts or evidence. The Planning Official did render an opinion that the development was not compatible, but never set forth any specific evidence to support such opinion. The record indicates that the County simply disagreed with the Petitioners' expert without presenting facts that contradicted the opinions set forth in her compatibility analysis. Additionally, the County's witnesses and the BOA itself never considered or applied the code's decree that a compatibility analysis was competent substantial evidence which supported the Petitioner's request. Further, other than its disagreement with the Petitioner's expert that the proposed use would be able to achieve long-term compatibility with existing and potential uses, the County never presented objective facts to support its disagreement. The County's opinion that the proposed development was not compatible and would not achieve long term compatibility was simply a bald conclusion and without more has no evidentiary value. Arkin Const. Co. v. Simpkins, 99 So. 3d 557, 561 (Fla. 1957).

In contrast, the Petitioner brought forth specific evidence in support of its application. The Petitioner's expert, who had put together hundreds of compatibility analyses in her career, prepared a compatibility analysis as contemplated by the code and gave testimony in support of such analysis at the hearing. In such analysis, and in her testimony, she also opined that the Petitioner's proposed use of the property would be able to achieve long-term compatibility with existing and potential uses; such opinion meeting the criteria set forth in (e)(5). As will also be addressed in another portion of this Order, the code language itself demands the BOA to find that the compatibility analysis is competent substantial evidence of unique circumstances regarding the potential uses of parcels that were not anticipated by the alternative criteria (i.e. (e)(1)-(4)). The County never introduced any specific evidence why the Petitioners' compatibility should be

rejected. Rather, the County's evidence was that it simply did not agree with the Petitioners' compatibility analysis. In fact, the County's witness never directly answered the question posed by Petitioners' counsel as to whether the proposed use (a commercial venture in a commercial zone) could coexist with the surrounding residential uses in a stable fashion over time such that no use, activity or condition is unduly negatively impacted. (See App. 076-080).

While the BOA affirmatively stated it based its decision on the expert testimony, and not the citizen testimony, the County argues that part of the competent substantial evidence supporting the BOA's decision did indeed come from the citizen testimony. The Court certainly understands the complaints and fears of these witnesses. However, the testimony of the citizens who spoke against the proposed use cannot constitute competent substantial evidence based upon existing case law.² The First District Court of Appeal has held that lay witnesses' speculation about potential traffic problems, light and noise pollution, and general unfavorable 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). Similarly any lay witnesses' opinions that a proposed land use will devalue homes in the area are insufficient to support a finding that such devaluation will occur. Further, while there were speakers who identified themselves as real estate agents, their testimony cannot be considered as expert opinions as to whether the proposed use would cause devaluation of property. Such witnesses did not identify themselves as appraisers of real property and did not base their testimony on specific real estate sales and listings, opinions of brokers and other real estate agents, and information as to the general status of the local economy. See Trustees of Central States Southeast and Southwest Areas, Pension Fund v. Indico Corp., 401 So.2d 904, 906 (Fla. 1st DCA 1981). Based on the evidence the BOA

² The Florida Supreme Court has stated that the decisions of the district courts of appeal represent the law of Florida unless and until they are overruled by the Florida Supreme Court. Stanfill v. State, 384 So.2d 141, 143 (Fla. 1980).

could consider, the Court finds there was no competent substantial evidence justifying the BOA's decision to deny the Petitioners' administrative appeal.

The Court also finds that the BOA departed from the essential requirements of law by ignoring the code's language that a petitioner's compatibility analysis provides competent substantial evidence of unique circumstances regarding the potential uses of a parcel that were not anticipated by the alternative criteria. It is not for this Court to add or subtract words or requirements from a code provision. Anderson Columbia v. Brewer, 994 So.2d 419, 421 (Fla. 1st DCA 2008). Nothing in the plain language of Section 3-2.10(e)(5) of the County's LDC authorizes the County Staff or the BOA to simply disregard the Petitioner's compatibility analysis. The Code sets forth the established principle that a compatibility analysis must be viewed as competent substantial evidence. The County never considered that proposition when rendering its opinion, and neither did the BOA when it rejected the Petitioners' appeal. This is not a mere simple legal error, but rather a failure to apply the plain language of the Code. To be clear, this Court is not ruling at this time that a compatibility analysis automatically entitles the Petitioner the relief it seeks. However, the Court believes the Code mandated the BOA to apply the standards set forth in the Code when it rendered its decision, and by failing to do so the BOA departed from the essential requirements of the law that applied to this case.

For the reasons set forth above, the Court finds that the BOA's decision denying the Petitioners' Administrative Appeal was not supported by competent substantial evidence, and that the BOA departed from the essential requirements of the law. Accordingly, it is hereby ORDERED and ADJUDGED that:

1. The Petitioners' Amended Petition for Writ of Certiorari is GRANTED;

2. The BOA's decision denying the Petitioners' Administrative Appeal is QUASHED; and

3. The Court reserves jurisdiction to award costs, if appropriate, upon proper motion by the Petitioners as the prevailing party in this appellate proceeding.

DONE AND ORDERED in Chambers in Escambia County, Florida, this _____ day of _____ 2018.


eSigned by CIRCUIT COURT JUDGE J. SCOTT DUNCAN in 2017 CA 001778
on 08/03/2018 18:47:49 yw76gVXG

SCOTT DUNCAN
CIRCUIT COURT JUDGE

Conformed copies via e-mail to:

David A. Theriaque, Esquire (Counsel for Petitioners)
S. Brent Spain, Esquire (Counsel for Petitioners)
Kristin D. Hual, Esquire (Counsel for Respondent)

DEPARTMENT OF HIGHWAY
SAFETY AND MOTOR
VEHICLES, Petitioner,

v.

Russell AZBELL, Respondent.

No. 5D14-838.

District Court of Appeal of Florida,
Fifth District.

Jan. 2, 2015.

Background: Motorist filed petition for writ of certiorari, challenging the suspension of his driver's license by the Department of Highway Safety and Motor Vehicles. The Circuit Court granted the petition, finding that Department had failed to introduce substantial, competent evidence to support the suspension. Department petitioned for writ of certiorari, and the District Court of Appeal denied the petition. Thereafter, the Circuit Court, Volusia County, William A. Parsons, J., ordered Department to reinstate the license. Department petitioned for writ of certiorari.

Holdings: The District Court of Appeal, Torpy, C.J., held that:

- (1) Department was not entitled to new evidentiary hearing, and
- (2) circuit court had authority to order Department to reinstate motorist's license.

Petition denied.

1. Automobiles ⇌144.2(4)

Department of Highway Safety and Motor Vehicles was not entitled to new evidentiary hearing after circuit court determined, on certiorari review, that it had failed to introduce substantial, competent evidence to justify suspension of motorist's driver's license; granting Department a new hearing in such a situation would sim-

ply afford Department another bite at the apple, and could result in an endless series of hearings until Department finally presented sufficient evidence to support suspension.

2. Automobiles ⇌144.2(1)

Absent circumstances where Department of Highway Safety and Motor Vehicles is prevented from presenting material evidence in support of suspension of a motorist's driver's license, it should only get one opportunity to present its proof.

3. Automobiles ⇌144.2(4)

Circuit court that determined, on certiorari review of the suspension of motorist's driver's license, that Department of Highway Safety and Motor Vehicles had failed to introduce substantial, competent evidence to justify the suspension had authority to order Department to reinstate motorist's license; circuit court had inherent authority to enforce its mandate.

4. Certiorari ⇌69

A reviewing court on first-tier certiorari review has the inherent authority to enforce its mandate.

Stephen D. Hurm, General Counsel, and Kimberly A. Gibbs, Assistant General Counsel, Department of Highway Safety and Motor Vehicles, Orlando, for Petitioner.

Michael H. Lambert, Daytona Beach, for Respondent.

TORPY, C.J.

We address this driver's license suspension case for the second time. The circuit court granted Respondent's petition for certiorari, concluding that Petitioner had failed to introduce substantial, competent



evidence to justify the suspension of Respondent's driver's license. In the first case before this court, we denied by order Petitioner's petition for certiorari directed to that order. After our mandate issued, the circuit court ordered Petitioner to reinstate Respondent's driver's license. Petitioner challenges that order, contending that the circuit court should have instead given it the opportunity to have a new hearing with different evidence. We deny the instant petition.

[1] Petitioner contends that the law is "well settled" that "when a circuit court determines that there has been an evidentiary error in an administrative hearing and/or that there is not substantial competent evidence in the record to support the administrative order, the circuit court is limited to quashing the administrative order and remanding the matter to Petitioner for further proceedings." (Emphasis added). It cites three precedents from this court in support of this proposition. Contrary to Petitioner's representation, however, none of the cited authorities supports the latter part of its argument—that a new hearing is required when the evidence is lacking because of the unexcused failure of Petitioner to present sufficient proof.

Lillyman v. Department of Highway Safety & Motor Vehicles, 645 So.2d 113 (Fla. 5th DCA 1994), addressed a situation where the hearing officer had denied the driver the due process right to cross-examine a witness. We analogized that situation to a similar trial error concerning erroneous exclusion of evidence in a criminal case and held that a new hearing was necessary. In *Department of Highway Safety & Motor Vehicles v. Icaza*, 37 So.3d 309 (Fla. 5th DCA 2010), we ordered a new hearing because of a change in the law that occurred after the hearing. Our decision was premised upon the conclusion

that the department had been denied due process because it did not have a fair opportunity to present the necessary evidence. In *Department of Highway Safety & Motor Vehicles v. Corcoran*, 133 So.3d 616 (Fla. 5th DCA 2014), the hearing officer made an erroneous evidentiary ruling that denied the licensee due process. Consistent with our prior precedent, we directed the trial court to order a new hearing.

[2] All of these cases involved situations where the merits of the controversy were not reached because one party or the other was denied the right to present pertinent evidence. The instant case involves a simple failure by Petitioner to meet its evidentiary burden. To grant a new hearing in situations like this simply affords Petitioner another bite at the apple and could result in an endless series of hearings until it finally presents sufficient evidence to support suspension. Absent circumstances where Petitioner is prevented from presenting material evidence it should only get one opportunity to present its proof. See *Doll v. Dep't of Health*, 969 So.2d 1103, 1107 (Fla. 1st DCA 2007), and cases cited therein (in administrative proceeding, upon failure of agency to present sufficient proof of costs, no entitlement to second opportunity).

[3] The foregoing notwithstanding, Petitioner contends that the circuit court lacked the authority to "direct the administrative agency to take any particular action on remand." In support of this argument, Petitioner relies upon *Broward County v. G.B.V. International, Ltd.*, 787 So.2d 838 (Fla.2001). Again, we think Petitioner's reliance upon the cited authority is misplaced. *G.B.V. International, Ltd.* addressed the authority of an appellate court on second-tier review. In that case, the circuit court had erroneously concluded that it did not have authority to review a zoning decision because it believed it to be

legislative in nature, rather than quasi-judicial. 787 So.2d at 844. On second-tier review, the Fourth District Court of Appeal properly quashed the order because the zoning decision was quasi-judicial and should have been reviewed using a competent, substantial evidence standard by the circuit court. Instead of remanding the matter to the circuit court to conduct that review, the fourth district court itself determined that there was not substantial, competent evidence to support the zoning decision, and it ordered that the zoning request by the property owner be approved. *Id.* at 845. The Florida Supreme Court held that this was in excess of the fourth district court's authority on second-tier review. *Id.*

[4] Here, by contrast, the circuit court on first-tier review made the determination that the evidence to support the suspension was lacking. On review, we allowed that decision to stand. After our mandate issued, the circuit court simply enforced its mandate. A reviewing court on first-tier certiorari review has the inherent authority to enforce its mandate. See *Citibank, N.A. v. Plapinger*, 469 So.2d 144, 145 (Fla. 3d DCA 1985) (after trial court attempted to stay appellate court's mandate, appellate court ordered mandate's enforcement).

Accordingly, we deny the petition.

PETITION DENIED.

WALLIS and EVANDER, JJ., concur.

Matthew DIXON, Appellant,

v.

STATE of Florida, Appellee.

No. 1D12-3371.

District Court of Appeal of Florida,
First District.

Jan. 2, 2015.

Background: Defendant was convicted following open guilty plea in the Circuit Court, Leon County, Mark E. Walker, J., of a crime. Defendant appealed. The District Court of Appeal affirmed. Defendant sought review. The Supreme Court quashed and remanded.

Holding: The District Court of Appeal held that remand was required for State to be given an opportunity to present evidence as to whether Department of Corrections was capable of providing the specialized treatment that defendant needed. Reversed and remanded.

Criminal Law ⇌ 1181.5(8)

Remand was required for State to be given an opportunity to present evidence as to whether Department of Corrections was capable of providing the specialized treatment that defendant needed so that a downward sentencing departure was not required. West's F.S.A. § 921.0026(2)(d).

Clyde M. Taylor, Jr., Taylor & Taylor,
PA, Tallahassee, for Appellant.

Pamela Jo Bondi, Attorney General, and
Jay Kubica, Assistant Attorney General,
Tallahassee, for Appellee.



MEETING OF THE ESCAMBIA COUNTY BOARD OF ADJUSTMENT

Proceedings held in the above-styled cause before the Escambia County Board of Adjustment on the 18th day of October 2017, commencing at 8:30 a.m., at Escambia County Central Office Complex, 3363 West Park Place, Room 104, Pensacola, Florida 32505 reported by Rebecca T. Fussell.

APPEARANCES

BOARD OF ADJUSTMENT MEMBERS:

Auby Smith, Chairman
Bill Stromquist
Walker Wilson
Judy Gund
Michael Godwin

ABSENT:

Frederick J. Gant
Jennifer Rigby Staff

STAFF PRESENT:

Andrew Holmer, Division Manager, Planning & Zoning
Kayla Meador, Senior Office Assistant
Kristin Hual, Assistant County Attorney
Meredith Crawford, Assistant County Attorney
Horace Jones, Director, Development Services

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PROCEEDINGS

MR. CHAIRMAN: Our next case is Appeal Case 2017-02.

Board members, have there been any ex parte communications regarding this case?

MS. GUND: I had a phone call this morning from Jonathan Owen, and we talked about not necessarily this case in general, but it was in general, just about private property rights, the Land Development Code, that kind of thing.

MR. CHAIRMAN: Counsel, do you see any problem with Judy voting?

MS. HUAL: No.

MR. CHAIRMAN: Does anyone have knowledge or information obtained from a site visit or other sources?

MR. WILSON: Mr. Chairman, I also had an ex parte communication. I received a Facebook message from someone I do not know by the name of Sarah Ann Keenan requesting that I vote to consider putting this Dollar General in place -- to not put it in place because it would affect her property values. I did not respond, but I did receive that message.

MR. CHAIRMAN: Counsel, any problem?

MS. HUAL: No.

<p style="text-align: right;">Page 5</p> <p>1 MR. CHAIRMAN: Thank you.</p> <p>2 MR. GODWIN: Mr. Chairman, I received a voice</p> <p>3 mail this morning from a friend that lives in the</p> <p>4 area, and, of course, I didn't respond to it at</p> <p>5 all, but it was a general conversation, but the --</p> <p>6 this application was mentioned, so...</p> <p>7 MR. CHAIRMAN: Counselor?</p> <p>8 MS. HUAL: No.</p> <p>9 But I will add, as to any ex parte</p> <p>10 communication that may have occurred, if either</p> <p>11 party wishes to question the board members</p> <p>12 concerning those communications, they are free to</p> <p>13 do so.</p> <p>14 MR. CHAIRMAN: Thank you. Thank you.</p> <p>15 MR. STROMQUIST: I also got a message from</p> <p>16 somebody that I didn't know. And as far as the</p> <p>17 facts of the conversation, I deleted the message.</p> <p>18 MR. CHAIRMAN: I feel slighted. I didn't get</p> <p>19 a message.</p> <p>20 Does any board member intend to refrain</p> <p>21 from voting due to a voting conflict of interest?</p> <p>22 (No response)</p> <p>23 MR. CHAIRMAN: Seeing none.</p> <p>24 Would the individuals who are a party to</p> <p>25 this item, please come to the podium and identify</p>	<p style="text-align: right;">Page 6</p> <p>1 yourselves and state your name and address for the</p> <p>2 record and be sworn in.</p> <p>3 If you're an -- are you an attorney?</p> <p>4 MR. THERIAQUE: Yes, sir.</p> <p>5 MR. CHAIRMAN: Okay. You don't have to be</p> <p>6 sworn in.</p> <p>7 MR. THERIAQUE: Right.</p> <p>8 MR. CHAIRMAN: Are the others attorneys also?</p> <p>9 MR. THERIAQUE: No. They are potential</p> <p>10 witnesses, sir.</p> <p>11 MR. CHAIRMAN: All right. And are you going</p> <p>12 to speak with them?</p> <p>13 MR. THERIAQUE: Potentially during rebuttal.</p> <p>14 I thought I'd just have him sworn in at this</p> <p>15 juncture in case we do have him testify.</p> <p>16 MR. CHAIRMAN: All right. Come forward, if</p> <p>17 you will, and state your name and address. Go</p> <p>18 ahead.</p> <p>19 MS. GUTCHER: Allara Mills Gutcher. I am at</p> <p>20 2311 Lee Street in Lynn Haven, Florida.</p> <p>21 MR. HODGES: Tom Hodges, 121 Parkway Drive,</p> <p>22 Thomasville, Georgia.</p> <p>23 MS. PLAYER: Bonita Player, 1720 West</p> <p>24 Fairfield Drive.</p> <p>25 MS. BELL: Jennifer Bell, 4212 Rosebud Court,</p>
<p style="text-align: right;">Page 7</p> <p>1 Pensacola 32504.</p> <p>2 MR. CHAIRMAN: If you will, raise your right</p> <p>3 hand and be sworn.</p> <p>4 (Witnesses sworn.)</p> <p>5 MR. CHAIRMAN: Thank you-all. You may make</p> <p>6 your presentation.</p> <p>7 MR. THERIAQUE: Thank you, Mr. Chairman. May</p> <p>8 I approach?</p> <p>9 MR. CHAIRMAN: Yes.</p> <p>10 MR. THERIAQUE: Thank you.</p> <p>11 MR. CHAIRMAN: Let's see. Has this been</p> <p>12 presented to staff?</p> <p>13 MR. THERIAQUE: I'm going to give them a copy</p> <p>14 as well. Yes, sir.</p> <p>15 MR. CHAIRMAN: Does staff have any objection</p> <p>16 to this, to the board considering whether or not to</p> <p>17 accept this as evidence?</p> <p>18 MR. THERIAQUE: I would like to walk through</p> <p>19 it so that I can identify what the documents are.</p> <p>20 MR. HOLMER: Mr. Chairman, most, if not all of</p> <p>21 this, is already in the meeting packet that was</p> <p>22 e-mailed to you.</p> <p>23 MR. CHAIRMAN: This?</p> <p>24 MR. HOLMER: Yes. Most of all this.</p> <p>25 MR. CHAIRMAN: I'm going to call for a motion</p>	<p style="text-align: right;">Page 8</p> <p>1 to accept this as -- into evidence. Do we have a</p> <p>2 motion?</p> <p>3 MS. GUND: I'll make a motion that it be</p> <p>4 accepted into evidence.</p> <p>5 MR. CHAIRMAN: Judy moves.</p> <p>6 Do we have a second?</p> <p>7 MR. GODWIN: I'll second it.</p> <p>8 MR. CHAIRMAN: We have a second by --</p> <p>9 MS. CRAWFORD: Mr. Chairman, if I may.</p> <p>10 Meredith Crawford, Assistant County Attorney.</p> <p>11 The one caveat, I would ask to your</p> <p>12 motion would be that the Land Use Compatibility</p> <p>13 Analysis be accepted simply for what it is and not</p> <p>14 as actual proof of compatibility. But it can very</p> <p>15 well be accepted as the document.</p> <p>16 MR. CHAIRMAN: Do the motion folks agree to</p> <p>17 that? Michael?</p> <p>18 MR. GODWIN: Yes.</p> <p>19 MR. CHAIRMAN: And Judy?</p> <p>20 MS. GUND: I made my motion.</p> <p>21 MR. THERIAQUE: May I address that, Mr.</p> <p>22 Chairman?</p> <p>23 MR. CHAIRMAN: Yes.</p> <p>24 MR. THERIAQUE: The author of that report is</p> <p>25 present. That was Allara Mills Gutcher who was</p>

<p style="text-align: right;">Page 9</p> <p>1 placed under oath. It is a report. The author is 2 present. It's not hearsay. The board is entitled 3 to assign whatever weight it desires to assign to 4 it. It is competent, substantial evidence that 5 could substantiate a finding of compatibility, the 6 report alone. But we do have the author who will 7 be testifying from the report as well. 8 MR. CHAIRMAN: Okay. If we have the motion, 9 any question on the motion? 10 (No response) 11 Those in favor, signify by raising your 12 right hand. 13 (The board members raise their right 14 hands.) 15 Any opposed? 16 (No response) 17 Motion passes unanimously. 18 (Exhibits 1 through 10 were received into 19 evidence.) 20 MR. THERIAQUE: Thank you. 21 And if I may, Mr. Chairman, just so that 22 the record is clear, while the binder has come in, 23 I would like to identify for the record what is in 24 the binder. 25 Exhibit 1 is the letter dated July 24th,</p>	<p style="text-align: right;">Page 10</p> <p>1 2017 from Horace Jones, Director, to Teramore 2 Development, LLC. 3 Exhibit 2 is the administrative appeal 4 filed by the property owners. 5 Tab 3 or Exhibit 3 is the administrative 6 appeal filed by Teramore Development, which is the 7 authorized agent on behalf of the owner. We filed 8 an appeal from both entities, kind of a 9 belt-and-suspender approach to ensure that we had 10 proper jurisdiction before you, sir. 11 Four is from your Land Development Code. 12 It is the locational criteria that are at issue 13 during this proceeding. 14 Five is a preliminary site plan of the 15 property. 16 Tab 6 is a rendering with the actual 17 vegetation. Tom Hodges will provide an explanation 18 of how this document was created. I am an 19 attorney, so I don't provide evidence, but I will 20 just summarize that the actual vegetation on site 21 is depicted, and they hired somebody to superimpose 22 what the building would look like with the actual 23 vegetation. 24 Exhibit 7 is a lighting plan, or also 25 known as photometric plan that shows how the</p>
<p style="text-align: right;">Page 11</p> <p>1 lighting would be on the property. 2 Exhibit 8 is the Land Use Compatibility 3 Analysis that was prepared by Allara Mills Gutcher. 4 Again, we will ask you to accept her as an expert 5 witness when we get to that point. 6 Exhibit 9 is Ms. Gutcher's resume. 7 And Exhibit 10 is the resume of Thomas 8 Hodges. 9 MR. CHAIRMAN: Thank you, sir. 10 MR. THERIAQUE: Thank you, sir. 11 And before I call my first witness, I 12 just would like to briefly describe what we believe 13 is at issue today. 14 If the board -- excuse me one second. I 15 want to put up a diagram. Thank you. 16 As you know, this is a quasi-judicial 17 proceeding. And you're bound to base your decision 18 on competent, substantial evidence. And your code 19 and rules are actually pretty good. I practice 20 statewide, and I was online looking at your 21 requirements for board of adjustment proceedings. 22 You track it perfectly well. I would like most 23 local governments to have what you have in place 24 for your quasi-judicial hearings. You have done it 25 well.</p>	<p style="text-align: right;">Page 12</p> <p>1 And I know this isn't your first rodeo, 2 but I do want to remind you that your decision 3 needs to be based on competent, substantial 4 evidence from either expert witnesses who provide 5 opinion or fact-based testimony from lay people. 6 It's not a popularity poll. So if I have 7 300 people here that are for me or 300 people who 8 are against me, that doesn't weigh into the 9 equation today. What weighs into your decision 10 today is that competent, substantial evidence on 11 whether or not this appeal meets the criteria that 12 is set forth in (e)(5). 13 As you know, this piece of property has a 14 future land use map designation that allows 15 commercial. It has a zoning designation that 16 allows commercial. And you recently -- I believe 17 it was in December or maybe November of 2016 -- 18 added location criteria that changed what could be 19 allowed as-of-right on this property. 20 Prior to that change, we wouldn't be even 21 before you. We didn't have to do a compatibility 22 analysis. We didn't have to meet these other 23 requirements. 24 Each one of (e)(1), (e)(2), (e)(3), 25 (e)(4) and (e)(5) stand alone. An applicant meets</p>

<p style="text-align: right;">Page 13</p> <p>1 the location criteria if they can qualify for any</p> <p>2 one of those five. It's not conjunctive, where you</p> <p>3 have to hit one and two and three and four and</p> <p>4 five.</p> <p>5 If an applicant meets any one of those</p> <p>6 five, then they qualify for commercial on the</p> <p>7 property that is designated for commercial. And we</p> <p>8 believe the evidence is going to demonstrate to you</p> <p>9 today that the applicant meets documented</p> <p>10 compatibility.</p> <p>11 And what you will hear is how this site</p> <p>12 has been proposed to be designed. You will hear</p> <p>13 the size of the property. And you will hear that</p> <p>14 in all of the Dollar Generals that our client has</p> <p>15 developed in Florida, in Pensacola and in other</p> <p>16 states, they have never left this amount of</p> <p>17 undeveloped property. And they did so in order to</p> <p>18 try to be a good neighbor with the surrounding</p> <p>19 residential uses.</p> <p>20 You will also hear that a Dollar General</p> <p>21 is a neighborhood commercial use. It's not a</p> <p>22 general commercial use. And there is a</p> <p>23 distinction. Neighborhood commercial is intended,</p> <p>24 from a planning perspective, to be near</p> <p>25 neighborhoods.</p>	<p style="text-align: right;">Page 14</p> <p>1 The reason that you have neighborhood</p> <p>2 commercial is to have shorter trips, or on your way</p> <p>3 home, you realize you need milk and bread.</p> <p>4 So neighborhood commercial is intended to be</p> <p>5 located near neighborhoods.</p> <p>6 And I think what you will hear at the</p> <p>7 conclusion of our evidence is that this site has</p> <p>8 been well designed and will be compatible with the</p> <p>9 surrounding properties.</p> <p>10 And at this point, I would like to call</p> <p>11 Allara Mills Gutcher. And I have some blue forms I</p> <p>12 need to turn in.</p> <p>13 MR. CHAIRMAN: Thank you, sir.</p> <p>14 MR. THERIAQUE: Yes, sir.</p> <p>15 I will actually use the mic over here,</p> <p>16 and you can use this.</p> <p>17 WHEREUPON,</p> <p>18 ALLARA MILLS GUTCHER</p> <p>19 was called as a witness and, after having been first</p> <p>20 duly sworn, testified as follows:</p> <p>21 DIRECT EXAMINATION</p> <p>22 BY MR. THERIAQUE:</p> <p>23 Q Please state your name and address for the</p> <p>24 record.</p> <p>25 A My name is Allara Mills Gutcher, and I'm</p>
<p style="text-align: right;">Page 15</p> <p>1 at 2311 Lee Street in Lynn Haven, Florida.</p> <p>2 Q And would you briefly describe your</p> <p>3 professional background?</p> <p>4 A I'm a certified land use planner by the</p> <p>5 American Institute of Certified Planners. I have been</p> <p>6 for about 15 years. I have been in the profession</p> <p>7 for about 20 years. I have been in both the private and</p> <p>8 the public sector. I have been more recently the</p> <p>9 planning manager for the City of Panama City and the</p> <p>10 planning and community director for Gadsden County up</p> <p>11 near Tallahassee.</p> <p>12 Q Are you A.I.C.P.?</p> <p>13 A I am A.I.C.P.</p> <p>14 Q What does it mean to be A.I.C.P.?</p> <p>15 A A.I.C.P. certification is a certification</p> <p>16 that is produced through the American Planning</p> <p>17 Association, which requires a certain amount of</p> <p>18 training, a certain amount of education, a certain</p> <p>19 amount of work experience and an exam that must be</p> <p>20 passed.</p> <p>21 MS. GUND: Can I excuse you for just a moment?</p> <p>22 Horace, did you have something you wanted</p> <p>23 to say?</p> <p>24 MR. JONES: If you can speak louder in the</p> <p>25 mic. The volume is not the best in here, so you</p>	<p style="text-align: right;">Page 16</p> <p>1 may need to really speak directly into the mic so</p> <p>2 that the people in the back can hear you clearly.</p> <p>3 MR. THERIAQUE: Thank you.</p> <p>4 MR. JONES: Thank you.</p> <p>5 THE WITNESS: Maybe not at all.</p> <p>6 MR. THERIAQUE: We are not resting our case at</p> <p>7 this point.</p> <p>8 BY MR. THERIAQUE:</p> <p>9 Q Ms. Gutcher, have you ever performed a</p> <p>10 compatibility analysis?</p> <p>11 A I have several times -- in fact, hundreds</p> <p>12 of times in my career through any type of a zoning</p> <p>13 change or a comprehensive plan map amendment, we look at</p> <p>14 these issues.</p> <p>15 MR. THERIAQUE: At this time, Mr. Chairman, I</p> <p>16 would like to tender Ms. Gutcher as an expert</p> <p>17 witness in urban regional planning.</p> <p>18 MS. CRAWFORD: No objection by the County.</p> <p>19 MR. THERIAQUE: Thank you.</p> <p>20 MR. CHAIRMAN: Board members, do we have a</p> <p>21 motion to accept her as an expert witness?</p> <p>22 MR. STROMQUIST: So moved.</p> <p>23 MR. CHAIRMAN: We have a motion. Do we have a</p> <p>24 second?</p> <p>25 MS. GUND: Second.</p>

<p style="text-align: right;">Page 17</p> <p>1 MR. CHAIRMAN: Moved by Bill, second by Judy. 2 Those in favor, signify by raising your 3 right hand. 4 (The board members raise their right 5 hands.) 6 Any opposed? 7 (No response) 8 Motion passes unanimously. 9 MR. THERIAQUE: Thank you, Mr. Chairman. 10 BY MR. THERIAQUE: 11 Q Ms. Gutcher, are you here on behalf of the 12 applicant? 13 A Yes, I am. 14 Q What have you done in preparation for your 15 testimony today? 16 A Yes. I have reviewed the Escambia County 17 Comprehensive Plan. I have reviewed the Escambia County 18 Land Development regulations. I have reviewed the 19 Escambia County property appraiser's Web site to include 20 the aerial photographs. I have made a site visit to the 21 property. I have also looked at the Escambia County 22 future land use map and the zoning map. 23 Q And have you written a report regarding 24 your analysis of the compatibility issue? 25 A Yes, I have.</p>	<p style="text-align: right;">Page 18</p> <p>1 Q Is that report -- let me see. You have a 2 hard copy, I believe. 3 A Yes, I do. 4 Q Let me show it to you in my tab. Give me 5 one second just to confirm. 6 Is what is tabbed as Exhibit 8 a true and 7 correct copy of your report? 8 A Yes, it is. 9 Q All right. Would you please walk through 10 your analysis for the board, please? 11 A Yes. 12 And good morning, and thank you 13 for allowing me here today to speak to you on this 14 issue. 15 I am pleased to present with you my 16 analysis and how it relates and how it is compatible 17 with the surrounding uses and existing development. I 18 submit to you that this site, which is zoned for 19 commercial uses on the Escambia County official zoning 20 map with the zoning designation of commercial and has 21 been designated on the future land use map as MU-S, 22 which is mixed-use suburban, can be developed 23 responsibly so that the existing pattern of development 24 and existing uses will not be adversely affected over 25 time by the development of a commercial retail store.</p>
<p style="text-align: right;">Page 19</p> <p>1 The designation of MU-S on the future land use map 2 allows for the development of a commercial use. 3 Chapter 7 of the Comprehensive Plan 4 contains the future land use element. Policy 1.3.1 5 lists the future land use categories and also describes 6 the allowable uses and overarching development 7 parameters of MU-S. These include things like the 8 allowable uses, which is listed retail sales and 9 services, and a development parameter of 1.0 floor area 10 ratio. 11 The Escambia County Land Development 12 Regulations describe how parcels within the commercial 13 zoning district can be developed. Section 3-2.10 of the 14 LDR states in Part A of this section that the purpose of 15 this zoning district is, quote, for general commercial 16 activities, especially the retailing of commodities and 17 services, end quote. 18 I think we can all agree that this retail 19 Dollar General store will sell commodities, or in other 20 words, goods to be public. 21 Furthermore, in this section, Part B lists 22 the permitted uses. Part two of this subsection states 23 that retail sales are an allowable use. Clearly, the 24 proposed commercial use is an allowable one, not a 25 conditional one, within this zoning category.</p>	<p style="text-align: right;">Page 20</p> <p>1 However, Escambia County elected to 2 include location criteria in Part E of this LDR section, 3 which brings us here today. I will document with 4 competent and substantial evidence that as a requirement 5 of Section 3-2.10(e)(5) of the Escambia County LDRs, 6 this use will achieve long-term compatibility with 7 existing uses in the area. 8 First, we must look to the definition of 9 compatibility. The Escambia County Comprehensive Plan 10 defines compatibility as, quote: Compatible development 11 is new development proposed to be constructed next to 12 existing development in which the proximity of the two 13 kinds of development would each complement or enhance 14 the usefulness of the other, end quote. 15 In addition, Section 163.3164(9) of the 16 Florida Statutes define compatibility as, quote: A 17 condition in which land uses or conditions can coexist 18 in relative proximity to each other in a stable fashion 19 over time so that no use or condition is unduly 20 negatively impacted directly by another use or 21 condition, end quote. 22 And I will also note that your definition 23 section of Chapter 6 in your Escambia County LDRs 24 defines compatibility virtually identical to that in the 25 Florida Statutes.</p>

<p style="text-align: right;">Page 21</p> <p>1 So when we look at how uses are compatible</p> <p>2 to each other, we look at several development</p> <p>3 characteristics, such as setbacks, buffering, open space</p> <p>4 ratios, hours of operation, lighting, noise, smoke,</p> <p>5 glare, and building height, orientation and mass.</p> <p>6 These are the characteristics I will</p> <p>7 present to you this morning to show that there is</p> <p>8 competent and substantial evidence that this proposed</p> <p>9 development will be compatible with existing uses.</p> <p>10 This project as proposed is to develop</p> <p>11 approximately 9,100 square feet of retail space on about</p> <p>12 three-and-a-half acres, a little less than, about 3.4</p> <p>13 acres.</p> <p>14 The development footprint will only take</p> <p>15 1.25 acres of that or less than half. In fact, less</p> <p>16 than 40 percent of the site. This will leave about 2.15</p> <p>17 acres of native vegetation untouched by this development</p> <p>18 plan.</p> <p>19 In my 20-plus years experience in this</p> <p>20 profession, I have never come across a developer who has</p> <p>21 been willing to leave that much land on the table, not</p> <p>22 even close. This is extraordinary.</p> <p>23 The height of the structure will not</p> <p>24 exceed 22 feet above grade of the site. This height is</p> <p>25 similar to the height of a peaked-roof, single-family</p>	<p style="text-align: right;">Page 22</p> <p>1 home, or more importantly, the trees on the site. This</p> <p>2 development will not tower above the existing tree line</p> <p>3 as a highrise condominium would, office building or</p> <p>4 other types of retail can. You won't see this building</p> <p>5 from the north through the trees.</p> <p>6 The building orientation will be to the</p> <p>7 south to Gulf Beach Highway, and access will only be via</p> <p>8 Gulf Beach Highway. No ingress or egress access will be</p> <p>9 via any other street or roadway.</p> <p>10 The setback area will remain primarily in</p> <p>11 the natural vegetative state with exception to what is</p> <p>12 necessary surrounding the building for storm water and</p> <p>13 parking. These setbacks can be found on page 12 of the</p> <p>14 analysis in your books on page 12 on Table 3 and are</p> <p>15 97 feet from the front property line where your LDRs</p> <p>16 require 15 feet, 82 feet from the rear property line</p> <p>17 where your LDRs require 15 feet, 231 feet from the west</p> <p>18 side property line where your LDRs only require 10 feet</p> <p>19 and 175 feet from the east property line where your LDRs</p> <p>20 require, again, only 10 feet.</p> <p>21 In no case are any of these setbacks less</p> <p>22 than 400 percent over the required amount, and at most,</p> <p>23 the setback exceeds the required amount by over</p> <p>24 2000 percent. These massive setbacks, the lower height</p> <p>25 of the structure, the intent to retain 2.15 acres of</p>
<p style="text-align: right;">Page 23</p> <p>1 vegetation all contribute to the conditions that allow</p> <p>2 this use to coexist in proximity to other uses in a</p> <p>3 stable fashion over time so that this use will not</p> <p>4 negatively impact others.</p> <p>5 Another factor in my compatibility study</p> <p>6 is how the use will operate. Will it create excessive</p> <p>7 noise? Will it create glare to the neighbors? Will it</p> <p>8 concrete smoke? Will it create dust? Will the hours of</p> <p>9 operation disrupt other uses? The answers to each of</p> <p>10 these questions is a resounding absolutely not.</p> <p>11 This small retail use will not create any</p> <p>12 noise outside of what is already created by the traffic</p> <p>13 on Gulf Beach Highway. There will be no glare. In</p> <p>14 fact, the lighting plan for this development will only</p> <p>15 be installed on the building in a downward fashion which</p> <p>16 is necessary for the safety of pedestrians after dark.</p> <p>17 There will be no smoke or dust created as</p> <p>18 a manufacturing type of use may create. And the hours</p> <p>19 of operation will be conducive to standard human</p> <p>20 behavior. They will not be any earlier than 7:00 a.m.</p> <p>21 or any later than 9:00 p.m. None of these conditions</p> <p>22 will contribute to a negative impact of this use to</p> <p>23 other uses in proximity over time.</p> <p>24 Finally, it is important to refer to the</p> <p>25 documents that have been adopted by the Board of County</p>	<p style="text-align: right;">Page 24</p> <p>1 Commissioners to understand if this proposal is</p> <p>2 consistent with the guidance of the County's growth</p> <p>3 management documents.</p> <p>4 It is clear that the intent of the</p> <p>5 Escambia County Comprehensive Plan is to promote new</p> <p>6 infill development in already developed areas. This is</p> <p>7 an admirable intent, which helps save taxpayers money</p> <p>8 through the use of existing transportation networks,</p> <p>9 utility lines and governmental services.</p> <p>10 The Comprehensive Plan talks about new</p> <p>11 development in built areas in Policy FLU 1.5.1, which</p> <p>12 says, Escambia County is, quote, to promote the</p> <p>13 efficient use of existing public roads, utilities and</p> <p>14 service infrastructure. The County will encourage the</p> <p>15 redevelopment in underutilized properties to maximize</p> <p>16 development densities and intensities located in the</p> <p>17 MU-S future land use category, end quote.</p> <p>18 And, again, this site is located within</p> <p>19 the MU-S future land use category.</p> <p>20 I submit to you that an undeveloped parcel</p> <p>21 in a largely developed area must be classified as</p> <p>22 underutilized.</p> <p>23 Additionally, Goal 2 of the future land</p> <p>24 use element states, quote, Escambia County will promote</p> <p>25 urban strategies for compact development, the efficient</p>

<p style="text-align: right;">Page 25</p> <p>1 provision of infrastructure and urban services and the 2 protection of natural resources. Urban strategies will 3 include infill development, mixed-use development and 4 coordinated land use and transportation planning, end 5 quote. 6 Objective FLU 2.1 furthers the directives 7 of this goal by stating, quote, direct growth towards 8 those areas where infrastructure and services exist to 9 support development at approved densities and 10 intensities, end quote. 11 Objective 2.3 speaks to directing future 12 growth into already developed areas, which is referred 13 to as infill development. Quote, encourage infill 14 development in appropriate urbanized areas where 15 infrastructure is sufficient to meet demands, such as 16 MU-U and MU-S, end quote. And, again, we are in a MU-S 17 future land use category. 18 So in my conclusion, not only is this 19 development compatible to surrounding uses, due to the 20 setbacks, the height of the structure, the mass of the 21 structure, the lack of noise, smoke, dust, glare, and 22 the limited hours of operation, the Board of County 23 Commissioners through the adoption of the Escambia 24 County Comprehensive Plan support this type of infill 25 development in order to enhance efficiency of the</p>	<p style="text-align: right;">Page 26</p> <p>1 provision of services, such as transportation, utilities 2 and governmental services. 3 I submit to you that this proposal can 4 coexist in a stable fashion over time with other uses in 5 the vicinity and will not negatively or adversely impact 6 the other uses directly or indirectly. 7 Thank you very much. 8 Q Ms. Gutchner, just a couple of follow-up 9 questions. 10 A Yes. 11 Q Do you consider this store to be a 12 neighborhood commercial store? 13 A I do. 14 Q Where are neighborhood commercial stores 15 typically located? 16 A Within a residential or neighborhood area 17 for ease of access. 18 MR. THERIAQUE: Thank you. 19 MR. CHAIRMAN: May we have an opportunity to 20 see if any board would like to ask questions? 21 THE WITNESS: Certainly. 22 MR. CHAIRMAN: Any questions of the speaker, 23 Board? 24 (No response) 25 Staff, any questions of the speaker?</p>
<p style="text-align: right;">Page 27</p> <p>1 MS. CRAWFORD: I would like to cross-examine 2 the witness, please. 3 CROSS-EXAMINATION 4 BY MS. CRAWFORD: 5 Q Is it Ms. Gootcher? 6 A Gutchner. 7 Q Gutchner. Hi, Ms. Gutchner. 8 A Hi. 9 Q I'm Meredith Crawford. I'm one of the 10 assistant county attorneys. I work with Development 11 Services. 12 MR. CHAIRMAN: Could you get the mic a little 13 closer? Thank you. 14 BY MS. CRAWFORD: 15 Q Again, my name is Meredith Crawford. I'm 16 one of the assistant county attorneys. 17 If you will, can we just walk through your 18 compatibility analysis report? 19 A Certainly. 20 Q It appears that pages one and two are 21 simply your table of contents? 22 A That is correct. 23 Q And then on page three, you recite the 24 definition of compatibility from the Florida Statutes, 25 the Comp Plan and the LDC?</p>	<p style="text-align: right;">Page 28</p> <p>1 A That's correct. 2 Q And then it appears that pages four -- 3 four, five, six, seven and eight through the majority of 4 page nine, you're simply reciting the site conditions, 5 the zoning, future land use photographs, things not 6 necessarily related to your compatibility analysis but 7 specific to this project? 8 A Well, you look at these things that are 9 adopted in your documents to determine the compatibility 10 of the site in accordance to what the allowable use is 11 and what the surrounding uses are. 12 Q We are going to walk through those code 13 provisions. 14 So on the bottom of page nine, you give 15 your opinion that the Dollar General store fulfills the 16 location criteria pursuant to Section 3-2.10(e)(5). 17 A Yes. 18 Q And so it's your professional opinion that 19 the way that this project meets compatibility is through 20 that documented compatibility? 21 A Through the documented compatibility 22 analysis, yes. 23 Q And that is what is contained in your 24 report? 25 A That's correct.</p>

<p style="text-align: right;">Page 29</p> <p>1 Q And did you read or review the entire code 2 for preparing this report? 3 A I read those portions which were pertinent 4 to this development. 5 Q Did you review Section 3-1.6? 6 THE WITNESS: Do you have a copy of the code? 7 BY MS. CRAWFORD: 8 Q I have a copy of the code, if you need it. 9 A Do you have a page number so it would be 10 easier for me to find it? 11 Q Oh, sure. It's LDC 3:12. 12 A So this is under Article 3, Land 13 Disturbance Activities; correct? 14 MR. JONES: You may have to -- I can show it 15 to you, if you don't mind. 16 THE WITNESS: I'm sorry. I was on the wrong 17 page. 18 BY MS. CRAWFORD: 19 Q Article 1, General Provisions of the Land 20 Development Code, 3-1.6. 21 A Yes. 22 Q If I can draw your attention to paragraph 23 A, the last sentence. Do you agree that the code states 24 that: Although zoning separates generally incompatible 25 development, inclusion as a permitted use within a</p>	<p style="text-align: right;">Page 30</p> <p>1 district does not alone ensure compatibility with other 2 uses? 3 A Yes. That's what the code says, yes. 4 Q And so your statement that this is a 5 permitted use does not necessarily guarantee that this 6 is compatible; correct? 7 A That's correct. 8 Q And then if you will look on to paragraph 9 B of that same section, do you agree that this states: 10 Location criteria are established within some zoning 11 districts to promote compatibility among uses, 12 especially new nonresidential uses in relation to 13 existing residential uses. Most criteria are designed 14 to create smooth transitions of use intensity from the 15 large-scale concentrations of general commercial uses 16 near major street intersections to small-scale dispersed 17 neighborhood commercial uses in proximity to residential 18 areas? Is that an accurate -- 19 A That is what the version I have states, 20 yes. 21 Q And in your analysis, you note that there 22 are no large concentrations or it appears there are no 23 large concentrations of general commercial uses near 24 this site; is that correct? 25 A Not adjacent to the site.</p>
<p style="text-align: right;">Page 31</p> <p>1 Q Okay. So, again, this provision requires 2 or states that the location criteria, which is what we 3 will get to in the next section, typically are 4 for transitional stages between heavy commercial and 5 smaller uses or less intense uses? 6 A Within some zoning districts. 7 Q And you agree that there are no general 8 commercial uses near major street intersections in this 9 area? 10 A There are no -- there are none within a 11 quarter-mile radius. 12 Q Okay. Thank you. 13 Now, in your analysis on page ten, while 14 on page nine, you cite that compatibility is based on 15 this documented compatibility, on page ten, you go into 16 your analysis, and it appears that you are citing infill 17 development as a basis for compatibility; is that 18 accurate? 19 A I'm stating -- what I'm stating here is 20 that Escambia County promotes infill development. 21 Q If you will turn to the location criteria 22 in the commercial district, which is 3-2.10. 23 A Of the Comprehensive Plan? 24 Q No. I'm sorry. Of the Land Development 25 Code. And it's going to be on page 3:15.</p>	<p style="text-align: right;">Page 32</p> <p>1 A What was the citation? 2 Q 3-2.10(e). It also, I believe, is in 3 your -- 4 A Yes. 5 Q -- notebook. 6 Now, these location criteria are the 7 criteria necessary to create new commercial development 8 that is not part of a planned unit development and is 9 not identified -- 10 A May I have a moment? 11 Q Sure. 12 A I'm trying to refer back to the section 13 that lies under -- you are referring to Part F? 14 Q No. I'm referring to -- 15 A To Part E, which is under -- 16 Q Commercial zoning district. 17 A That's what I'm trying to go to. Section 18 3-2.10? 19 Q Yes, ma'am. I believe it's number four in 20 your tabbed binder. 21 A Yes, I found it. 22 Q Now, in order for your development to be 23 compatible in this location, you agree that one of these 24 locational criteria must be met? 25 A Yes.</p>

<p style="text-align: right;">Page 33</p> <p>1 Q So when we look at number one, proximity</p> <p>2 to an intersection, you agree that you're not within</p> <p>3 one-quarter mile of the intersection --</p> <p>4 A We agree.</p> <p>5 Q -- with an arterial street? Okay.</p> <p>6 Number two, do you also agree you're not</p> <p>7 within one-quarter mile radius of an individual traffic</p> <p>8 generator of more than 600 daily trips?</p> <p>9 A We agree.</p> <p>10 Q Okay. I'm going to skip number three</p> <p>11 because that is one you touched on and go down to number</p> <p>12 four.</p> <p>13 Do you also agree that number four site</p> <p>14 design, that you do not meet that criteria?</p> <p>15 A Yes.</p> <p>16 Q Okay. Now, if we go back up to infill</p> <p>17 development, do you agree that the definition requires</p> <p>18 in this provision that infill development is along an</p> <p>19 arterial or collector street, but it must be in an area</p> <p>20 where already established non-residential uses are</p> <p>21 otherwise consistent with a commercial district and</p> <p>22 where the new use would constitute infill development of</p> <p>23 a similar intensity as the conforming development on</p> <p>24 surrounding parcels? Do you agree that is the code</p> <p>25 provision?</p>	<p style="text-align: right;">Page 34</p> <p>1 A That's what my version says.</p> <p>2 Q And do you agree that this area, there is</p> <p>3 not an already established non-residential use, that</p> <p>4 this is a residential area?</p> <p>5 A I will concur that this site has a zoning</p> <p>6 designation for commercial and that the MU-U -- MU-S</p> <p>7 category allows for commercial uses.</p> <p>8 Q And the surrounding parcels are all</p> <p>9 residential; correct?</p> <p>10 A They are developed residentially within</p> <p>11 the MU --</p> <p>12 Q They are zoned residential?</p> <p>13 A -- S future land use category.</p> <p>14 Q And the zoning is either low-density</p> <p>15 residential or high-density residential on the</p> <p>16 surrounding parcels?</p> <p>17 A Yes.</p> <p>18 Q Thank you.</p> <p>19 So given that infill development has to be</p> <p>20 in an area where already established non-residential</p> <p>21 uses are otherwise consistent with commercial, that</p> <p>22 would not apply?</p> <p>23 A I don't know that I would agree with you</p> <p>24 that this is definition of infill development. This is</p> <p>25 an example of what this paragraph is citing regarding</p>
<p style="text-align: right;">Page 35</p> <p>1 commercial district.</p> <p>2 Q And so this would be the provision</p> <p>3 controlling infill development in the commercial</p> <p>4 district; correct? That's why it would be in the code</p> <p>5 in this place?</p> <p>6 A However, the comprehensive plan policies</p> <p>7 that I cited were specific to broader issues of infill</p> <p>8 development, not necessarily specific to commercial</p> <p>9 district Part E, Part 3 infill development.</p> <p>10 Q Do you agree that the County puts forth</p> <p>11 infill development as a principle and yet has certain</p> <p>12 protections to keep the infill development from</p> <p>13 unnecessarily encroaching upon, as in this case,</p> <p>14 residential development?</p> <p>15 A I do.</p> <p>16 Q So if you go down to documented</p> <p>17 compatibility, which is number five, and, again, that is</p> <p>18 what you cite as the basis for your finding of</p> <p>19 compatibility, as the documented compatibility analysis?</p> <p>20 A Yes, I was -- yes.</p> <p>21 Q And do you agree that in order to meet the</p> <p>22 criteria of documented compatibility, you must show</p> <p>23 evidence of unique circumstances regarding the potential</p> <p>24 uses of a parcel that were not anticipated by the</p> <p>25 alternative criteria?</p>	<p style="text-align: right;">Page 36</p> <p>1 A Yes.</p> <p>2 Q And in this case, in your documented</p> <p>3 compatibility analysis, you cite infill development?</p> <p>4 A I cite that this site is a development</p> <p>5 that is currently undeveloped and could be considered</p> <p>6 infill because there is a large developed area</p> <p>7 surrounding it.</p> <p>8 Q And do you agree that infill development</p> <p>9 is considered in the alternative criteria in criteria</p> <p>10 number three?</p> <p>11 A Yes, I do.</p> <p>12 Q And so infill development would not be a</p> <p>13 basis for documented compatibility since it is also</p> <p>14 considered in the alternative criteria, and in order to</p> <p>15 meet the documented compatibility, it must be something</p> <p>16 that is not anticipated by the alternative criteria;</p> <p>17 correct?</p> <p>18 A So -- can you rephrase your question,</p> <p>19 please, because I think --</p> <p>20 Q Sure.</p> <p>21 A Go ahead.</p> <p>22 Q Okay. So in order to meet documented</p> <p>23 compatibility, criteria number five --</p> <p>24 A Yes.</p> <p>25 Q -- the applicant must show evidence of</p>

<p style="text-align: right;">Page 37</p> <p>1 unique circumstances regarding the potential uses of the</p> <p>2 parcel that were not anticipated by the alternative</p> <p>3 criteria? I believe that is the first sentence.</p> <p>4 A That's correct.</p> <p>5 Q Infill development is contemplated and</p> <p>6 anticipated by number three in the locational criteria;</p> <p>7 correct?</p> <p>8 A Correct.</p> <p>9 Q Okay. Now, if you will go with me to --</p> <p>10 let's go back to Section 3-1.6, please.</p> <p>11 A Okay.</p> <p>12 Q You mentioned buffering as part of the</p> <p>13 applicant's ability to become compatible with the area;</p> <p>14 correct?</p> <p>15 A Correct.</p> <p>16 Q If you look at 3-1.6, paragraph C, other</p> <p>17 measures, do you agree that it reads: In addition to</p> <p>18 the location criteria of the zoning district,</p> <p>19 landscaping, buffering and screening may be required to</p> <p>20 protect lower intensity uses for more intensive uses; is</p> <p>21 that correct?</p> <p>22 A That's what it states.</p> <p>23 Q So this states in addition to location</p> <p>24 criteria, not in lieu of location criteria?</p> <p>25 A Yes. That's what it states.</p>	<p style="text-align: right;">Page 38</p> <p>1 Q So buffering would not be sufficient on</p> <p>2 its own? You would also have to meet the location</p> <p>3 criteria before you're compatible; correct?</p> <p>4 A So, again, we're going back to Section</p> <p>5 3-1.6, Compatibility, Part B, location criteria.</p> <p>6 Location criteria are established within some zoning</p> <p>7 districts. And then what you're citing is underneath</p> <p>8 that Part B location criteria.</p> <p>9 Q Actually, C, ma'am. I'm sorry. C, other</p> <p>10 measures.</p> <p>11 A Okay. I'm sorry.</p> <p>12 Can you repeat your question?</p> <p>13 Q Yes, ma'am.</p> <p>14 C, other measures under the general</p> <p>15 compatibility provision in the code --</p> <p>16 A Yes.</p> <p>17 Q -- which is 3-1.6, it reads: "In addition</p> <p>18 to the location criteria of the zoning districts,</p> <p>19 landscaping, buffering and screening may be required to</p> <p>20 protect lower intensity uses from more intensive uses."</p> <p>21 And then it goes on to describe, such as residential</p> <p>22 from commercial and commercial from industrial. Do you</p> <p>23 agree that's --</p> <p>24 A That's what my version states.</p> <p>25 Q And it states "in addition to the location</p>
<p style="text-align: right;">Page 39</p> <p>1 criteria," not "instead of the location criteria"?</p> <p>2 A Correct.</p> <p>3 Q So in order to be compatible, you still</p> <p>4 must meet the location criteria, and compatibility</p> <p>5 cannot be established by buffering alone since it is in</p> <p>6 addition to the location criteria per our code; correct?</p> <p>7 A So when I go back to section -- I have to</p> <p>8 go back several pages -- 3-2.10, and I go to Part E, the</p> <p>9 location criteria there states that -- in the last</p> <p>10 portion of that sentence -- "The district shall be on</p> <p>11 parcels that satisfy at least one of the following</p> <p>12 location criteria."</p> <p>13 So the one location criteria that we are</p> <p>14 using is the compatibility analysis.</p> <p>15 Q And in your --</p> <p>16 A Not one, not two, not three, not four</p> <p>17 which has to do with the proximity to certain things.</p> <p>18 It's Part 5, the documented compatibility, which is the</p> <p>19 analysis that I provided to you.</p> <p>20 Q And yet, in your analysis, you cite infill</p> <p>21 development as part of that documented compatibility?</p> <p>22 A I am citing that as a general</p> <p>23 Comprehensive Plan guideline that the County</p> <p>24 Commissioners have adopted to support infill</p> <p>25 development.</p>	<p style="text-align: right;">Page 40</p> <p>1 Q And, if you will, turn with me to Section</p> <p>2 1-1.11 entitled "Rules for Understanding LDC</p> <p>3 Provisions."</p> <p>4 A Do you have a page number?</p> <p>5 Q I do. Mine is LDC 1:6. It's pretty close</p> <p>6 to the beginning, only three pages in.</p> <p>7 A And what was that section number again?</p> <p>8 Q 1-1.11, Rules for Understanding LDC</p> <p>9 Provisions.</p> <p>10 A Okay.</p> <p>11 Q And if you will look at paragraph D,</p> <p>12 Particular and General, which states: "A particular</p> <p>13 intent expressed in the LDC has authority over a general</p> <p>14 one, such that when there is a more specific</p> <p>15 requirement, it must be followed in place of a more</p> <p>16 general one, regardless of whether the general</p> <p>17 requirement is more lenient or in conflict with the</p> <p>18 specific one."</p> <p>19 A That's what my version says.</p> <p>20 Q And the infill development would be a</p> <p>21 general requirement of the County, and the specifics</p> <p>22 would be in this section?</p> <p>23 A Correct. But, also, the Comprehensive</p> <p>24 Plan rules over any land development regulation.</p> <p>25 Q And, again, the Comp Plan, the County may</p>

<p style="text-align: right;">Page 41</p> <p>1 support generally infill development and, yet, restrict</p> <p>2 it in certain zoning categories as deemed necessary by</p> <p>3 the governing body; correct?</p> <p>4 A Correct. But I haven't identified which</p> <p>5 zoning category that would apply to because your code</p> <p>6 says "some zoning categories."</p> <p>7 Q And in the commercial zoning category, it</p> <p>8 is listed and included; correct?</p> <p>9 A Can you point to that?</p> <p>10 Q Sure. It's 3-2.10, the location criteria</p> <p>11 we have been discussing.</p> <p>12 A Absolutely. I'm flipping through so many</p> <p>13 pages. Could you help me with that, please?</p> <p>14 Q I apologize. Sure. In mine, it's 3:50.</p> <p>15 I believe this is tab four in your notebook.</p> <p>16 A I don't have a notebook. So I'm referring</p> <p>17 to the --</p> <p>18 Q I'm sorry. You can have mine.</p> <p>19 A Yes. Thank you.</p> <p>20 So location criteria, Part E. And again?</p> <p>21 MR. JONES: 3-2.10.</p> <p>22 THE WITNESS: Yes, I'm on that page, 3,</p> <p>23 semicolon, 50 -- 3:50.</p> <p>24 BY MS. CRAWFORD:</p> <p>25 Q Yes. And, again, this is the location</p>	<p style="text-align: right;">Page 42</p> <p>1 criteria, which is included in the --</p> <p>2 A Yes, I'm there.</p> <p>3 Q -- commercial zoning district. So the</p> <p>4 commercial zoning district includes locational criteria?</p> <p>5 A It does.</p> <p>6 And I -- we recognize that we do not meet</p> <p>7 location criteria one, two, three or four.</p> <p>8 Q So it's your position that you have shown</p> <p>9 unique circumstances that are not otherwise anticipated</p> <p>10 by the criteria?</p> <p>11 A Yes.</p> <p>12 Q And those unique circumstances are</p> <p>13 outlined in your analysis?</p> <p>14 A Well, I think one of the unique</p> <p>15 circumstances is the allowable uses in the commercial</p> <p>16 and the mixed use-S category that allow for commercial</p> <p>17 development but somehow not on this parcel that is zoned</p> <p>18 commercially.</p> <p>19 Q And you agree that simply because of uses</p> <p>20 permitted, it's not automatically compatible?</p> <p>21 A Because of uses permitted, it is not</p> <p>22 automatically compatible. I do agree with that.</p> <p>23 Q And in your analysis, you cite Comp Plan</p> <p>24 policy regarding new development in built areas, which</p> <p>25 is FLU 1.5.1?</p>
<p style="text-align: right;">Page 43</p> <p>1 A Correct.</p> <p>2 Q You also cite FLU 2, which is infill</p> <p>3 development. Objective 2.1 is just urban development.</p> <p>4 And then you have 2.3, again, infill development. And</p> <p>5 those are the bases for your opinion; correct?</p> <p>6 A These are in support of my opinion.</p> <p>7 Q And they are included in the section of</p> <p>8 your opinion entitled "Analysis," where you would weigh</p> <p>9 the factors and the code and advise the Board of</p> <p>10 Adjustment as to your position?</p> <p>11 A That's correct.</p> <p>12 Q And in here, those are the provisions you</p> <p>13 cite?</p> <p>14 A Yes.</p> <p>15 MS. CRAWFORD: I believe those are my</p> <p>16 questions of this witness.</p> <p>17 MR. THERIAQUE: Mr. Chairman, I have a couple</p> <p>18 of brief follow-up.</p> <p>19 MR. CHAIRMAN: Sure.</p> <p>20 MR. THERIAQUE: Thank you, sir.</p> <p>21 REDIRECT EXAMINATION</p> <p>22 BY MR. THERIAQUE:</p> <p>23 Q Ms. Gutscher, just so the record is clear,</p> <p>24 your determination that this project meets number (e)(5)</p> <p>25 on LDC 3-2.10 is not based upon (e)(3); correct?</p>	<p style="text-align: right;">Page 44</p> <p>1 A That is correct.</p> <p>2 Q And, in fact, when you refer to the</p> <p>3 infill, you were just discussing infill as a concept,</p> <p>4 not a vocational criterion; is that correct?</p> <p>5 A That's correct.</p> <p>6 Q How many acres, again, is this property?</p> <p>7 A 3.4.</p> <p>8 Q And how many acres are undeveloped?</p> <p>9 A 2.15.</p> <p>10 Q Would you say that leaving two-plus acres</p> <p>11 out of a three-acre parcel was exceptional?</p> <p>12 A I agree with that, yes.</p> <p>13 Q Would you consider leaving over two acres</p> <p>14 untouched on a three-acre parcel to be a unique</p> <p>15 circumstance?</p> <p>16 A I will say that is true. And I have never</p> <p>17 come across that in my 20-plus years as a land use</p> <p>18 planner.</p> <p>19 Q And in your report, if you can help me</p> <p>20 find it again, I believe you have the setbacks. Was it</p> <p>21 page --</p> <p>22 A It's page 12.</p> <p>23 Q Page 12. Thank you. And you indicated in</p> <p>24 Table 3 the setback comparison. Do you see that?</p> <p>25 A I do.</p>

<p style="text-align: right;">Page 45</p> <p>1 Q And you indicated that there was a 15-foot 2 setback for the front and that this property was 3 providing 97 feet? 4 A That's correct. 5 Q And that it exceeded the requirement by 6 547 percent? 7 A That is correct. 8 Q Do you think the locational criteria 9 contemplated an applicant submitting an application that 10 exceeded the front setback by 547 percent? 11 A I do not. 12 Q Do you consider that to be a unique 13 circumstance? 14 A I do. 15 Q The rear was 15 feet required by the code, 16 and I believe you said that the rear here has 82 feet to 17 exceed by 447 percent; is that correct? 18 A That's correct. 19 Q Do you consider that to be an exceptional 20 setback? 21 A I do. 22 Q Do you consider that to be unique for this 23 property? 24 A I do. 25 Q Do you believe the code contemplated a</p>	<p style="text-align: right;">Page 46</p> <p>1 property owner offering to exceed the rear setback by 2 447 percent? 3 A I do not. I do not think -- I think that 4 is excessive, and I think that is something that most 5 developers, if not all developers, would not do. 6 Q Would that be a unique circumstance? 7 A It would. 8 Q Then on Table 3, you refer to the side 9 setback of ten feet and that there are 231 feet at the 10 rear corner exceeding the County's regulations by 2,210 11 percent? 12 A That is correct. 13 Q Do you consider that to be a unique 14 circumstance that a property owner would exceed the 15 setback requirement by 2,210 percent? 16 A I do. 17 Q And on the side, the code requires ten 18 feet. I believe your table states that the applicant 19 here is providing 175 feet and that the applicant is 20 proposing to exceed the County's regulations by 1,650 21 percent; is that correct? 22 A That's correct. 23 Q Do you consider exceeding the side setback 24 by 1,650 percent to be a unique circumstance not 25 contemplated by locational criteria?</p>
<p style="text-align: right;">Page 47</p> <p>1 A I do. 2 Q Would you consider that all of the side 3 setbacks and the rear setback and the front setback are 4 exceptional setbacks? 5 A I do consider them exceptional, yes. 6 Q And have you ever seen a property owner 7 that had a three-acre plus or minus parcel offer to not 8 develop more than two-thirds of the property of the 9 developed property? 10 A Not only that, but I have never seen a 11 developer not clear the property for ease of visibility 12 on a site like this. 13 MR. THERIAQUE: Thank you. No more questions. 14 MS. CRAWFORD: If I may have a quick 15 follow-up. 16 RECROSS-EXAMINATION 17 BY MS. CRAWFORD: 18 Q Ms. Goocher -- Gutcher -- 19 A Gutcher. 20 Q Gutcher. I'm so sorry. 21 Do you agree that the setbacks you just 22 described with Mr. Theriaque are performance standards 23 and not locational criteria? 24 A They are not locational criteria. 25 Q And would you agree that on any number of</p>	<p style="text-align: right;">Page 48</p> <p>1 occasions there are property owners who do not fully 2 develop the entire parcel and leave vacant acreage? 3 A I will concur that when a developer has 4 excessive amounts of property that are not part of the 5 development plan, those are usually lands that are held 6 for future sale or future development. 7 Q And that may be with your clients, but, in 8 general, there are parcels throughout counties that are 9 only partially developed and leave vacant acreage? 10 A I agree that in my 20-years plus of 11 planning that those parcels are usually reserved 12 for future sale or future development. 13 Q And there is no requirement that that be 14 the case? 15 A Are you asking me if there is a 16 requirement to leave those in vacant state? 17 Q Do you agree with me -- 18 A Correct. That would be correct. 19 MS. CRAWFORD: Thank you. I believe those are 20 my questions. 21 MR. CHAIRMAN: Let's see if the board has any 22 questions of your speaker. And if you have no 23 objection, I believe it would be beneficial if -- I 24 know you have other witnesses and speakers. I 25 think it would be beneficial to the board members</p>

<p style="text-align: right;">Page 49</p> <p>1 if we went ahead and got the staff presentation 2 presented to us. Do you have any objection to 3 that? 4 MR. THERIAQUE: No objection, Mr. Chairman. 5 MR. CHAIRMAN: Thank you, sir. 6 MR. THERIAQUE: As long as I still retain the 7 right to call my remaining witnesses. 8 MR. CHAIRMAN: Yes, sir. 9 MR. THERIAQUE: Thank you. 10 MR. CHAIRMAN: Board members, any questions of 11 the applicant speaker? 12 MR. GODWIN: Mr. Chairman, I have one. 13 The property you said, if I recall 14 correctly, it was two-plus acres that are going to 15 be remaining in its present state or something like 16 that? 17 THE WITNESS: That is correct. 18 MR. GODWIN: Would it be possible later on 19 for that property to be developed? 20 THE WITNESS: I will let the developer answer 21 that question. That would be up to -- I think he 22 would better answer that. 23 MR. GODWIN: Well, just in theory, would that 24 be possible? 25 THE WITNESS: It depends on the type of</p>	<p style="text-align: right;">Page 50</p> <p>1 development, the setbacks if they can meet them. 2 It depends on whether or not FDOT will issue a 3 driveway permit that close to this development. 4 There are a number of factors. 5 And they are centering, as you can see, 6 in the center of the site, so that doesn't really 7 leave a whole lot of room on either side for 8 another -- I would be more concerned if they were 9 either on one-half or the other, but they are dead 10 center. 11 MR. THERIAQUE: Mr. Chairman, on that 12 particular issue, Tom Hodges is the developer. 13 Perhaps he could answer that question, if that 14 would be appropriate. 15 MR. CHAIRMAN: That would be great. Thank 16 you. 17 MR. THERIAQUE: Mr. Hodges. Mr. Hodges, 18 please identify yourself for the record and your 19 position. 20 MR. HODGES: Tom Hodges, vice president of 21 operations, Teramore Development. Do you need my 22 address again? 23 MR. THERIAQUE: Please. 24 MR. HODGES: 121 Parkway Drive, Thomasville, 25 Georgia.</p>
<p style="text-align: right;">Page 51</p> <p>1 We currently hold a lease with Dollar 2 General. It's a 15-year triple-net lease with four 3 five-year options. Inside of that lease, 4 obviously, there are many exhibits. And one of 5 those is going to be this surveyed property. 6 So this 3.45 acres is actually going to 7 be the demised premises in the lease, and the lease 8 does not allow for any future development while the 9 Dollar General is on the property. So there will 10 be no opportunity to develop this other property, 11 the remaining buffering property, while the Dollar 12 General is in place. 13 MR. GODWIN: And how long is the lease? 14 MR. HODGES: A 15-year initial term with four 15 five-year options at the end of that 15-year term. 16 MR. GODWIN: Are those negotiated or 17 automatic? 18 MR. HODGES: They are automatically available 19 to Dollar General. They can -- at the end of 15 20 years, they can decide to relocate or continue to 21 operate the store after 15 years. 22 MR. CHAIRMAN: Thank you, sir. 23 MR. HODGES: Thank you. 24 MR. CHAIRMAN: Again, if there is no 25 objection, we will have staff make their</p>	<p style="text-align: right;">Page 52</p> <p>1 presentation, and you will have a chance to have 2 your witnesses later if that is okay. 3 MR. THERIAQUE: Yes, sir. 4 MR. CHAIRMAN: All right, staff. 5 WHEREUPON, 6 ANDREW HOLMER 7 was called as a witness and, after having been first 8 duly sworn, testified as follows: 9 MR. HOLMER: I'm Andrew Holmer, again, with 10 Development Services. I'm going to go through the 11 maps on the site just to kind of orient everybody 12 and show everybody where we are. 13 This is our location map showing where 14 it's located along Gulf Beach Highway. This is a 15 500-foot radius map showing the zoning on site is 16 commercial. To the south, you see low density 17 residential and to the north, high density 18 residential. That black line is the 500-foot 19 radius. 20 Future land use on site and throughout 21 that whole area is mixed-use suburban. 22 This is an aerial map of the site. As 23 you can see, it's currently undeveloped. You have 24 single-family residential uses everywhere around 25 that.</p>

<p style="text-align: right;">Page 53</p> <p>1 The public hearing sign posted on site. 2 We are getting new signs. Yeah. I should have -- 3 they have longer legs on them. I will tell 4 everyone in the audience who may have had concerns 5 about that, those little metal legs do not do so 6 well in high winds and sand. 7 So this is looking north at the site. 8 From where the sign was posted, as you can see, 9 like I said, it's an undeveloped vegetative site. 10 And looking east along Gulf Beach 11 Highway, you can see the sidewalk and right-of-way 12 there. It's on the north side of Gulf Beach. 13 This is a map showing on the inner circle 14 is a quarter-mile buffer. The outer circle is a 15 half-mile buffer. These are both referred to in 16 the locational criteria for commercial zoning. 17 This is the zoning within those two 18 buffers of a quarter mile and half mile. As I do 19 for you-all with various appeal hearings, I do put 20 the code sections up there. The speakers are using 21 actual copies of the code. 22 If you can skip down a bit more. 23 And here is, as I put up there, the 24 appeal criteria, a definition from the state on -- 25 from the statutes on arbitrary and capricious and</p>	<p style="text-align: right;">Page 54</p> <p>1 the criteria for everyone in the public to speak 2 to. We will put these back up when we get to 3 public speakers just to help folks out. 4 MS. CRAWFORD: I just have one or maybe two 5 questions for you. 6 DIRECT EXAMINATION 7 BY MS. CRAWFORD: 8 Q Gulf Beach Highway, is that a collector 9 road? 10 A Yes. I put that on the map legend. You 11 can see by the dark blue color. Sorry it doesn't come 12 up so well on our equipment that we currently have. 13 Once again, like our wonderful microphone 14 here, we are getting an upgrade in equipment, folks, 15 next month. 16 Yes, Gulf Beach Highway is what is 17 classified as a major collector road. 18 Q And within that quarter-mile and half-mile 19 radius, is there the necessary intersection as required 20 by, I guess, locational criteria one, two and four? 21 A The only intersections with that major 22 collector are local roads. Within the quarter mile, 23 within the half mile, the nearest intersection with 24 anything other than a local road is where Bauer Road 25 connects off to the west.</p>
<p style="text-align: right;">Page 55</p> <p>1 Q And that is outside of the half mile? 2 A Yes, ma'am. 3 MS. CRAWFORD: Those are my questions. 4 MR. CHAIRMAN: Board members, any questions of 5 staff or staff counsel? 6 (No response) 7 Applicant, any questions of staff? 8 MR. THERIAQUE: Yes. Thank you, Mr. Chairman. 9 CROSS-EXAMINATION 10 BY MR. THERIAQUE: 11 Q Good morning, Mr. Holmer. 12 A Good morning. 13 Q How are you today? 14 A Hanging in. 15 Q Hanging in, I got you. 16 Under the commercial designation, would 17 residential be allowed? 18 A Yes. This commercial zoning designation 19 is within MU-S, so residential is allowed. 20 Q And do you know what that density would 21 be? 22 A Can I have a second to pull it up for you? 23 Q Yes, please. 24 Is it 25 dwelling units to the acre? 25 A Maximum density of 25 dwelling units per</p>	<p style="text-align: right;">Page 56</p> <p>1 acre throughout the district. 2 Q And is there a maximum height requirement 3 on this property of 150 feet? 4 A I do believe so. Let me read that. 5 Maximum height, maximum structure height, 150 feet above 6 adjacent grade. Now, this is near the base. It's 7 within an AIPD 2. That's Airfield Influence Planning 8 District 2. 9 The Navy does comment on our development 10 review projects anywhere within the AIPDs. The AIPD 2, 11 however, does not have the stringent performance 12 standards you would find within the AIPD 1 and Accident 13 Potential Zones. So the height is regulated by the 14 zoning. Once again, at development review, I'm sure we 15 would have input from the Navy. 16 Q And would the residential development at 17 25 units per acre be as-of-right, or is there some type 18 of conditional use that is required? 19 A 25 units per acre is as-of-right. In 20 addition, mixed-use suburban has that same 25 units per 21 acre. 22 Q And would the 150-foot height limitation 23 also be as-of-right? 24 A Do you mean regarding the Comp Plan or -- 25 Q If I came in on this property for a</p>

<p style="text-align: right;">Page 57</p> <p>1 residential project at 25 dwelling units to the acre, 2 would I be allowed as-of-right to have a 150-foot high 3 structure? 4 A As established by the zoning. 5 Q Is that a yes? 6 A Yes, sir. 7 Q And this property is approximately 8 three-plus acres. I think it's 3.4. 9 A I believe the property appraiser says is 10 2.96. 11 Q It's surveyed at 3.45. 12 A I will go with the survey. 13 Q I got it. 14 And if I wanted to calculate maximum 15 density, I would multiply the 3.45 times 25; is that 16 correct? 17 A That will give you your maximum allowable 18 density, not guaranteed. 19 Q Correct. 20 So we are looking at somewhere around 21 potentially 75 to 80 dwelling units per acre -- or 22 excuse me -- for the project, not per acre? 23 A Yes, sir. Obviously, depending on site 24 conditions and other factors. 25 Q And if a residential project at 150 feet</p>	<p style="text-align: right;">Page 58</p> <p>1 were built with 85 units, would you believe that there 2 would be more of a loss of privacy for the surrounding 3 residential than what would be -- or what would occur 4 with a 9,100-square-foot Dollar General with a height of 5 22 feet? 6 A I can't say to the loss of privacy. I 7 would tell you that is a lot of density on the site in 8 relation to the surrounding areas. 9 MR. THERIAQUE: Thank you. 10 I have no other questions. 11 MR. CHAIRMAN: Board members, any questions of 12 staff? 13 (No response) 14 I know the applicant has more witnesses. 15 What I'm going to do is call on opposition. 16 MS. CRAWFORD: Mr. Chairman, I have an 17 additional witness for the County. I apologize. 18 MR. CHAIRMAN: Go ahead. 19 MS. CRAWFORD: I would call Horace Jones. 20 WHEREUPON, 21 HORACE JONES 22 was called as a witness and, after having been first 23 duly sworn, testified as follows: 24 DIRECT EXAMINATION 25 BY MS. CRAWFORD:</p>
<p style="text-align: right;">Page 59</p> <p>1 Q Mr. Jones, will you state for me your name 2 and occupation? 3 A My name is Horace Jones. I'm the director 4 of the Development Service Department of Escambia 5 County, Florida. 6 Q And how long have you been with the 7 County? 8 A I have been with the County a long time, 9 for approximately 17 years and counting for retirement. 10 Q In that 17 years, have you been in 11 Planning and Zoning? 12 A Yes. 13 Q Okay. As the Director of Planning and 14 Zoning, are you authorized by the code in Section 2-2.7 15 to confirm land uses development activities and review 16 for compatibility? 17 A Yes. 18 Q And when you review for compatibility, do 19 you give an official opinion? 20 A Yes. 21 Q And a compatibility determination? 22 A Yes. 23 Q And did you give a compatibility 24 determination in this case? 25 A Yes, I did.</p>	<p style="text-align: right;">Page 60</p> <p>1 Q And what was your determination? 2 A My determination was that it did not -- 3 the proposed use, commercial use, did not meet the 4 compatibility analysis as outlined in the Land 5 Development Code of Escambia County. 6 Q Okay. And we're going to walk through 7 that. 8 The application in this case, was it a 9 full site plan, DRC application, or was it simply to 10 review for compatibility? 11 A In this process, it was simply to review 12 for compatibility. 13 Q So if this outcome is favorable to the 14 applicant, they would still need to go through the full 15 site plan review -- 16 A Yes. 17 Q -- just so we are clear where we are at 18 this stage? 19 A Yes. 20 Q In making your determination, did you 21 review the compatibility analysis supplied by Teramore 22 Development and Ms. Gutcher? 23 A Yes, I did. 24 Q And do you agree generally with their 25 recitation of the definition of compatible as well as</p>

<p style="text-align: right;">Page 61</p> <p>1 the factors related to this specific cite and pages, I</p> <p>2 believe, three through about the end of nine?</p> <p>3 A Yes.</p> <p>4 Q And yet, you disagree that the Dollar</p> <p>5 General meets the documented compatibility?</p> <p>6 A Yes, I do disagree.</p> <p>7 Q What are the surrounding existing uses in</p> <p>8 this area?</p> <p>9 A Based upon -- based upon my analysis, it</p> <p>10 is established, existing, residential neighborhoods.</p> <p>11 Q And are there any commercial developments</p> <p>12 in this area?</p> <p>13 A According to my review, it's not.</p> <p>14 Q When you review compatibility and when you</p> <p>15 specifically reviewed this project, do you use the</p> <p>16 criteria located under 3-2.10(e)?</p> <p>17 A Yes.</p> <p>18 Q And do you agree that this property does</p> <p>19 not meet criteria one, two and four as conceded by the</p> <p>20 applicant?</p> <p>21 A I do agree.</p> <p>22 Q As to number three, the applicant also</p> <p>23 concedes they do not meet infill development. Would you</p> <p>24 agree that this is not infill development?</p> <p>25 A This is not infill development.</p>	<p style="text-align: right;">Page 62</p> <p>1 Q And can you tell the board why this is not</p> <p>2 infill development based on criterion three?</p> <p>3 A Yes. Based upon -- based upon the zoning</p> <p>4 district for commercial, which is 3-2.10, it states</p> <p>5 that, the specific performance. It says, "Along an</p> <p>6 arterial or collector street in an area where already</p> <p>7 established non-residential uses are otherwise</p> <p>8 consistent with a commercial district and where the new</p> <p>9 use would constitute infill development of a similar</p> <p>10 intensity as the conforming development on surrounding</p> <p>11 parcels."</p> <p>12 Basically, there are no other</p> <p>13 non-residential uses in the immediate vicinity or</p> <p>14 proximity to the proposed location. So, therefore,</p> <p>15 based upon the terms of three, it does not meet infill</p> <p>16 development.</p> <p>17 Q And further in three, would you agree that</p> <p>18 a Dollar General is not of similar intensity as other</p> <p>19 developments on surrounding parcels, which are HDR and</p> <p>20 LDR?</p> <p>21 A I do agree with that.</p> <p>22 Q And would the Dollar General be more</p> <p>23 intense?</p> <p>24 A Yes.</p> <p>25 Q So you're in agreement that it does not</p>
<p style="text-align: right;">Page 63</p> <p>1 meet number three?</p> <p>2 A It does not meet number three.</p> <p>3 Q Now, you have heard and reviewed the</p> <p>4 compatibility analysis by the applicant?</p> <p>5 A Yes, I did.</p> <p>6 Q And it's their position that they meet</p> <p>7 number five, documented compatibility?</p> <p>8 A Based upon -- based upon my position after</p> <p>9 review of the Land Development Code, it does not meet</p> <p>10 five.</p> <p>11 Q And would you agree that leaving empty</p> <p>12 space on a development is not a unique circumstance?</p> <p>13 A No, it's not.</p> <p>14 Q And does that commonly occur where someone</p> <p>15 develops a portion of their property and perhaps leaves</p> <p>16 several acres vacant?</p> <p>17 A Definitely.</p> <p>18 Q And would you agree that the majority of</p> <p>19 the applicant's compatibility analysis focused on infill</p> <p>20 development?</p> <p>21 A Yes, it did.</p> <p>22 Q And I believe three of the four Comp Plan</p> <p>23 provisions cited -- cite directly to infill development</p> <p>24 with one only citing general growth?</p> <p>25 A I do agree with that.</p>	<p style="text-align: right;">Page 64</p> <p>1 Q Outside of infill development, are you</p> <p>2 aware of any unique -- or I'm sorry -- outside of the</p> <p>3 empty acreage, are you aware of any other alleged unique</p> <p>4 circumstances related to this parcel?</p> <p>5 A No, I'm not.</p> <p>6 Q And is it your professional opinion that</p> <p>7 this proposed development would not achieve long-term</p> <p>8 compatibility with the existing and potential uses and</p> <p>9 would serve to create an incompatible area within the</p> <p>10 County?</p> <p>11 A I do agree with that.</p> <p>12 Q Now, in this case, were you provided an</p> <p>13 application for a highrise, 85-unit apartment complex?</p> <p>14 A No.</p> <p>15 Q So have you done any professional review</p> <p>16 as to whether or not someone could put 85 apartments in</p> <p>17 a highrise on that parcel?</p> <p>18 A No.</p> <p>19 Q Give me one second, please.</p> <p>20 If I could just walk you through some of</p> <p>21 the code provisions we discussed earlier. When you look</p> <p>22 at compatibility in 3-1.6, do you agree that even if a</p> <p>23 use is allowed in zoning, it's not automatically</p> <p>24 compatible?</p> <p>25 A I do agree with that.</p>

<p style="text-align: right;">Page 65</p> <p>1 Q And while this use is allowed in this</p> <p>2 zoning and future land use category, it's still your</p> <p>3 professional opinion that it's not compatible?</p> <p>4 A I do agree that it's not compatible.</p> <p>5 Q And that is based on its inability to meet</p> <p>6 those five criteria, or any one of those five criteria?</p> <p>7 A Yes.</p> <p>8 Q And do you agree that the code designates</p> <p>9 location criteria and states: "They're designed to</p> <p>10 create smooth transitions of use intensity from</p> <p>11 large-scale concentrations of general commercial uses</p> <p>12 near major street intersections to small-scale dispersed</p> <p>13 neighborhood commercial uses in proximity to residential</p> <p>14 areas"?</p> <p>15 A I do agree with that.</p> <p>16 Q And have you heard this morning the</p> <p>17 applicant refer to their development as a neighborhood</p> <p>18 commercial use?</p> <p>19 A I did hear it this morning.</p> <p>20 Q And does the code state that location</p> <p>21 criteria is to transition between large concentrations</p> <p>22 of commercial use to those smaller neighborhood</p> <p>23 commercial uses?</p> <p>24 A No, it does not.</p> <p>25 Q Does -- let me restate the question. I</p>	<p style="text-align: right;">Page 66</p> <p>1 think you may have misunderstood.</p> <p>2 In paragraph B, does it state: "These</p> <p>3 location criteria are designed to create smooth</p> <p>4 transition of use intensity from large-scale</p> <p>5 concentrations of general commercial uses near major</p> <p>6 street intersections to small-scale dispersed</p> <p>7 neighborhood commercial uses in proximity to residential</p> <p>8 areas"?</p> <p>9 A I do agree with that.</p> <p>10 Q And you agree that they have classified</p> <p>11 themselves as a neighborhood commercial use?</p> <p>12 A Yes.</p> <p>13 Q Based on this provision, is it your</p> <p>14 opinion that the location criteria included in the</p> <p>15 commercial category are to transition between the</p> <p>16 large-scale commercial use to the neighborhood</p> <p>17 commercial and not between a residential use to</p> <p>18 neighborhood commercial?</p> <p>19 A I do agree with that.</p> <p>20 Q And so based on the definition of location</p> <p>21 criteria, the premise alone would not meet that?</p> <p>22 A It would not meet it.</p> <p>23 Q And, again, the same section, paragraph C,</p> <p>24 would you agree that buffering, screening and</p> <p>25 landscaping may be used in addition to location</p>
<p style="text-align: right;">Page 67</p> <p>1 criteria, but it does not take the place of?</p> <p>2 A I agree that it's in addition to.</p> <p>3 Q And then, finally, I believe --</p> <p>4 MR. THERIAQUE: I'm sorry. I need to</p> <p>5 interrupt for one second. When you said B and C,</p> <p>6 what page were you on, please?</p> <p>7 MS. CRAWFORD: I was on -- let's see. I'm</p> <p>8 sorry. I forget. It was 3-1.6(b) and (c). And in</p> <p>9 my code, it's LDC 3:12 and 3:13.</p> <p>10 MR. THERIAQUE: Thank you.</p> <p>11 BY MS. CRAWFORD:</p> <p>12 Q And did you provide the applicant with a</p> <p>13 written opinion of your compatibility analysis?</p> <p>14 A Yes, I did.</p> <p>15 Q And in that opinion, do you cite their</p> <p>16 failure to meet each specific locational criteria as</p> <p>17 your basis for the denial --</p> <p>18 A Yes.</p> <p>19 Q -- for lack of compatibility?</p> <p>20 A Yes.</p> <p>21 Q And was your review based on your years of</p> <p>22 experience in planning and zoning?</p> <p>23 A Yes.</p> <p>24 Q And was it based on your interpretation as</p> <p>25 the planning official of the Land Development Code?</p>	<p style="text-align: right;">Page 68</p> <p>1 A Yes.</p> <p>2 Q And is that authority that has been given</p> <p>3 to you by the Board of County Commissioners?</p> <p>4 A Yes, they have.</p> <p>5 Q Through the County Administrator?</p> <p>6 A Yes.</p> <p>7 Q And has anything you heard here this</p> <p>8 morning from the planner for the developer changed your</p> <p>9 opinion about the compatibility of this proposed</p> <p>10 development?</p> <p>11 A No, it has not.</p> <p>12 Q So it remains your opinion that it is not</p> <p>13 compatible?</p> <p>14 A It remains my opinion that it is not</p> <p>15 compatible.</p> <p>16 MS. CRAWFORD: Those are my questions.</p> <p>17 MR. CHAIRMAN: Board members, any questions of</p> <p>18 Mr. Jones?</p> <p>19 (No response)</p> <p>20 MR. CHAIRMAN: Applicant?</p> <p>21 MR. THERIAQUE: Yes, sir.</p> <p>22 CROSS-EXAMINATION</p> <p>23 BY MR. THERIAQUE:</p> <p>24 Q Good morning, Mr. Jones.</p> <p>25 A Good morning, sir.</p>

<p style="text-align: right;">Page 69</p> <p>1 Q Could you turn to LDC 3:12? It's 3-1.6, 2 compatibility language. 3 A Yes, sir. 4 Q And do you see paragraph B? 5 A I believe yes, I do. 6 Q Would you read the second sentence that 7 begins "most criteria"? 8 A It says -- reading 3-1.6(b), "Most 9 criteria are designed to create smooth transitions of 10 use intensity from large-scale concentrations of general 11 commercial uses near major street intersections to 12 small-scale dispersed neighborhood commercial uses in 13 proximity to residential areas." 14 Q Thank you. 15 It doesn't say all criteria; correct? 16 A It says most. 17 Q So that would mean some of the criteria 18 are not designed to address a smooth transition from 19 large-scale concentrations of general commercial to 20 small-scale dispersed neighborhood commercial uses; 21 isn't that true? 22 A It says most. 23 Q Right. So some would not? 24 A Yes, sir. 25 Q Thank you.</p>	<p style="text-align: right;">Page 70</p> <p>1 When you determined that the Dollar 2 General was not compatible with the residential areas, 3 did you determine that that store or proposed store was 4 not compatible because of smoke? 5 A No, sir. 6 Q Did you determine that it was not 7 compatible because of odors? 8 A No, sir. 9 Q Did you determine it was not compatible 10 because of mass and bulk? 11 A No, sir. 12 Q Did you determine that it was not 13 compatible because of noise? 14 A No, sir. 15 Q Did you determine that the surrounding 16 residential uses could no longer continue as residential 17 uses if the property were developed with a Dollar 18 General? 19 A I did not determine that. 20 Q So you would agree that the surrounding 21 residential uses could continue to function for 22 residential uses if the Dollar General is developed on 23 this property? 24 A The residential uses could remain. 25 Q Would you agree with me, as a planner,</p>
<p style="text-align: right;">Page 71</p> <p>1 that the factors that we looked at for compatibility are 2 mass and bulk; is that correct? 3 A It's not in the code. 4 Q It's not in the code? 5 A Yes, sir. That's not when I reviewed. 6 Q Tell me where in the code that you're 7 referring to, sir. 8 A I'm referring to the zoning district under 9 commercial zoning district, 3-2.10(e). 10 Q Isn't there a definition of compatibility 11 in the code? 12 A There is a definition of compatibility in 13 the code, yes, sir. 14 Q As a planner -- let me back up for a 15 second. 16 (e)(5) doesn't address what compatibility 17 is; correct? It just states you have to be compatible. 18 A No, it does not specifically state what 19 the definition -- the definition of compatibility. 20 Q Right. So it says you will be able to 21 achieve long-term compatibility with existing and 22 potential uses; correct? 23 A Based upon the -- based upon the many 24 requirements of this particular -- of this specific 25 zoning district.</p>	<p style="text-align: right;">Page 72</p> <p>1 Q I understand. 2 Now, as a planner, not what is in (e)(5). 3 Are you A.I.C.P.? 4 A No, I'm not. 5 Q Okay. As a planner, have you analyzed 6 compatibility on other projects? 7 A Yes, I have. 8 Q And isn't it true that, as a planner, when 9 you look at compatibility, one of the factors is the 10 relationship of mass and bulk to surrounding properties? 11 A Based upon -- based upon my review as a 12 planner within Escambia County, I have based my 13 compatibility analysis on the requirements of the Land 14 Development Code. 15 Q Okay. Let me -- we are cross-talking 16 here, sir. 17 I understand there is a definition of 18 compatibility, but you are a planner; correct? 19 A Correct. 20 Q And would you agree with me that, as a 21 planner, one of the factors that a planner looks at when 22 they are evaluating a proposed development is the 23 relationship of the mass and bulk of the proposed use 24 with the surrounding existing uses? 25 A A planner could look at that.</p>

<p style="text-align: right;">Page 73</p> <p>1 Q Thank you.</p> <p>2 Would a planner also look at whether a</p> <p>3 proposed use would generate noise that would disturb the</p> <p>4 surrounding properties?</p> <p>5 A If it is part of their requirements, they</p> <p>6 could.</p> <p>7 Q And would a planner also look at odor and</p> <p>8 glare?</p> <p>9 A If it is part of their criteria, they</p> <p>10 could.</p> <p>11 Q Turn to -- please identify what you</p> <p>12 believe are the criteria for determining compatibility</p> <p>13 in this Land Development Code.</p> <p>14 A The criteria for determining compatibility</p> <p>15 in this Land Development Code is guided by Section</p> <p>16 3-1.6, but more specifically, it is guided by the zoning</p> <p>17 district requirements of 3-2.10 under (e).</p> <p>18 Q Mr. Jones, isn't it true that 10(e), the</p> <p>19 locational criteria, are not all compatibility</p> <p>20 requirements? In fact, only one of them is a</p> <p>21 compatibility requirement, and that is (e)(5)?</p> <p>22 A But based upon -- based upon the Land and</p> <p>23 Development Code for reviewing compatibility, one of the</p> <p>24 requirements is to look at the location criteria. So,</p> <p>25 basically, this is what we do in Escambia County inside</p>	<p style="text-align: right;">Page 74</p> <p>1 the Land Development Code.</p> <p>2 Q Could you turn to Section 6-0.3 in the</p> <p>3 code?</p> <p>4 A Yes. That is the definitions, yes, sir,</p> <p>5 the definition for compatibility.</p> <p>6 Q What I'm looking at is 6:11, compatible.</p> <p>7 I don't know if your code is broken down the same as</p> <p>8 mine. Do you see that, sir?</p> <p>9 A Are you looking at the definition for</p> <p>10 compatible?</p> <p>11 Q Yes.</p> <p>12 A Yes, sir.</p> <p>13 Q "A condition" -- and I'm reading this. "A</p> <p>14 condition in which land uses, activities or conditions</p> <p>15 can coexist in relative proximity to each other in a</p> <p>16 stable fashion over time, such that no use, activity, or</p> <p>17 condition is unduly negatively impacted directly or</p> <p>18 indirectly by another use, activity or condition."</p> <p>19 Did I read that correctly?</p> <p>20 A Yes, sir. That is the way that it's</p> <p>21 worded.</p> <p>22 Q That's the County's definition?</p> <p>23 A Yes, sir.</p> <p>24 Q And isn't it true that under the County's</p> <p>25 definition that there can be some degree of negative</p>
<p style="text-align: right;">Page 75</p> <p>1 impact? The negative impact just can't reach the level</p> <p>2 of unduly negative; correct?</p> <p>3 A That's what it says.</p> <p>4 Q Is this the definition that you use when</p> <p>5 you are doing a compatibility analysis?</p> <p>6 A Based upon the definition, we do use that</p> <p>7 as guided by the specific zoning district requirement.</p> <p>8 Q And tell me what about the proposed Dollar</p> <p>9 General would fail to meet this definition. That's a</p> <p>10 poorly worded question. Let me restate it.</p> <p>11 Isn't it true that the proposed Dollar</p> <p>12 General can coexist in relative proximity to the</p> <p>13 surrounding residential uses in a stable fashion over</p> <p>14 time, such that no use, activity or condition is unduly</p> <p>15 negatively impacted, directly or indirectly, by another</p> <p>16 use, activity or condition?</p> <p>17 A Along with the criteria, the other</p> <p>18 criteria, as inside the zoning district of the Land</p> <p>19 Development Code in its entirety, it has to meet all of</p> <p>20 those things because the definition just provides</p> <p>21 general guidance, just a general definition.</p> <p>22 Q That didn't answer my question.</p> <p>23 My question was: Isn't it true that the</p> <p>24 proposed Dollar General on the subject property can</p> <p>25 coexist in relative proximity to the surrounding</p>	<p style="text-align: right;">Page 76</p> <p>1 residential uses in a stable fashion over time, such</p> <p>2 that no use, activity or condition is unduly negatively</p> <p>3 impacted, directly or indirectly?</p> <p>4 A Based upon the location criteria, it does</p> <p>5 not meet the definition of what we consider</p> <p>6 compatibility?</p> <p>7 MR. THERIAQUE: Mr. Chairman, if I may, I'm</p> <p>8 not asking about the location criteria. I don't</p> <p>9 want to be redundant. My question is under the</p> <p>10 definition that is contained in the County's Land</p> <p>11 Development Code. And I'm reading it almost</p> <p>12 verbatim. Whether -- and I will ask it again, if I</p> <p>13 may, because I still haven't gotten a yes or a no.</p> <p>14 BY MR. THERIAQUE:</p> <p>15 Q Isn't it true that the proposed Dollar</p> <p>16 General on the subject property can coexist in relative</p> <p>17 proximity to the surrounding residential uses in a</p> <p>18 stable fashion over time, such that no use, activity or</p> <p>19 condition is unduly negatively impacted, directly or</p> <p>20 indirectly?</p> <p>21 A Without me having a site plan, it cannot</p> <p>22 meet those things. And I cannot ascertain that at this</p> <p>23 time. Nor will I be able to say that it can because it</p> <p>24 does not meet the location criteria of all the other</p> <p>25 standards within the Land Development Code. I have to</p>

<p style="text-align: right;">Page 77</p> <p>1 take it in whole, not just in part, the entire zoning 2 districts and requirements of location criteria, which 3 is part of this review, in determining does it meet 4 compatibility. 5 Q So tell me how the proposed Dollar General 6 will create an impact -- a negative impact on the 7 surrounding residential use, sir. 8 UNKNOWN SPEAKER: Ask the residents. 9 UNKNOWN SPEAKER: Yes, we live there. 10 BY MR. THERIAQUE: 11 Q I'm asking him directly. 12 A Without me, again -- respectfully, without 13 me having a site plan to review, at this time I base my 14 review upon the zoning district doesn't meet the 15 location criteria. My determination is still the same. 16 It does not. 17 Whether or not those other elements, those 18 other performance standards, they will have to be 19 reviewed during the site plan review process. At this 20 time, we are not at this point. It doesn't meet the 21 compatibility based upon this review, respectfully. 22 Q Mr. Jones -- 23 A Yes, sir. 24 Q -- can you turn to LDC 3-50, page 3:50? 25 A Can you give me a section number, please,</p>	<p style="text-align: right;">Page 78</p> <p>1 sir? 2 Q (e)(5). 3 A (e)(5), yes, sir. 4 Q It's the location criteria. 5 A Yes, sir. 6 Q You are saying that compatibility is 7 something you can't determine right now. Yet, the code 8 specifically provides an applicant or a property owner 9 with the right to demonstrate location criteria through 10 documenting compatibility. 11 I understand your statement about location 12 criteria, but what I still haven't heard from you, sir, 13 is how this proposed Dollar General on this property is 14 incompatible as defined by the County's Land Development 15 Code with the surrounding residential uses? Simply 16 saying that it doesn't meet the location criteria 17 doesn't provide a compatibility analysis. 18 A It says, "unique circumstances, documented 19 compatibility." Under five, it says: "A compatibility 20 analysis prepared by the applicant provides competent, 21 substantial evidence of unique circumstances." There is 22 nothing unique. One of the criteria -- 23 Q Go ahead, sir. 24 A One of the criteria, Mr. Theriaque, is the 25 location criteria will help us determine the location</p>
<p style="text-align: right;">Page 79</p> <p>1 compatibility. Location criteria is a very -- is a 2 very, very essential factor in determining whether a 3 proposed use meets the compatibility test analysis. 4 Q Isn't it true that you were provided a 5 preliminary site plan as part of this compatibility 6 analysis? 7 A It was only a preliminary review, only. 8 And it was asked of me, if I may, they wanted to make 9 sure that it does meet the location criteria before they 10 submit, make the initial submittal. That was at the 11 applicant's request because they realized that this 12 could be an issue. So at their request, I provided them 13 a determination. 14 Q Isn't it true that in December you 15 instructed or informed Jennifer Bell that it was your 16 opinion that this project did not meet the location 17 criteria? 18 A Yes, I did tell Miss Jennifer Bell that, 19 the engineer of record. 20 Q So it wasn't that the applicant had a 21 concern regarding whether they met the location 22 criteria? It was something that you had already told 23 the applicant's engineer; correct? 24 A Because it's my understanding that the 25 engineer of record was representing her client. So,</p>	<p style="text-align: right;">Page 80</p> <p>1 therefore, since she represents her client, I relayed 2 that information back to her as the agent for the 3 property owner or whomever that client was at the time. 4 Q Isn't it true that I contacted the County 5 attorney, as well as you, to ask for us to tee up the 6 locational criteria because of your position that the 7 property did not meet the locational criteria and that 8 we didn't want to incur the time and expenses submitting 9 full site plans and engineering drawings in case the 10 board ultimately determined that it did not meet the 11 criteria? 12 A Yes, sir. That was the understanding. 13 Q So we weren't trying to circumvent a 14 process? 15 A No. No, sir. 16 MR. THERIAQUE: Thank you. 17 No other questions of Mr. Jones at this 18 time. 19 MS. CRAWFORD: I have a few follow-up, if I 20 may. 21 MR. CHAIRMAN: Go ahead. 22 REDIRECT EXAMINATION 23 BY MS. CRAWFORD: 24 Q Mr. Jones, you have been asked about 25 noise, odor, glare, smoke. Are those issues that would</p>

<p style="text-align: right;">Page 81</p> <p>1 be addressed in a full development review committee, 2 DRC, process? 3 A Yes, sir. 4 Q Yes, ma'am. 5 A Yes, ma'am. 6 Q Is that anything that you looked at 7 for this threshold determination related to 8 compatibility? 9 A No, sir -- no, ma'am. 10 Q Isn't this a threshold determination? 11 A Yes. 12 Q So this must be determined at the request 13 of the applicant prior to them submitting? 14 A Yes. 15 Q Now, you were asked a lot about the 16 definition of compatible. Did you look at the 17 definition of compatible before you gave your 18 determination? 19 A Yes, I did look at it. 20 Q And did you consider the definition of 21 compatible that is within our code when you made the 22 determination? 23 A Yes. 24 Q Based on your review of the definition, an 25 application of the code and definition to this project,</p>	<p style="text-align: right;">Page 82</p> <p>1 is it your opinion that it is incompatible? 2 A Yes. My opinion is it is still 3 incompatible. 4 Q And when you look at that definition, in 5 order to be compatible, it must be shown that it can 6 coexist in relative proximity in a stable fashion over 7 time? 8 A That's what the definition says. 9 Q And this is a proposed store, basically a 10 general-type store, surrounded completely by commercial 11 residential -- I'm sorry -- residential homes -- 12 A Yes, definitely. 13 Q -- an already established, built-out -- 14 A Yes. 15 Q -- platted subdivision; is that correct? 16 A Yes. 17 MS. CRAWFORD: I believe those are my only 18 follow-up questions. Thank you. 19 MR. CHAIRMAN: Board members, any questions of 20 staff, Mr. Jones or staff counsel at this time? 21 (No response) 22 MR. CHAIRMAN: We normally limit speakers to 23 three minutes. Even at three minutes, we will be 24 here until Thursday week. What I would like to do 25 is perhaps, as a group, you have kind of a</p>
<p style="text-align: right;">Page 83</p> <p>1 representative speaker who could address the issues 2 that you have as residents of that area. And then 3 we will let -- we will let everybody speak who 4 wants to be heard, but there is no need of 5 repeating what one says. So is there a -- 6 MS. CRAWFORD: Mr. Chairman, if I may 7 interject as to that. I would ask that the public 8 be allowed or be asked to state their name and 9 state either I agree with the prior speaker as to 10 x, y and z, or I disagree. 11 For the record, because this is 12 quasi-judicial, I want the record to establish who 13 the individual was, their address and their concern 14 with the adverse impact on their personal property. 15 MR. CHAIRMAN: We certainly concur that that 16 is proper to do. So -- 17 MR. THERIAQUE: Mr. Chairman? 18 MR. CHAIRMAN: -- let's begin right here. 19 MR. THERIAQUE: Mr. Chairman? Mr. Chairman? 20 Excuse me, sir. 21 MR. CHAIRMAN: Yes, sir. 22 MR. THERIAQUE: I was wondering, we have a lot 23 of people here, and you said we were going to be 24 here until a week from Thursday, if we could take a 25 five-minute restroom break, and allow the Court</p>	<p style="text-align: right;">Page 84</p> <p>1 Reporter to break. She's been going for over two 2 hours straight. 3 MR. CHAIRMAN: All right. 4 MR. JONES: I concur. 5 MR. THERIAQUE: And Mr. Jones concurred. It's 6 the first thing we have agreed upon all day. 7 MR. CHAIRMAN: A five-minute break. 8 (Recess taken) 9 MR. CHAIRMAN: We are going to reconvene. 10 In order to expedite the process, I'm 11 going to call out your name. And if you would, 12 line up at the center of the podium toward the back 13 of the room. Come to the podium and state your 14 name and address and if you are for or against the 15 project. 16 UNKNOWN SPEAKER: I'm sorry. Could you repeat 17 that, please? 18 MR. CHAIRMAN: Pardon? 19 UNKNOWN SPEAKER: Could you repeat that, 20 please? 21 MR. CHAIRMAN: I'm going to call out names 22 that have signed up to speak. And we will ask you 23 to come down the center and just make a line to the 24 podium and come up to the podium and state your 25 name and address and whether you're for or against</p>

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<p>1 the project, yea or nay.</p> <p>2 Barbara Notz, Tom Sullivan, Chris</p> <p>3 Webster, Kimberly Laye, James Henderson, Joan</p> <p>4 Henderson, Bill Barnes, Robert -- and I believe</p> <p>5 it's LaRick or LaRock, Robert, John Hallam, John</p> <p>6 Petit, Shawn Duane, Christine Harper, Bob</p> <p>7 Sterriker, Cindy Marvel, Sheri Lynch, Lindsey</p> <p>8 Brown, Jim Matthews, Walt Viglienzone, Brandi</p> <p>9 Schoenvogel.</p> <p>10 I think what we will -- we have a lot</p> <p>11 more, but we'll go ahead and get started.</p> <p>12 MS. BARBARA NOTZ: My name is Barbara Notz. I</p> <p>13 live at 11501 Gulf Beach Highway, and I am against</p> <p>14 it.</p> <p>15 MR. HODGES: I would just like to ask</p> <p>16 everybody that is speaking -- we are getting new</p> <p>17 equipment. I just have to keep saying that.</p> <p>18 Please speak directly into the microphone.</p> <p>19 MS. KIMBERLY LAYE: Kimberly Laye, 425 Palm</p> <p>20 Lake Drive, against.</p> <p>21 MR. TOM SULLIVAN: Tom Sullivan, 6125 Electra</p> <p>22 Lane, Pensacola. We are opposed to this project.</p> <p>23 We are original homeowners in Chevalier. We had</p> <p>24 our home built via construction in 1994.</p> <p>25 We are asking this board to concur with</p>	<p>1 the planning official's decision that determined</p> <p>2 the location of a Dollar General store at the</p> <p>3 proposed site on Gulf Beach Highway would not be</p> <p>4 compatible with our residential and neighborhood</p> <p>5 communities.</p> <p>6 We are in complete agreement with the</p> <p>7 planning -- with the findings of the planning</p> <p>8 official who clearly cited the reasons why this</p> <p>9 development should not proceed.</p> <p>10 After reviewing this decision, we decided</p> <p>11 to consider where other Dollar Generals were</p> <p>12 located. This helped us to understand how the</p> <p>13 planning board reached their decision to allow</p> <p>14 development on those sites.</p> <p>15 It became very clear the board would have</p> <p>16 no problem signing off on stores near Sorrento</p> <p>17 Road, for example, the one at Bauer Road and</p> <p>18 Lillian Highway or Kingsport and Gulf Beach</p> <p>19 Highway, as well as many others.</p> <p>20 These locations are all in higher traffic</p> <p>21 density areas where commercial development had</p> <p>22 already been established when the request to</p> <p>23 develop these sites were initiated. They all fit</p> <p>24 the requirements as described by the County Land</p> <p>25 Development Code.</p>
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<p>1 A Dollar General at the Gulf Beach</p> <p>2 Highway/Chevalier location is not compatible with</p> <p>3 an established residential community. It does not</p> <p>4 meet the criteria of the LDC. as we stated, and</p> <p>5 would not only break up the community, would break</p> <p>6 up the community for further community commercial</p> <p>7 development.</p> <p>8 We are for progress and appreciate having</p> <p>9 retail facilities such as Dollar General. We wish</p> <p>10 them as well as they seek to build stores in other</p> <p>11 locations, locations that are available in areas</p> <p>12 zoned specifically for their business model and are</p> <p>13 compatible with our local zoning laws.</p> <p>14 Thank you.</p> <p>15 MR. CHAIRMAN: Thank you.</p> <p>16 MR. THERIAQUE: Mr. Chairman, I have a few</p> <p>17 questions.</p> <p>18 MR. TOM SULLIVAN: Yes, sir.</p> <p>19 MR. CHAIRMAN: Yes, sir.</p> <p>20 MR. THERIAQUE: I have a few questions of the</p> <p>21 speaker.</p> <p>22 MR. CHAIRMAN: Yes, sir. Go ahead.</p> <p>23 MR. THERIAQUE: Was it Tom Sullivan.</p> <p>24 MR. TOM SULLIVAN: Correct.</p> <p>25 MR. THERIAQUE: Thank you, sir. I wanted to</p>	<p>1 make sure I had your name correct.</p> <p>2 Are you an urban regional planner?</p> <p>3 MR. TOM SULLIVAN: No.</p> <p>4 MR. THERIAQUE: And you said that if this is</p> <p>5 approved, that it would break up the community.</p> <p>6 Isn't it true that there are no other properties</p> <p>7 near your neighborhood that have a commercial</p> <p>8 zoning district?</p> <p>9 MR. TOM SULLIVAN: At this time, true.</p> <p>10 MR. THERIAQUE: So other properties would have</p> <p>11 to be rezoned for your theory; correct?</p> <p>12 MR. TOM SULLIVAN: Exactly. Exactly.</p> <p>13 MR. THERIAQUE: No other questions. Thank</p> <p>14 you.</p> <p>15 MR. BILL BARNES: Bill Barnes, 5099 Grumman,</p> <p>16 Chevalier, against.</p> <p>17 MR. CHAIRMAN: Thank you.</p> <p>18 MR. ROBERT LAROCK: Robert LaRock, 6021</p> <p>19 Firefly Drive, Pensacola, against.</p> <p>20 MR. JAMES HENDERSON: James Henderson, 4106</p> <p>21 Cobia Street. I'm against.</p> <p>22 MS. JOAN HENDERSON: Joan Henderson, 4106</p> <p>23 Cobia Street, Chevalier, against.</p> <p>24 MR. BOB STERRIKER: Bob Sterriker, 1016 Avia</p> <p>25 Lane, against.</p>

<p style="text-align: right;">Page 89</p> <p>1 MS. CINDY COOK: Hi. My name is Cindy Cook</p> <p>2 I'm from 5067 Challenger Way. I am against, but I</p> <p>3 would like to -- I didn't have anything prepared</p> <p>4 until I listened to the arguments. But I was</p> <p>5 listening to the definition of compatibility and</p> <p>6 what would be unduly negatively impacting. And</p> <p>7 although this isn't a popularity contest, it sure</p> <p>8 is about what is unduly impacting negatively the</p> <p>9 people that live in these residential areas. So</p> <p>10 the definition of compatibility needs to take that</p> <p>11 into consideration. It will unduly impact --</p> <p>12 impact us negatively in the manner that will -- as</p> <p>13 the gentleman spoke in the beginnings about the</p> <p>14 community and the neighborhoods in our community.</p> <p>15 This will increase the traffic in and out</p> <p>16 of that particular establishment. I think that it</p> <p>17 will add more traffic coming down Gulf Beach</p> <p>18 Highway that wouldn't have come down that way</p> <p>19 previously to get to the beaches because this will</p> <p>20 be a stop along the way to pick up beer and</p> <p>21 otherwise. So I think that that traffic will</p> <p>22 increase. So that will impact me.</p> <p>23 My son rides his bicycle along that way.</p> <p>24 There are tons of bicycles that ride up and down</p> <p>25 that Gulf Beach Highway. That will increase our</p>	<p style="text-align: right;">Page 90</p> <p>1 air traffic if you ask me. And unduly, I think it</p> <p>2 will impact the fact that there are a lot of -- a</p> <p>3 lot of -- I have been in that. Let me start over.</p> <p>4 I have been in that community for 15</p> <p>5 years. I'm retired Navy. After 22 years, I</p> <p>6 decided to live there because it's quiet. It's not</p> <p>7 commercial. There's -- it's just residential</p> <p>8 areas. It's a beautiful area to walk, to walk your</p> <p>9 dog, to walk your family, ride your bikes, all of</p> <p>10 that. So I bought that property with that in mind.</p> <p>11 To come in and build the commercial</p> <p>12 residence -- or excuse me -- the commercial Dollar</p> <p>13 General there, I just think it impacts the</p> <p>14 community and why we all decided to move there in</p> <p>15 the first place.</p> <p>16 There are a lot of -- a lot of people</p> <p>17 that use that particular -- the Gulf Beach Highway</p> <p>18 as an area to exercise, and that will also impact</p> <p>19 that because it will just add more possibility of</p> <p>20 accidents and pedestrians being involved.</p> <p>21 So I had some other really great things,</p> <p>22 but I don't know where they are right now. But I</p> <p>23 think it will negatively impact us, and that is not</p> <p>24 a popular thing to do.</p> <p>25 So thank you.</p>
<p style="text-align: right;">Page 91</p> <p>1 MR. THERIAQUE: Ms. Cook, just a few</p> <p>2 questions, please.</p> <p>3 MS. CINDY COOK: Yes.</p> <p>4 MR. THERIAQUE: First of all, thank you for</p> <p>5 your service.</p> <p>6 I'm sorry. I didn't mean to interrupt,</p> <p>7 Mr. Chairman.</p> <p>8 Are you a traffic engineer?</p> <p>9 MS. CINDY COOK: No, but I experience traffic</p> <p>10 on a regular -- on a regular day.</p> <p>11 MR. THERIAQUE: Have you analyzed any of the</p> <p>12 traffic flows that would be associated with this</p> <p>13 property?</p> <p>14 MS. CINDY COOK: I think that question --</p> <p>15 yeah. No, I have not.</p> <p>16 MR. THERIAQUE: Thank you. No other</p> <p>17 questions.</p> <p>18 MS. CINDY COOK: Can I like -- not to get tit</p> <p>19 for tat.</p> <p>20 MR. CHAIRMAN: Pardon me?</p> <p>21 MS. CINDY COOK: Not to get tit for tat. I</p> <p>22 don't want to go back and forth. But whenever</p> <p>23 anything is added to that area, I have experienced</p> <p>24 the increase in traffic. So while I might not be a</p> <p>25 traffic aficionado, I know what my personal</p>	<p style="text-align: right;">Page 92</p> <p>1 experience has been.</p> <p>2 MR. CHAIRMAN: Thank you.</p> <p>3 MS. CINDY COOK: Thank you.</p> <p>4 MS. CINDY MARVEL: Cindy Marvel. Address is</p> <p>5 6053 Firefly Drive. I'm against the project.</p> <p>6 MR. JIM MATTHEWS: Good morning. I'm Jim</p> <p>7 Matthews, 5032 Challenger Way. I'm not an expert</p> <p>8 on anything here. So thank you for the County</p> <p>9 for presenting the legal issues and reading the</p> <p>10 compatibility standards and so on. So I think we</p> <p>11 have heard that ad nauseam, so I won't repeat that.</p> <p>12 The -- it seems they have laid out a case</p> <p>13 where it clearly doesn't meet the compatibility, so</p> <p>14 just a couple other personal issues that I won't</p> <p>15 say. We are already under traffic ordinance</p> <p>16 pursuant to the traffic partners from the base,</p> <p>17 pertaining to the Blue Angel practices and shows</p> <p>18 and different things. So that addresses some of</p> <p>19 the traffic that goes down that road.</p> <p>20 One of the other things, a two years ago,</p> <p>21 they completed a project building sidewalks on</p> <p>22 either side of Gulf Beach Highway that entire</p> <p>23 length from -- how far out do they go? Out to the</p> <p>24 Winn-Dixie, possibly. At least --</p> <p>25 UNKNOWN SPEAKER: As far as Blue Angel.</p>

<p style="text-align: right;">Page 93</p> <p>1 MR. JIM MATTHEWS: -- from Blue Angel out to 2 the district. There are a lot of people that use 3 those sidewalks that would cross right in front of 4 the Dollar General. Many -- a couple of those 5 people are in wheelchairs, many of them have baby 6 strollers. So there is good traffic, lots of 7 exercise, bicycles, so on and so forth. 8 Another thing that happened a few years 9 ago, on the corner of Bauer Road and Gulf Beach 10 Highway, there is a public library. But the 11 original proposal for that piece of property was a 12 huge gas station/convenience store. 13 And it was a meeting very similar to this 14 at the time. And that came down to -- at the time 15 the board considered there were some Friends of the 16 Library in the audience, and it was obvious that 17 the store didn't fit the issues, even though it's 18 on an artery. Bauer Road was an artery for egress. 19 MR. CHAIRMAN: I'm sorry, sir. We do have to 20 limit it. 21 MR. JIM MATTHEWS: Okay. And I'm just about 22 finished. 23 So anyway, the determination was that the 24 County bought that property, and the library was 25 there, and the convenience store was turned down.</p>	<p style="text-align: right;">Page 94</p> <p>1 So I will stop. Thank you for your time. 2 MR. WALT VIGLIENZONE: Walt Viglienzone, 5039 3 Challenger Way. I'm an expert resident. 4 The County denied the request due to 5 incompatibility with the LDC, but there is a more 6 important incompatibility with the neighbors and 7 residents who live all around the piece of 8 undeveloped land. 9 Dictionary definitions are primary in the 10 English language. Capable of existing or 11 performing in harmonious or an agreeable 12 combination, able to exist or occur together 13 without conflict. Prima facie evidence is here 14 today, and the badgered tax-paid servants have 15 tried to do their best. 16 President Reagan said, "Deeds, not words, 17 are most important." 18 From the beginning of the clear-cut scar, 19 which is not shown on their schematic, but which is 20 shown twice from two sides, Avia Lane and Gulf 21 Beach Highway, they did not come to the residents, 22 their neighbors, to be good neighbors. They 23 started acting and let us react. 24 A good neighbor and a business claiming 25 to provide a useful service needs to start on the</p>
<p style="text-align: right;">Page 95</p> <p>1 right foot and actions, not pictures, words, 2 lawyers and promises. This project began with an 3 incompatible disregard for neighboring residents in 4 an established 25-plus year development. 5 How can they ever claim and predict with 6 absoluteness some future? You know, the weathermen 7 can't predict the weather. 8 The Dollar General is incompatible at 9 this location. Drive or walk from Holy Spirit 10 Catholic Church to the library or the state park. 11 Any reasonable person can see the in-combatibility. 12 Words are not as important as being and seeing 13 there. In fact, the only commercial site between 14 Holy Spirit and the library was converted to 15 residential. 16 MR. BRIAN CHANEY: Hi. I'm Brian Chaney. I 17 live at 5115 Chandelle Drive. 18 Thank you, guys, for your service. I 19 know it's not always easy, but I sit on other 20 boards, and trust me, it's appreciated. 21 The applicant kind of alludes to the foot 22 that Mr. Jones' denial was arbitrary. I would say 23 his decision was not. It was based on the facts 24 that you guys have heard presented today. And 25 these are in alignment with Section 3-2.10, which</p>	<p style="text-align: right;">Page 96</p> <p>1 clearly delineate the requirements for commercial 2 development. 3 As you have already heard, traffic is 4 kind of a bear sometimes on that highway, coming 5 out of Chandelle trying to turn left out of the 6 north area, especially on Blue Angel practice days, 7 which I love them flying over all the time, 8 especially when I'm on the phone. It would just 9 further increase the problems. 10 We talked about compatibility. No, I'm 11 not an expert. I'm not a high-paid lawyer. I know 12 plenty of them, and I do appreciate what you guys 13 do. You are all paid to do this. You guys are 14 paid to do what you do. 15 But in a recent market survey, analysis, 16 within a half mile of every other Dollar General 17 store within the County, the median home value 18 ranges within \$49,000 to one hundred \$126,000. The 19 median home value within a half mile radius of this 20 proposal is more than \$268,000. 21 The traffic density analysis -- and these 22 are FDOT numbers -- on average for these 15 stores 23 is 24,781 cars per day. Obviously, there is a 24 range to that. Gulf Beach Highway supports 5,900. 25 Not only does that show an incompatibility with</p>

<p style="text-align: right;">Page 97</p> <p>1 their own general demographics, they would have to 2 increase traffic in order to provide the necessary 3 income. 4 Another issues that I think we are all 5 aware of is storm water management. We have seen 6 it across other areas, not just in our location. 7 With regard to the 100-year flood map, any further 8 development of this area would be kind of a bad 9 idea right now. 10 Finally, this appeal carries a subtle 11 reference to Bert Harris. There has been no taking 12 in this case. The rules were in place before, and 13 the purchaser did not do their proper due diligence 14 in order to fully understand the impacts of what 15 they were trying to do before the purchase price. 16 To me, this is clear and cut case, and I 17 will step off the stage. Thank you. 18 MR. JOHN HALLAM: Hi. My name is John Hallam, 19 and I live at 650 Electra Lane in Chevalier. Thank 20 you for your service. I appreciate what you're 21 doing for the County here. 22 I'm a real estate broker in Southwest 23 Pensacola, and I have been trying to follow this as 24 close as I possibly can. 25 The LDC is in place to establish a clear</p>	<p style="text-align: right;">Page 98</p> <p>1 County zoning and other land use regulations to 2 provide for orderly, efficient and sustainable use 3 of land and structures here. 4 While technically this is an appeal, it 5 really in reality is more of a de facto attempt to 6 circumvent the LDC, or rather get an exemption from 7 it. 8 In this instance, the location criteria 9 is not met. The parcel is not within a quarter 10 mile of an artery intersection. And the 11 application is incompatible with the parcel. This 12 was clear -- like Brian said a moment ago here, 13 this was clear before the applicant even purchased 14 the property. 15 I actually have the listing for that 16 property right here when they purchased it back in 17 2010. And the listing says they are going to need 18 a small-scale amendment to the Code in order to do 19 a commercial development here. So this isn't 20 something that wasn't anticipated. Just maybe they 21 didn't have someone to put a Dollar General in at 22 the time. 23 So in this instance, again, it's not met. 24 They knew about it. It's been there, and the 25 applicant has told us here that it's in compliance</p>
<p style="text-align: right;">Page 99</p> <p>1 with the LDC, and it meets the criteria for either 2 infill development or documented compatibility. 3 Actually, I think they said not for infill 4 development but just for documented compatibility. 5 This is incorrect. There are no 6 conforming developments of similar intensity within 7 even a half-mile radius of the subject parcel of 8 the subject parcel here. 9 The compatibility analysis applicant 10 cites LDC 3 -- Section 3-1.6(b) stating that the 11 zoning criteria allow for residential and 12 nonresidential uses to be in close proximity to one 13 another, specifically small-scale, dispersed 14 neighborhood, commercial uses and proximity to 15 residential areas. 16 But they failed to note that the 17 subsequent section, which very clearly describes 18 locational criteria, is with respect to 19 intersection distances for the arterial streets 20 there. And this will not provide any smooth 21 transition from a large-scale commercial to 22 residential. That is not applicable here. 23 They also failed to note LDC Section 24 3-1.3(h), which definitively states the zoning of 25 the parcel shall be consistent with the applicable</p>	<p style="text-align: right;">Page 100</p> <p>1 future land use category by either directly 2 implementing the provisions of the FLU or otherwise 3 not being in conflict with its intent, allowable 4 uses, density or intensity. 5 This proposed project here, which at some 6 point in time, this goes with the parts of the 7 ruling here. It doesn't go with the project here. 8 They said that the setbacks were some unique 9 circumstance. They may not be later. It may be a 10 different thing, or they might not pay the same 11 courtesy. So this is clearly in conflict with both 12 the FLU and LDC Section 3-2.10, the location 13 criteria. It does not meet documented 14 compatibility either. 15 Thank you-all very much for your time. 16 MR. CHRIS PLOURDE: Good morning. Chris 17 Plourde. I live on 5128 Grumann Drive in 18 Pensacola, and I appreciate the opportunity to 19 speak here today. 20 What I want to speak about briefly is, 21 for this appeal, the burden falls to the applicant 22 to prove that Mr. Jones' decision was arbitrary and 23 capricious. I'm going to show you that it was 24 neither. 25 On page seven of the compatibility</p>

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<p>1 analysis, the applicant states: "Allowed uses 2 under the Comprehensive Plan and land use MU-S 3 include retail sales. Actually, according to the 4 Comprehensive Plan in FLU 1.3.1, this statement is 5 true only for parcels that lie within a quarter 6 mile of an arterial roadway, as previously stated. 7 For parcels outside of that quarter mile, 8 retail sales are not included in the allowable 9 uses, and this location is well outside one-quarter 10 mile of an artery. 11 On page 10 of the analysis, the applicant 12 cites: "The goal of FLU 2 is to promote urban 13 strategies of compact development, which include 14 infill development." This is correct but only for 15 MU-U, urban designation. This parcel is very 16 clearly MU-S and not MU-U. Therefore, this does 17 not meet the requirements of infill development 18 under the LDC. The applicant has been very 19 creative in this interpretation of the LDC, FLU and 20 CP 2030. 21 Furthermore, the applicant asserts on 22 page 13 of this analysis that no adverse impacts 23 will be generated, such as smoke, noise, emissions, 24 et cetera and previously discussed. 25 The applicant further asserts that on</p>	<p>1 page 13 that the residents will somehow benefit 2 from the location of this store. 3 And, finally, on page 13, the applicant 4 asserts that this location will somehow result in 5 the reduction of traffic congestion, miles driven 6 and daily trips. Obviously, this is purely 7 speculative. 8 According to FDOT traffic flow, the 9 traffic count on Gulf Beach Highway must increase 10 by a factor of three just to obtain the lowest 11 level of travel flow of any other Dollar General 12 within the County. This must definitely will not 13 reduce traffic, daily trips or miles driven. 14 There is also no other shortage of 15 commercial property or retail space within a 16 five-mile radius that complies with the LDC. In 17 fact, there are two commercial lots near Winn Dixie 18 that are prime examples. The applicant has clearly 19 not demonstrated a unique circumstance to make an 20 exception to the LDC, and Mr. Jones properly 21 applied the LDC, and his appeal should be denied. 22 Thank you for your time. 23 MR. MICHAEL VARIAS: Ladies and gentlemen of 24 the board. Good morning. My name is Michael 25 Varias. I live on 1109 Naples Drive in Chandelle</p>
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<p>1 Subdivision, which is adjacent to Chevalier, west 2 of the proposed store location. I have owned that 3 home since 2023. 4 Based on the traffic impact analysis 5 performed, the applicant will tell you that the 6 proposed store will not adversely affect traffic in 7 the current year. 8 Given that is October 18 of 2017, we're 9 only 2.5 months away from the end of this year, so, 10 yes, that is probable true, but to say there is no 11 impact locally, traffic impact locally, is 12 definitely false. 13 While the extent of any impact is 14 debatable, it is inconceivable for even a layman 15 like myself that a commercial enterprise at this 16 location will not impact traffic. 17 The traffic problem on Gulf Beach Highway 18 has been subject to not one but two full-length 19 articles in the Pensacola News Journal. The first 20 was April 28th of 2017 and August 9th of this year. 21 I have copies of both if you need them. 22 In addition, just this past Friday, 13 23 October, WEAR Channel 3 News conducted a news story 24 on specific Dollar General debate. Within that 25 story, Escambia County Commissioner and Board</p>	<p>1 Chairman Doug Underhill was interviewed by saying, 2 and I quote: "Putting any kind of retail there 3 that creates a retail traffic generation is really 4 in congruence with the rest of the way that Gulf 5 Beach Highway is set up." 6 I can say with certainty that the way we 7 wrote our Code, the Land Development Code, it's 8 written this way to specifically protect the areas 9 by Gulf Beach Highway. 10 He concludes with an interview by saying, 11 quote, again: "If you want to see Gulf Beach 12 Highway traffic collapse, put a curb on every lot 13 and put in a commercial business, end quote. 14 Ladies and gentlemen, traffic flow on 15 Gulf Beach Highway is clearly a problem. The 16 applicant's traffic analysis only compared a 17 proposed store of 15-story 85 unit high-rise 18 condominium, which we all know will not be 19 realistic and never to be put on that parcel. 20 A more accurate analysis that would have 21 been included would be an FDOT rating and a tree 22 impact statement. Any additional commercial 23 development along Gulf Beach Highway will 24 exacerbate the only disastrous traffic problem. 25 Granting this appeal will run counter to</p>

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<p>1 all current efforts by our County Commissioner, 2 Escambia County Sheriff's Department, as well as 3 Visit Pensacola. 4 Ladies and gentlemen of the board, I 5 agree with County Commissioner Underwood, and I 6 strongly believe that the proposed development is 7 not compatible and does not meet the location 8 criteria prescribed by the LDC. 9 Thank you for your time and 10 consideration. 11 MR. THERIAQUE: Sir, excuse me. 12 MR. MICHAEL VARIAS: Yes, sir. 13 MR. THERIAQUE: Just two quick questions. 14 Thank you. 15 Are you a traffic engineer? 16 MR. MICHAEL VARIAS: No, sir. I'm a concerned 17 citizen. 18 MR. THERIAQUE: And are you a land use 19 planner? 20 MR. MICHAEL VARIAS: No. I am a concerned 21 citizen and neighbor. 22 MR. THERIAQUE: Thank you. 23 MR. MICHAEL VARIAS: You're welcome. 24 MR. PATRICK FIEG: Good morning. Patrick 25 Fieg, 208 Clear Lake Drive. I have lived there</p>	<p>1 for 11 years. Thank you for the opportunity to 2 speak today. 3 Traffic along Gulf Beach Highway, every 4 day I drive there. I think it's great that I'm 5 able to drive on such a scenic place and beautiful 6 road. However, there are certain things that will 7 set that -- the traffic off where it kind of 8 becomes a problem. 9 One thing that I noticed, and this is 10 while I was employed in Afghanistan, there was a 11 problem with school busses. We had traffic passing 12 school busses just because of the backlog. As a 13 concerned parent, I got that so solved working with 14 the deputies. That was just one thing. 15 The other big thing is the Blue Angel 16 practice. I have been in traffic for an hour 17 multiple times trying to get on base. I have 18 actually seen my first case of road rage on Gulf 19 Beach Highway due to the traffic jam because of the 20 Blue's practice. 21 The traffic problem is not the Navy's 22 problem to solve. It's ours as citizens to try to 23 solve. The sheriff's department has a deputy there 24 on the Perdido Bay Bridge to try to direct traffic 25 around Sorrento, but it's still not solved, and</p>
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<p>1 that problem is still going to be there. 2 In addition, there is traffic flow there 3 on Sunday at the Catholic Church. One of my 4 neighbors was involved in an accident there just 5 because of the stop-and-go traffic. The other 6 thing was the response of the emergency vehicles to 7 actually to respond to her was slowed down just 8 because of the practice. 9 And, lastly, as a husband and a father, I 10 am extremely concerned about making left turns out 11 of the Chandelle neighborhood, which is adjacent to 12 the proposed lot. You only have a couple of 13 seconds reaction time as it is now. And with the 14 traffic increase, it's going to be a lot worse. 15 Now, the developer and owner said that 16 traffic will not increase, but this can't be true. 17 The Florida Department of Transportation says that 18 traffic flow at every other Dollar General in 19 Escambia County is 24,781. Yet, the DOT traffic 20 flow on Gulf Beach Highway is only 5,900. Clearly, 21 something is not adding up. 22 To summarize, approval of this project 23 will increase traffic and increase safety hazards. 24 The developer's and owner's proposal, especially in 25 regard to not increasing traffic and risks to</p>	<p>1 safety, simply does not add up. 2 Thank you. 3 MR. SHAWN DUANE: Good morning. I'm Shawn 4 Duane. I live at 5694 Grande Lagoon Boulevard. I 5 have been a 20-year resident of either Grande 6 Lagoon or Chandelle. I appreciate you guys having 7 this hearing this morning. It's a very important. 8 The applicant asserts there will be no 9 adverse impact on traffic. I'm going to kind of 10 beat this drum a little bit but not be too 11 repetitive on the previous talkers. 12 The fact is, obviously, it's a business 13 plan where they have to have more traffic. More 14 traffic is good for business. I'm a huge proponent 15 of business. This is what our country is based on, 16 but this might not be the right place, and it might 17 not -- it doesn't appear to be compatible according 18 to our own regulations. So I do not believe any 19 special disposition should be made in this case. 20 The number one topic of interest in the 21 recent visits to Pensacola with county residents 22 with FDOT was, in fact, traffic along Gulf Beach 23 Highway. As we have heard this morning, it's a 24 huge and very important issue. 25 A lot of stuff has happened over the last</p>

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<p>1 20 years. There is an increase in tourism. There</p> <p>2 is new residential development along Gulf Beach.</p> <p>3 There has been a change in the rules with NAS</p> <p>4 Pensacola in how they use the gates, the</p> <p>5 publication of Blue Angel practice schedules.</p> <p>6 All of these combined basically create a</p> <p>7 perfect storm where that road becomes kind of a</p> <p>8 focal point or a center of gravity, military terms.</p> <p>9 A lot of mitigating efforts by the County</p> <p>10 include: They have put up signs. They have added</p> <p>11 police officers. They have tried to do all sorts</p> <p>12 of things to mitigate the traffic along Gulf Beach</p> <p>13 Highway. It's just a known problem.</p> <p>14 So here we are today talking about an</p> <p>15 issue that is going to kind of take it the other</p> <p>16 direction. It's going to add to the problem</p> <p>17 instead of fix it. I just ask you folks just to go</p> <p>18 by your own rules, go by the expertise of our</p> <p>19 County. I appreciate folks trying to bring more</p> <p>20 business, more jobs. But at the end of the day,</p> <p>21 this is probably not the right place and the right</p> <p>22 time.</p> <p>23 Thank you very much.</p> <p>24 MR. STEVEN HOPPE: Good morning. My name is</p> <p>25 Steven Hoppe. I live on Palm Lake Drive in</p>	<p>1 Chandelle. I bought that house in 1998 and was in</p> <p>2 and out of it several times. We have been current</p> <p>3 resident since 2007.</p> <p>4 I would like to touch on the storm water</p> <p>5 issue on Gulf Beach Highway and the subdivisions</p> <p>6 within. Most of those subdivisions and</p> <p>7 developments were built using the current -- or</p> <p>8 using the 25-year flood map. We are currently on a</p> <p>9 100-year flood map, and we don't most of them would</p> <p>10 be permitted using that map.</p> <p>11 In the last two year -- two months alone,</p> <p>12 the north easement of Gulf Beach Highway has been</p> <p>13 torn up and is being reworked because of storm</p> <p>14 water and drainage problems that were evidenced in</p> <p>15 the 2014 major flood event.</p> <p>16 Chevalier has had two major storm water</p> <p>17 overhauls since its development, and it's still</p> <p>18 inadequate, and homes still flood in the back of</p> <p>19 that neighborhood.</p> <p>20 Chandelle, which is where I live, we have</p> <p>21 homes that flood in our neighborhood, too, because</p> <p>22 there is not a comprehensive storm water management</p> <p>23 plan in that area. Everything is kind of</p> <p>24 disjointed. So you have basins that fill up, and</p> <p>25 then there is nowhere for the water to go, so it</p>
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<p>1 just backs up.</p> <p>2 Right in front of my house on Palm Lake</p> <p>3 Drive, it becomes impassable because the water</p> <p>4 doesn't drain off fast enough. Right across the</p> <p>5 street from this particular property, there is a</p> <p>6 house on Gulf Beach Highway that had two feet of</p> <p>7 water in it for nearly three weeks after that 2014</p> <p>8 event.</p> <p>9 So if we add more impermeable surfaces in</p> <p>10 that area, that is just less that the ground can</p> <p>11 suck up and pull water away from those houses. So</p> <p>12 I think it would be irresponsible to increase the</p> <p>13 amount of impermeable surfaces in that area.</p> <p>14 Thank you.</p> <p>15 MR. CRAIG DALTON: My name is Craig Dalton. I</p> <p>16 live at 9995 Rail Circle. I'm the former chairman</p> <p>17 of Florida Defense Alliance in the</p> <p>18 70-billion-dollar industry of defense that is the</p> <p>19 third-largest industry in this state. The defense</p> <p>20 industry in Pensacola is 6.7 billion dollars.</p> <p>21 One of the ways the defense industry</p> <p>22 grades communities is its ability to follow the</p> <p>23 rules, the guidelines, like the Joint Land Use</p> <p>24 Study, the LDCs and Future Land Use Agreements.</p> <p>25 In this case, I think we should follow</p>	<p>1 those rules. I don't think we should trade a --</p> <p>2 oh, my gosh -- Dollar General for 22,000 jobs and</p> <p>3 6.7-billion-dollar industry.</p> <p>4 Thank you.</p> <p>5 MR. JOHN PETIT: Good morning. It's still</p> <p>6 morning barely. My name is John Petit. I live at</p> <p>7 5141 Grumann Drive in Chevalier. I'm an original</p> <p>8 owner. I bought directly from the property</p> <p>9 developer back in 1996. I moved in '97. So I have</p> <p>10 been there for a while.</p> <p>11 I had some ideas on what to say, but</p> <p>12 there are quite a few people smarter than me who</p> <p>13 spoke before me. I think a couple of highlights,</p> <p>14 the big thing that I say or that I believe is that</p> <p>15 the quickest way to ensure disorderly development</p> <p>16 or urban sprawl would be to operate contrary to the</p> <p>17 guidelines that we have in place, such as CP 2030,</p> <p>18 the LDC, the FLU.</p> <p>19 If we take those only as advisory in</p> <p>20 nature and don't actually enforce them, then we are</p> <p>21 setting ourselves up for a problem down the road.</p> <p>22 And it's not just this lot. Let's make no mistake.</p> <p>23 Although this is technically an appeal, I think</p> <p>24 Mr. Hallam said that it's, you know, de facto or a</p> <p>25 request for an exemption to the LDC.</p>

<p style="text-align: right;">Page 113</p> <p>1 If we grant it here, what is to stop us</p> <p>2 from granting it farther down the road for any</p> <p>3 other commercial parcel down Gulf Beach Highway or</p> <p>4 anywhere else in Pensacola? I think we are</p> <p>5 setting ourselves up for a problem if we can't even</p> <p>6 follow the own rule or the rules, our own rules</p> <p>7 that we have in place.</p> <p>8 Mr. Jones, he's the expert on Escambia</p> <p>9 County Land Development Code. Mr. Homer, the same</p> <p>10 thing. These folks are very smart, and I</p> <p>11 absolutely would not want to get into a battle of</p> <p>12 wits with any of them. I am not nearly the</p> <p>13 wordsmith.</p> <p>14 But I think that in order to put this</p> <p>15 Dollar General in place, we have to show that</p> <p>16 Mr. --</p> <p>17 UNKNOWN SPEAKER: Jones.</p> <p>18 MR. JOHN PETIT: -- Jones' -- I keep wanting</p> <p>19 to call him Horace -- Mr. Jones' actions were</p> <p>20 arbitrary and capricious. They were not.</p> <p>21 Ms. Gutcher did a great job of</p> <p>22 highlighting the buffer and everything, all the</p> <p>23 good things that Dollar General is going to do for</p> <p>24 us by keeping that in place. They are small</p> <p>25 numbers, so she converted them to percentage. As</p>	<p style="text-align: right;">Page 114</p> <p>1 an engineer when I'm trying to convey a point, I do</p> <p>2 the same thing. If I want to say that one went to</p> <p>3 two, I'll say it doubled. It increased by a 100</p> <p>4 percent. Well, it only increased by one, but yeah,</p> <p>5 you know, a 200 percent increase, 300 percent</p> <p>6 increase sounds good.</p> <p>7 As far as the buffer goes, that is not</p> <p>8 there anymore. Make no mistake. When she went out</p> <p>9 to do her site survey, my guess would be it was</p> <p>10 well before the developer bulldozed a clearcut from</p> <p>11 the north boundary to the south boundary through</p> <p>12 that subdivision. And the folks on the corner</p> <p>13 of -- I believe it's Avia Lane and Challenger now</p> <p>14 have an unobstructed view of the back of the Dollar</p> <p>15 General that may or may not be built.</p> <p>16 Given the demographics that you heard</p> <p>17 earlier with the mean property values and the</p> <p>18 traffic counts for Dollar General, I'm not</p> <p>19 convinced this is actually going to even be a</p> <p>20 Dollar General. Maybe it is. Maybe it's not. I</p> <p>21 don't really care. I don't care if it's a</p> <p>22 Starbucks. I don't care if it's a tattoo parlor,</p> <p>23 an adult toy store. It does not matter. Okay? It</p> <p>24 does not comply with the LDC as set forth in our</p> <p>25 own documents.</p>
<p style="text-align: right;">Page 115</p> <p>1 I ask that you please deny this appeal on</p> <p>2 this basis. I was the first one to hit the buzzer.</p> <p>3 Thank you very much, and thank you for your time.</p> <p>4 MS. KAREN GROVE: My name is Karen Grove. I'm</p> <p>5 a resident at 3005 Dauntless Drive in Chevalier</p> <p>6 Subdivision, and I have been there since 1998. The</p> <p>7 home was purchased because it's residential. I</p> <p>8 don't want in an commercial environment. Sorry.</p> <p>9 Construction of this Dollar General is</p> <p>10 not welcome. I'm requesting that you honor the</p> <p>11 original decision from July 24th, 2017. The</p> <p>12 traffic is going to be horrific. I'm not a traffic</p> <p>13 engineer. I'm not a property value expert. I'm</p> <p>14 not an expert of any kind. I'm just a resident,</p> <p>15 one of many that do not want this store. We</p> <p>16 already have cops that block traffic when Blue</p> <p>17 Angels practice. What more do you need to know?</p> <p>18 That it's not what we want.</p> <p>19 Currently, there is a Dollar General 2.3</p> <p>20 miles from where they are going to build. Do they</p> <p>21 really need another one that close? It's not the</p> <p>22 only store we have. We have Winn-Dixie. We have a</p> <p>23 cleaners down there, I think. We have a CVS</p> <p>24 pharmacy. We have a Publix. Not too far away is</p> <p>25 Walmart. There is Target, and there is a Dollar</p>	<p style="text-align: right;">Page 116</p> <p>1 General. Do we need more? Think about it.</p> <p>2 I thank you for taking the time to listen</p> <p>3 to me and giving me this opportunity to speak to</p> <p>4 all of you, but please honor the original decision</p> <p>5 that it's not compatible to where we live. We are</p> <p>6 100 percent residential more than a mile in each</p> <p>7 direction because we want to be in a residential</p> <p>8 area. We don't want to be in a commercial area.</p> <p>9 Once a commercial vendor moves in, it's only a</p> <p>10 matter of time before more come. And they may say</p> <p>11 that's leased to Dollar General and won't be</p> <p>12 developed around it, leases can be modified, and</p> <p>13 they can build more. It's the beginning.</p> <p>14 Thank you for your time. I appreciate</p> <p>15 your allowing me to speak.</p> <p>16 MS. CYNTHIA HOBGOOD: Thank you, Board,</p> <p>17 for hearing us. My name is Cynthia Hobgood. I</p> <p>18 live at 10901 Seaglade Drive. I have always wanted</p> <p>19 to live in that area. I looked at it for years and</p> <p>20 years and years before I had the opportunity to</p> <p>21 move there. And I did so, because in those days,</p> <p>22 it was almost rural. But now it's definitely</p> <p>23 residential.</p> <p>24 We have two east/west arteries that</p> <p>25 service all of Gulf Beach Highway, all of Sorrento,</p>

<p style="text-align: right;">Page 117</p> <p>1 all of Innerarity and Innerarity Island and 2 Perdido, the entire end of Perdido Key, are all 3 served by these two roads. 4 Now, on Sorrento, it's already 5 commercial. They have got Walmart and Target at 6 one end and both our little shopping centers are at 7 the other end with lots of businesses sprinkled in 8 between. That -- for whatever reason, that artery 9 went commercial. 10 However, Gulf Beach Highway being the 11 other main artery is definitely residential from 12 Blue Angel Highway -- from Blue Angel to the same 13 intersection of Sorrento. And over the bridge, 14 there is not but a handful. There is little 15 delicatessen which I would hate -- privately owned, 16 which I would hate to see hurt by this, and a 17 church or two, and that's about it. A canvas shop 18 or a tackle store. 19 We bought there. We bought there as 20 residents. It is -- my guess -- more than 90 21 percent, definitely, residential. On a 22 conservative side, more than 90 percent 23 residential. 24 Let's keep Sorrento commercial. It 25 already is. Let's make Gulf Beach Highway</p>	<p style="text-align: right;">Page 118</p> <p>1 residential because it already is. If I wanted to 2 live next to a Dollar General store or be able to 3 walk to one, I would have bought in Sorrento. 4 Let's consider rezoning. The other thing 5 that worries me is something I heard, and please 6 pardon my ignorance. I am just a layman. I have 7 heard that once commercial comes in and is 8 approved, within a certain distance either way 9 commercial comes in and will be approved as well. 10 That's the domino effect. 11 And as I look at this, either way we 12 lose. If Dollar General comes in, we have to look 13 at it and deal with it. We lose. If they go 14 belly-up because we boycott it, and that is a 15 definite possibility. If they go belly-up, they 16 have taken a commercial toehold. We absolutely do 17 not want that. 18 Thank you so much for your time. 19 MR. WILLIAM PHILLIPS: Good morning. Good 20 morning. My name is Bill Phillips. I live at 513 21 Grumann, G-R-U-M-A-N-N, Grumann Drive. I'm a 22 member of the board of HOA for Chevalier. 23 I think we heard it all. And I think 24 that the folks over here, they have to do what they 25 do. And when we know it's zoned commercial, and</p>
<p style="text-align: right;">Page 119</p> <p>1 all we ask you to do is to follow the rules as 2 outlined by your staff members. And I think I'll 3 kind of like sum it up for everybody in the room. 4 It's not just a matter we don't want the place, 5 and, believe me, we don't. But we're asking that 6 we don't do it based on your rules, not based on 7 emotions and those kinds of things, but based on 8 your rules as outlined by your staff and reject the 9 appeal. 10 Thank you very much. 11 MS. PAT COOK: My name is Pat Cook, and I live 12 at 5443 Grande Lagoon Court. I have been there 13 since 1999. I have been licensed in real estate in 14 three different states, including the State of 15 Florida. I have some history and professional 16 experience determining valuations on property. 17 And as has been previously mentioned, the 18 values of the property around this projected site 19 are greater than the typical values around a Dollar 20 General store. However, should a Dollar General 21 store go into that place, if I were valuing one of 22 the properties facing the back of a Dollar General 23 or across the street from a Dollar General, I would 24 have to say that those properties would be devalued 25 relative to just the view. A view of woods, even</p>	<p style="text-align: right;">Page 120</p> <p>1 if they are not pretty or landscaped, is much more 2 desirable than the view of a commercial facility. 3 I do understand all of their discussions 4 about the buffer, but as I saw their site plan, I 5 did not see any allocation of space for a retention 6 pond, which is another issue that has already been 7 discussed with the storm water issues that we have 8 in that area. 9 I have not heard there has been any 10 consideration to the demographics of the area. And 11 when I talk about demographics, I'm talking 12 specifically about the fact that the people that 13 live in this area are car-driving families. They 14 do not have any bus service. ECAT has been unable 15 to provide sufficient ridership to have any bus 16 service down this section of Gulf Beach Highway. 17 So, therefore, those people are getting places, and 18 they are getting there by car. 19 From my home, the current existing Dollar 20 General is 2.0 miles from my home. The new 21 location is .7. I go to a Dollar General 22 approximately four times a year. So that's 1.3 23 miles I would save to go to a closer store four 24 times a year. That's, you know, insignificant in 25 terms of being a neighborhood store as they are</p>

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<p>1 representing themselves to complement the 2 community.</p> <p>3 I foresee that should this proceed, there 4 is going to be a reduction in the tax base from an 5 area that is good provider of tax revenues to the 6 entire county of Escambia. And this development, 7 if it proceeds, is going to hurt not just our 8 immediate neighborhood but the entire county 9 because you are going to lose revenues because I, 10 for one, am going to immediately appeal my 11 assessment if a Dollar General is placed 0.7 miles 12 from my house.</p> <p>13 And even though I have been a 14 professional realtor in the past, my current 15 occupation in retirement is as a Domino's delivery 16 driver, so I guess I do consider myself a 17 professional with traffic. And the waits at the 18 exit to my subdivision have exceeded my five 19 minutes on occasion as it is right now. Five 20 minutes.</p> <p>21 MR. DAVID MIDDLETON: Good morning. My name 22 is David Middleton. I live at 5142 Grumann Drive.</p> <p>23 I'm opposed to this project on the basis 24 of traffic congestion and safety. As we all know 25 here, Gulf Beach Highway is a two-lane highway. It</p>	<p>1 has sidewalks on the north and the south side of 2 the highway. Our children and our citizens play in 3 this area, and they use those sidewalks repeatedly.</p> <p>4 To put this type of a location with the 5 limited access into the location itself would put 6 an undue burden on the amount of traffic that is on 7 Gulf Beach Highway.</p> <p>8 I will answer your question before you 9 ask. I am not a traffic expert. I do not work 10 for the Department of Transportation. I'm a 11 concerned citizen. I'm also not a rocket 12 scientist, but I'm smart enough to tell you that I 13 don't want a rocket launchpad in my backyard.</p> <p>14 When we look at projects like this, we 15 have to ask ourselves, Who benefits? Does it 16 benefit the community? Does it benefit the 17 residential neighborhood that we live in? I would 18 venture to say that the only people who benefit by 19 this project would be Dollar General and the 20 developer.</p> <p>21 Thank you for your time.</p> <p>22 MR. JOHN LANDIS: My name is John Landis. I 23 live 5047 Challenger Way. I'm not a community 24 planner or a traffic engineer. But I am a Navy 25 safety-trained speaker. Okay? And I do know how</p>
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<p>1 to identify hazards. And I know that this two-lane 2 highway on Gulf Beach Highway will be a major 3 hazard if a turn lane is not established there like 4 it is on the Dollar General that is 5.9 miles from 5 my house or a turn lane that is 2.6 miles from my 6 house on Sorrento.</p> <p>7 So it will create a hazard. It will 8 create accidents with school buses, with children, 9 with wheelchair people that are on the sidewalks 10 that are going to be built. So it is going to be a 11 hazard that the community is going to have to deal 12 with. I disagree with this place. It's not a good 13 deal. I will just drive two miles down the road if 14 I need to go to Dollar General to buy toilet paper.</p> <p>15 Thank you.</p> <p>16 MR. KENNY PARSONS: Good morning. I'm Kenny 17 Parsons. I live at 10112 Bittern Drive. I'm two 18 miles away from here. I'm in a subdivision called 19 Heron's Forest. And I never stood up in front of 20 folks like this before. So I just might as well 21 make myself -- an idiot out of myself if I need to.</p> <p>22 I'm opposed to the project, but I'm not 23 opposed to Dollar General, per se. And I tell you 24 why, because right now they are celebrating a grand 25 opening of a Dollar General store that my family</p>	<p>1 sold the property to.</p> <p>2 That was in an area that they asked and 3 begged for something like that to come to their 4 community. This community is in Hopedale, 5 Illinois. And that is for the record. They are 6 welcoming this store because it's needed. They 7 don't have any other option other than a Casey's 8 General Store that sells gas, beer, bread and a few 9 other things, and it's way over priced. It was a 10 need. It was highly desired by that community.</p> <p>11 So I celebrate Dollar General in what 12 they are doing, and my family wanted to help be a 13 part of that. We owned the property that they 14 wanted.</p> <p>15 Well, it's a little different case right 16 here. If I look from my house -- well, actually, 17 not my house, from the site location and look at a 18 two-mile radius, within that two-mile radius, I'm 19 going to find another Dollar General. If I go 20 three-quarters of a mile in the opposite direction 21 to the east, I'm going to find another convenient 22 store, which, by the way, they close their -- they 23 turn the lights off at night. At eight o'clock 24 last night, they were closed, and you couldn't see 25 nobody.</p>

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<p>1 But anyway, if I needed something, I got 2 there. If I want to go up the road, I can hit 3 Walmart. I can hit Target, and we all know and 4 understand that.</p> <p>5 But what I want to really mention today 6 is something a little bit different. For 25 years, 7 I was a general contractor, both commercial and 8 residential. I have an engineering background, my 9 education, and my degree is in engineering. I'm 10 not a traffic engineer.</p> <p>11 I also work for a consulting engineering 12 firm in New Orleans, and I just finished up a 13 nine-year project. I work with engineers. I work 14 around engineers. And as a senior project manager, 15 I got to know all the problems and hassles of 16 construction and development.</p> <p>17 I used to work in Central Florida also as 18 an independent contractor. And I was working for 19 Disney. I was also working for St. Joe in their 20 towns and resorts division. I have a little bit of 21 experience in what happens when you go into a 22 community, and you develop, and you bring in 23 things.</p> <p>24 Currently, I have been working for 25 insurance underwriters doing commercial and</p>	<p>1 residential property and building inspections. So 2 I go and look at places, properties, businesses, 3 and I look for risk hazards.</p> <p>4 I can tell you this, when I do my survey 5 right now, what do insurance underwriters want to 6 know? What type of neighborhood is it? As soon as 7 I start checking boxes that these folks that they 8 all live in an area that is also commercial, when 9 you bring commercial into the mix of what these 10 folks are being rated for their insurance 11 premiums -- I guess I'm done -- it has an impact.</p> <p>12 UNKNOWN SPEAKER: Negative.</p> <p>13 MR. MIKE RILEY: Good morning, folks. My name 14 is Mike Riley. I live at 5035 Challenger Way here 15 in Pensacola, of course.</p> <p>16 One thing that hasn't been mentioned 17 which you guys may be familiar with is the Sunrise 18 Community, which I believe you guys approved just 19 recently, the subdivision located on Gulf Beach 20 Highway, 61 homes. That is going to increase the 21 traffic on Gulf Beach Highway by itself. Okay? 22 Along with the Dollar General, traffic will be bad.</p> <p>23 I'm against this totally. All we're 24 asking for is to maintain our quality of life. 25 Please let us do that. Thank you for your time.</p>
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<p>1 MR. TOM KINNEAR: Good morning, ladies and 2 gentlemen. My name is Tom Kinnear. I live at 5087 3 Challenger Way.</p> <p>4 I think I have a fairly good sense for 5 how the community feels about the Dollar General. 6 It isn't complementary. It doesn't enhance. It's 7 not compatible with the neighborhood.</p> <p>8 Quite honestly, I can't understand why 9 Dollar General would really want to be in this 10 particular location. They are not going to have 11 any business. And, consequently, they are going to 12 fail, and now we're going to be stuck with a Dollar 13 General store that will suit no one's purpose.</p> <p>14 So, again, I thank you for all of your 15 services for us and listening to us today. And 16 take all of this into consideration. I appreciate 17 it.</p> <p>18 MR. CHAIRMAN: I'm going to line up some folks 19 behind you.</p> <p>20 Cynthia Fulford, Cynthia Hobgood, Connie 21 Morse, Briar Chaney, Chris Plourde, Michael Varias, 22 Craig Dalton, Patrick Fieg, Steven Hoppe, Leo 23 Huang, David Middleton, Lynne Tobin, Janet Puskar, 24 Pat Cook, Cindy Cook, Donna Middleton, Doug 25 Godefroid, Mike Riley, Jane Kulbeth, Kris Kelly,</p>	<p>1 Judith Seward, Tom Kinnear, Arthur Detonnancourt, 2 Gary Mackey, Julie Hogan, Kathryn Workman, J.H. 3 Workman, William McLendon, William Hubbard, Gil 4 Bixel, Kenny Parsons, William Phillips, Judith 5 Smith, Kenneth Williams, Jeanne Williams, Karen 6 Grove.</p> <p>7 I do remind you that you can say three 8 minutes if you want, or you can say amen.</p> <p>9 MR. ARTHUR DETONNANCOURT: My name is Art 10 Detonnancourt. I live at 10455 Gulf Beach Highway. 11 And I also own a home in Chevalier on 5009 12 Challenger Way. I don't think that we can keep 13 beating this horse about compatibility because it 14 is pretty obvious to me that a general store over 15 there would be totally incompatible.</p> <p>16 I also feel that the real estate price 17 values will definitely go down. I have been a real 18 estate broker for 35 years and a real estate 19 investor, and I feel quite certain that this would 20 be absolutely no help to the values of the 21 properties in the area. Thank you.</p> <p>22 MS. CYNTHIA FULFORD: My name is Cynthia 23 Fulford. I just wanted to add that my home is 24 11302 Gulf Beach Highway. I'm on the corner of 25 Cobia and Gulf Beach Highway. My homestead that I</p>

<p style="text-align: right;">Page 129</p> <p>1 grew up in 11333, which is directly across from 2 where the proposed Dollar General would be. 3 My father recently passed away, so my 4 brother and sister and I are in a quandary as far 5 as what we are going to do with the home. And that 6 has been a question of, what is the value going to 7 be. I have to divulge this potential to any 8 buyers. 9 All of that being said, having grown up 10 there since 1961, I have seen a lot of growth and 11 development, and I am happy that nothing commercial 12 has come within that realm of where I live. And 13 the Dollar General is not a good footprint for that 14 property. 15 I understand that the property owners 16 want to maximize their investment. But I think 17 that they also need to consider their neighbors. 18 And they need to reconsider what would be 19 appropriate for that area. 20 Thank you very much for your time. 21 MS. CONNIE MORSE: Hello. My name is Connie 22 Morse. I'm a 37-year resident of Seaglates. I 23 live at 11013 Seaglade Drive, and I am firmly 24 against the Dollar General store. 25 Thank you.</p>	<p style="text-align: right;">Page 130</p> <p>1 MS. LYNNE TOBIN: Hi. My name is Lynne Tobin. 2 I live at 10330 Foggy Bottom Road, like the metro 3 stop in D.C. 4 And I am against this project. And I 5 just wanted to point out that there is a traffic 6 sign on our road that says no through trucks on our 7 section of Gulf Beach Highway. Nobody has 8 mentioned that one yet, so I don't know what they 9 would do about truck traffic. 10 Thank you. 11 MS. JANET PUSKAR: I'm Janet Puskar at 10324 12 Foggy Bottom Road. 13 I am against this proposal. It heartens 14 me that our community comes together so 15 unanimously, and I certainly hope you will listen 16 to our concerns. 17 MS. JANE KULBETH: My name is Jane Kulbeth. I 18 live at 9625 Grallatorial Circle in Heron's Forest. 19 I am against this proposal. And my good 20 neighbors have done more than an adequate job of 21 covering all of my objections. 22 Thank you. 23 MS. JUDITH SEWARD: My name is Judith Seward. 24 I live at 6043 Electra Lane. I bought the property 25 in 1996. I moved in in 1997. So I have been there</p>
<p style="text-align: right;">Page 131</p> <p>1 for 20 years. 2 Some of the things I wanted to address, I 3 have been jotting down notes. According to Chapter 4 3 of the zoning regulations, Article 1, Section 5 3-1.1, number four, I don't see how building the 6 Dollar General would preserve the character and 7 quality of the residential neighborhoods. 8 And number six, I don't see how building 9 the Dollar General there would balance individual 10 property rights with the interests of the community 11 to create a healthy, safe and orderly environment. 12 Okay. Another thing I wanted to address 13 is there currently is a Dollar General four minutes 14 away from the area on Sorrento Road. 15 Also, as far as the noise issue, I don't 16 know how you can predict what the noise issue will 17 be. You cannot say that it won't be an issue. You 18 can't say it will be an issue. But taking into 19 consideration that the only entrance to the Dollar 20 General will be on Gulf Beach Highway, that tells 21 me that the big delivery trucks -- I don't know 22 what you call them, 18-wheelers or whatever -- they 23 are going to come right down Gulf Beach Highway 24 right by that subdivision, and they will have to 25 turn in there to deliver their supplies or whatever</p>	<p style="text-align: right;">Page 132</p> <p>1 they are delivering to the store, and I don't see 2 how you can say that is not going to create a noise 3 issue. Plus, it will also create a traffic issue, 4 which we all know there already is one. 5 Okay. Also, if you do build the Dollar 6 General there, and they have a 15-year lease, and 7 at the end of the 15-year lease, they decide that 8 don't want to renew their lease, then that will 9 lead to an abandoned building. And we all know 10 that Escambia County currently has their share of 11 abandoned buildings all over the County, which are 12 eyesores. We do want an abandoned building and 13 eyesore, particularly in our neighborhood. 14 The last point I want to make is the 15 property owners, I looked up the County appraiser's 16 record, and they said that the property owners live 17 in Pelham, Alabama. Now if you build a Dollar 18 General on Gulf Beach Highway, this is not going to 19 affect the property owners. I mean, they are like 20 completely out of the picture. 21 So I just don't see how building a Dollar 22 General is going to be conducive to us. It's not 23 going to have any negative effect on them, but it 24 will have a negative effect on us. 25 Thank you.</p>

<p style="text-align: right;">Page 133</p> <p>1 MS. KRIS KELLY: Hello. My name is Kris 2 Kelly. And I live at 3016 Corsair Drive in 3 Chevalier Subdivision right surrounding the 4 property. I live there with my husband. We are 5 homeowners, and we are raising a small family 6 there. 7 We picked this area because of its 8 residential quality, and we want that to be 9 retained, so we oppose the Dollar General at this 10 location. We do not feel -- we feel like this is 11 going to set a precedent for additional commercial 12 building in the area and for others to come in and 13 try to add more commercial development in the area. 14 It is not needed. 15 All of the daily necessities that we need 16 are within two miles or just over two miles away, 17 including the other Dollar General that is there. 18 We don't need to walk to it. We like to drive. We 19 drive every day. We go to work every day. We 20 drive on the holidays and weekends. We drive by 21 stores all the time. And when we come home, we 22 want to be home with neighbors and friends and not 23 commercial development. 24 That is pretty much all I have to say. 25 And I just ask that you deny their appeal. Thank</p>	<p style="text-align: right;">Page 134</p> <p>1 you. 2 MS. JULIE HOGAN: Hi. My name is Julie Hogan. 3 I live at 11412 Seaglade Drive, and I oppose this 4 project. 5 MR. WILLIAM HUBBARD: Good morning. I'm 6 William Hubbard. I'm at 615 Dundee Drive in 7 Chandelle, and I oppose it. 8 Thanks. 9 MS. JUDITH SMITH: Hi. I'm Judith Smith. I 10 live at 11150 Gulf Beach Highway. I have been 11 there 21 years, and I oppose. 12 MR. GIL BIXEL: My name is Gil Bixel. I live 13 at 11300 Seaglade Drive. I do oppose this project. 14 I would just ask that you look at the map 15 from Bauer Road and Gulf Beach Highway East and see 16 how many other commercial properties there are. 17 And to consider if this project is approved, it's 18 setting precedence for other areas. And I would 19 ask that you be mindful of this. 20 Thank you. 21 MR. KENNETH WILLIAMS: My name is Kenneth 22 Williams, 1406 Cacao Lane, Seaglades Subdivision, 23 and I oppose this. 24 Thank you. 25 MS. LINDA LEIGHTON: Hi. I'm Linda Leighton.</p>
<p style="text-align: right;">Page 135</p> <p>1 I am at 154 Ethel Wingate Drive, Unit 503, and we 2 are opposed to this. 3 MR. BYRON LEIGHTON: Hello. My name is Byron 4 Leighton, 154 Ethel Wingate, Harbour Pointe. I'm 5 opposed to the project. 6 Thank you. 7 MS. BRANDI SCHOENVOGEL: Good afternoon. My 8 name is Brandi Schoenvogel. I live at 11605 9 Chanticlear Drive, and I'm the president of the 10 Chanticlear Subdivision. 11 I would ask if someone over here could 12 put up the rendering of the building with the 13 landscape around it. 14 I would just like to say that I work 15 for a law firm out of Texas. I work remotely. And 16 one thing I have learned is when I look at this, I 17 love trees. I love it when people don't cut down 18 trees. But when you have a commercial property 19 like this, liability. There are burglars in those 20 trees, rapists, child predators. 21 I am completely against this. It will 22 diminish the value of our homes in our 23 neighborhood, too much traffic. I don't want it 24 anywhere near my new house. 25 Thank you.</p>	<p style="text-align: right;">Page 136</p> <p>1 MR. LEO HUANG: My name is Leo Huang. 200 2 Chocktaw Lane is where I live. I'm the property 3 owner on Gulf Beach Highway. And I understand the 4 concerns of the community, and I apologize. But I 5 do feel like this Dollar General will be a 6 convenience to all of you-all. I understand the 7 concerns, and I know at the start, you-all might 8 not shop there, but eventually, it will be a 9 convenience to you. 10 UNKNOWN SPEAKER: Do you live here? Will you 11 be using that store? 12 MR. LEO HUANG: I actually -- I live in 13 Navarre. 14 MR. THERIAQUE: Mr. Chairman. 15 MR. LEO HUANG: I have a beach house there. 16 And I do -- I'm sorry. 17 MR. THERIAQUE: Mr. Chairman, point of order. 18 The court reporter can't take down people screaming 19 from the audience. 20 MR. CHAIRMAN: Continue with your comments. 21 MR. LEO HUANG: Yes, sir. 22 Touching -- touching on the traffic 23 issues, it's not going to be a Walmart or the Blue 24 Angels events. I think it's going to be real 25 small, and the people that shop there will be from</p>

<p style="text-align: right;">Page 137</p> <p>1 the community. So you won't be attracting people 2 from maybe in the town, Pensacola town or Navarre. 3 It's going to be people in that community. 4 And talking about devalue of properties, 5 what I see as a devalue of the property is next to 6 a railroad track, you know, a landfill. Those 7 things devalue a property. 8 This Dollar General is a convenience to 9 the community, and when I buy a house, I don't look 10 at a Walmart or a Dollar General and say, hey, you 11 know, I'm going to offer you 20 percent less on 12 that property because Target is there or Walmart or 13 Dollar General. That is kind of my perception. 14 And I apologize. I know everybody's 15 concerned, but I really think this is going to be a 16 good thing for the community. 17 UNKNOWN SPEAKER: You don't live there. 18 UNKNOWN SPEAKER: It's your back account. 19 MR. CHAIRMAN: Have we missed anybody who 20 wanted to address it? Anybody, either pro or con? 21 If not, I would like to ask staff for a closing 22 statement. 23 MS. CRAWFORD: Yes, Mr. Chairman. 24 MR. THERIAQUE: Mr. Chairman, excuse me. We 25 haven't completed our case. If you recall, you</p>	<p style="text-align: right;">Page 138</p> <p>1 were going to allow staff to proceed and the public 2 comments. We never got to finish ours. 3 MR. CHAIRMAN: Okay. We will revert to that. 4 Go right ahead. Sorry. 5 MR. THERIAQUE: Yes. Thank you, sir. One 6 second, please. 7 I call Tom Hodges. 8 WHEREUPON, 9 THOMAS HODGES 10 was called as a witness and, after having been first 11 duly sworn, testified as follows: 12 THE WITNESS: Again, my name is Tom Hodges, 13 vice president of operations, Teramore Development. 14 121 Parkway Drive, Thomasville, Georgia. 15 I planned to say good morning, but I 16 guess I will say good afternoon. I'll start off 17 just by telling you a little bit about who we are. 18 We're a developer out of Thomasville, Georgia. 19 Before we developed for Dollar General, we 20 developed for other companies as well, Publix, 21 Dunkin' Donuts, things like that. We are a small 22 company, but we do work in Southern Georgia and 23 North Florida. 24 In this case, we identified this 25 property. We worked with Dollar General very</p>
<p style="text-align: right;">Page 139</p> <p>1 closely. We contracted the property. We had a 2 pre-app. We were aware of the locational criteria, 3 and since that time, have been working through 4 that. And that's what leads us here today. 5 Originally, our intention, if you look at 6 this property from a very early perspective, this 7 3.5 acres or 3.45 acres, and it's zoned commercial. 8 And we had intention or hopes to develop the entire 9 property, as I imagine anybody would looking at an 10 investment property. We hoped to have Dollar 11 General in the corner and then reserve the 12 remaining property as an investment to maybe 13 capitalize on later down the road. 14 Once we got a little bit deeper in the 15 locational criteria, we learned that really that 16 probably wasn't the best way to go to stick the 17 Dollar General in the corner and then retain the 18 residential or the retain the adjacent property 19 for future commercial use, but to really absorb, 20 have the buffering absorb the Dollar General site 21 and to buffer this from the residential use as much 22 as we possibly could. 23 I understand a lot of the citizens' 24 concerns. We held a neighborhood meeting last week 25 to try to hear as many of those as we could and</p>	<p style="text-align: right;">Page 140</p> <p>1 address as many as we could. I understand there 2 are people that just are not going to agree or be 3 in favor of this project. And I'm not trying to 4 change their minds about that. Everybody is 5 entitled to their opinions. The purpose of the 6 meeting last week was to give them accurate 7 information so that they could have an informed 8 decision, an informed opinion. 9 We are trying to do as much as we can in 10 terms of the buffering. You can see the rendering 11 of the building there. This is not the type of 12 Dollar General that you see anywhere else in this 13 area. We are trying to cater to the character and 14 nature of this area. 15 We have gone well above and beyond really 16 anything we have ever done certainly in terms of 17 the buffering, also in terms of the building facade 18 itself. We're proposing an e-wall around the front 19 to shield any lighting from spilling over from 20 headlights and things like that. 21 Dollar General and their business model 22 really has askew of different areas and densities 23 that they go after. Of course, you find them in 24 inner cities and urban areas. You find them in 25 extremely rural areas. You also find them in</p>

<p style="text-align: right;">Page 141</p> <p>1 neighbor areas. And that's what the purpose of 2 this site was, to be a neighborhood general store. 3 That's the market that we are trying to capture 4 there. 5 We have developed many Dollar Generals 6 throughout this area in Escambia County and 7 Pensacola and have done so for the last 15 years 8 and have put them in an array of different areas in 9 terms of density and nature in terms of zoning. 10 A good example, I guess, that relates to 11 this project would be one that we completed last 12 year in Miramar Beach. It was at the entrance of a 13 very upscale beachfront community. Home values 14 ranged from three to five hundred thousand dollars, 15 and that's not on the water. That is back off the 16 water. The ones on the water are, obviously, much 17 higher than that. 18 In that case, we had a neighborhood 19 meeting and had a much different turnout, and those 20 folks are still very happy with what they have. We 21 don't have access of the side road there. It's a 22 very good looking store. I think there is a 23 preconceived with Dollar General that you're going 24 to get a metal building, and it's going to be ugly. 25 And I understand the fear of the unknown. But I</p>	<p style="text-align: right;">Page 142</p> <p>1 think the finish product of what we are proposing 2 here would be of benefit to this community in terms 3 of convenience. It would keep people off the 4 roads. If you think about it, if folks are driving 5 east and west to get to where they are going, if 6 they don't have to go much farther at all than 7 where they are living, then they are really keeping 8 them off the roadways. 9 And we have a traffic specialist here, 10 Bonita Player, to touch on that with any questions 11 you have on that. 12 We want to work with the neighbors as 13 much as we can if there are additional concerns. I 14 know at the community meeting we heard, you know, 15 reduce -- in the landscaping, reduce pine straw. 16 We would like to see more grass, things of that 17 nature, keeping the lighting low. 18 We can work on things like signage. We 19 are extremely open and want to work with the 20 community and these residents as much as we 21 possibly can. 22 And then my final note would be, the 23 remaining property, I know there was the buffering. 24 There were some concerns about the lease and how 25 that would all be structured because leases can be</p>
<p style="text-align: right;">Page 143</p> <p>1 revised. 2 We would be willing to deed restrict that 3 remaining property to have it remain buffering. 4 And these restricts would go with the land. So I 5 just wanted to let you guys know that we would be 6 willing to do whatever necessary. 7 If there are any questions. 8 MR. CHAIRMAN: Board members, any questions of 9 the speaker? Staff? 10 (No response) 11 MR. CHAIRMAN: Thank you, sir. 12 MR. GODWIN: Mr. Chairman, I have one. 13 MR. CHAIRMAN: Oh, I'm sorry. 14 MR. GODWIN: Given the proximity from what I 15 heard the testimony this morning is there are two 16 stores that are pretty close to each other. Why 17 would you put one there? 18 THE WITNESS: That's a good question. I think 19 the closest one is about 2.3 or 2.4 miles away. It 20 has a lot to do with density. And, really, to 21 answer that question, I have to give you some 22 disclaimers. We are the developer, so we own the 23 property and the building, and it's a lease back to 24 Dollar General. So they will be operating the 25 store. We will own the property.</p>	<p style="text-align: right;">Page 144</p> <p>1 So we don't work for Dollar General. We 2 are not Dollar General. We are Teramore 3 Development, so there is that degree of separation. 4 We work with Dollar General very closely on site 5 selection. 6 In some cases, they say, hey, here is the 7 area we want you to work. In some cases, they say, 8 generally speaking, we would like to be somewhere 9 in here. Sometimes it's a little bit more 10 specific. Sometimes we go to them and say, hey, 11 we've, you know, identified an area that we think 12 would be attractive to you guys. 13 In this case, we worked very closely with 14 Dollar General. We told -- we, obviously, pointed 15 out to them where the existing stores are. They 16 run things like traffic, density and things like 17 that. 18 And so while they don't give us all of 19 their information about how they land on their 20 decision in their market planning division, you are 21 talking about a Fortune 150 company that really 22 gets it right a lot of the time, almost all of the 23 time. So you don't see dollar closing anywhere 24 around, unless they are being relocated. It's 25 usually somewhere next door. Those are 25,</p>

<p style="text-align: right;">Page 145</p> <p>1 30-year-old stores. 2 And so I can tell you that Dollar General 3 and their market planning division has run their 4 models, which are extremely, highly accurate. They 5 do not miss. And they have determined that this 6 would be a successful location for them based on 7 density and traffic patterns, things of that 8 nature. 9 And in terms of traffic generation, I 10 know that we have some stores nearby that are on 11 higher traffic roads. That doesn't mean that this 12 road will become the higher traffic road. We don't 13 cause something to go from 5,000 to 24,000 trips a 14 day or anything like that. That is just where we 15 located there were already 24,000 trips a day. So 16 I do want to clear that up as well. 17 But to answer your question, Dollar 18 General has determined that this would be a 19 successful location for them. And we do hold a 20 lease with them at this time. 21 MR. CHAIRMAN: Any other questions? 22 (No response) 23 Thank you, sir. 24 THE WITNESS: Thank you. 25 MR. THERIAQUE: No other witnesses at this</p>	<p style="text-align: right;">Page 146</p> <p>1 time. 2 Thank you, sir. 3 MR. CHAIRMAN: I will give you both an 4 opportunity to make a closing statement in just a 5 second, if you would like. 6 Staff, would you like to make a closing 7 statement? 8 MS. CRAWFORD: Yes, Mr. Chairman, I would. 9 Meredith Crawford, again, for the County 10 Attorney's Office here -- 11 MR. CHAIRMAN: Mic. 12 MS. CRAWFORD: I'm sorry. 13 Meredith Crawford here on behalf of the 14 County Attorney's Office. I am here representing 15 staff. 16 Just briefly in closing, this is an 17 appeal of the planning director's decision. The 18 burden is on the applicant to show error in his 19 decision, to show that he was arbitrary and 20 capricious in making that decision. 21 We have outlined all the relevant code 22 provisions related to compatibility determination, 23 related to compliance review, appeals before this 24 board. 25 Everything you have heard today is not</p>
<p style="text-align: right;">Page 147</p> <p>1 news to Mr. Jones. He know this. He already this. 2 He reviewed all of this, and he made his 3 determination based on our code. He provided his 4 determination based on his authority and the 5 mandate from the Board of County Commissioners that 6 grants him that authority to direct the planning 7 and the zoning of the County. 8 While the neighbors are not experts, they 9 can testify to the facts, and they did testify to 10 the facts related to traffic, related to storm 11 water, related to existing issues in the 12 neighborhood. 13 The applicant has stated that they want 14 to cater to the character and nature of the area. 15 However, the character and the nature of the area 16 and the surrounding area is all residential. 17 Based on Mr. Jones' analysis and the 18 competent, substantial evidence presented before 19 you here today, his testimony and the testimony of 20 Mr. Holmer, the review of the code, the testimony 21 of the citizens, I believe you have more than 22 enough evidence to find that his decision was 23 correct. It should be upheld and that the 24 applicant has not met their burden to overturn his 25 decision. So we would ask that you deny the</p>	<p style="text-align: right;">Page 148</p> <p>1 applicant's appeal and that you hold up the 2 determination of the planning official that Dollar 3 General in this location is not compatible. 4 Whether or not Dollar Generals are great 5 in other locations is not the question. The 6 question is simply: Have they met the requirements 7 of the code? Do they meet the locational criteria? 8 Are they compatible? 9 And the answer to all of those questions 10 have been a resounding no from staff, from our 11 local experts and from the communities. We would 12 ask that you rule in favor of the County and deny 13 their appeal. 14 MR. CHAIRMAN: Thank you. 15 Board members, any questions of staff? 16 (No response) 17 Applicant, would you like to make a 18 closing statement, sir? 19 MR. THERIAQUE: Absolutely. Thank you. 20 Let me begin by thanking you for your 21 patience. We have here now for almost four hours. 22 And I also want to thank the homeowners who turned 23 out to express their opinions. This is what is 24 kind of cool about local government practice. You 25 have staff. You have property owners, and you have</p>

<p style="text-align: right;">Page 149</p> <p>1 applicants all weighing in try to reach the best 2 decision that you can. So, again, I appreciate 3 that. 4 Let me begin by stating that you heard 5 testimony from the residents about traffic. You 6 heard testimony about storm water. You heard 7 testimony about compatibility. However, all the 8 folks who testified from the general public 9 acknowledge that they were not experts in storm 10 water or traffic or compatibility. 11 And especially with the traffic, the case 12 law is clear, that lay testimony on traffic saying 13 that it's going to increase or it's going to be 14 problematic is not competent, substantial evidence. 15 There is case after case that the courts have 16 decided that overturned a board relying upon lay 17 testimony that traffic was going to be an issue. 18 So I would submit that the neighborhood 19 concern about traffic, the neighborhood concern 20 about storm water, the neighborhood concern about 21 compatibility, it does not rise to the level of 22 competent, substantial evidence. 23 I would also note, and I started the 24 presentation that if I had 300 people for or 300 25 people against, the case law is clear that this</p>	<p style="text-align: right;">Page 150</p> <p>1 board does not get to vote on an applause meter. 2 The fact that lots of folks came up and just simply 3 said, I'm against, that is not competent, 4 substantial evidence to support a decision one way 5 or the other. 6 What is competent, substantial evidence 7 is the testimony of both staff members and the 8 folks that we called. I think what was really 9 telling to me is -- let me start with the criteria. 10 It was on page LDC 3:50. It was the 11 location criteria. I think it's Exhibit 4 in my 12 binder that I provided to you-all. 13 The location criteria one through four 14 are not compatibility determinations. Your 15 location criteria are not an overarching 16 compatibility test. For example, one, two and four 17 deal with distance. If you are so close within a 18 quarter of mile of an intersection with an arterial 19 street, you are within a certain distance of a 20 traffic generator. You are within a certain 21 distance of an intersection with an arterial and a 22 collected, et cetera. 23 Those are straight distance locational 24 criteria. They don't have an compatibility 25 problem. The infill development, we stated early</p>
<p style="text-align: right;">Page 151</p> <p>1 on, we were not hanging our hat on the infill 2 criterion. 3 However, the way your code is drafted, it 4 does provide an applicant the opportunity to say, 5 okay, no, we don't meet one, two, three or four. 6 But we can document that we can be compatible on 7 this property and that there are unique 8 circumstances that were not contemplated by these 9 other criteria. 10 And I believe what the evidence, 11 especially from Ms. Gutcher, demonstrated is she's 12 never worked on a project where you have 13 approximately three acres and a developer provided 14 two-plus acres as a buffer. And this was not a 15 developer who just came in here and said, I'm going 16 to plop the Dollar General. I have a commercial 17 future land use designation. I have a zoning 18 designation. I'm just going to plop it down and 19 say I'm compatible. 20 They gave up the reminder of the 21 property, and they have stipulated here today 22 because Board Member Goodwin or Godwin asked the 23 question about what happens after 15 years. He 24 just said he will deed restrict the property. So 25 after 15 years, it's still going to be a buffer.</p>	<p style="text-align: right;">Page 152</p> <p>1 And the percentages, this wasn't one foot 2 went to two. It was more ten feet went 200 feet, 3 15 feet went to 92 feet. Now, this is one of the 4 most buffered piece of property that I have ever 5 seen a small-scale commercial, neighborhood 6 commercial facility provide. 7 The diagram that is on the screen, that 8 is we literally hired somebody to take the existing 9 vegetation and then please the Dollar General that 10 we are proposing in the existing vegetation. So 11 that's what we're looking at, and this is an aerial 12 that is looking down. So you'll see some of the 13 tops of the houses behind it, but that is 14 surrounded by vegetation. It's surrounded by 15 trees. 16 You will not have an adverse impact on 17 the properties that surround this particular parcel 18 because of the way that it's laid out, the way that 19 the buffer works. You won't even -- you won't 20 hear. You won't see. There is not a mass in 21 question. 22 And what was telling as well -- and I 23 have known Mr. Jones for years. He's a fine 24 director of planning. But what he could not answer 25 to me is the crux of this case. He could not state</p>

<p style="text-align: right;">Page 153</p> <p>1 under oath that the proposed Dollar General -- and</p> <p>2 let me get the language again -- could not coexist</p> <p>3 in relative proximity to each other in a stable</p> <p>4 fashion over time, such that no use, activity or</p> <p>5 condition is unduly negatively impacted. That is</p> <p>6 the definition in your code.</p> <p>7 And you have no evidence from staff that</p> <p>8 this project fails to meet the definition of</p> <p>9 compatibility that the County adopted. You have</p> <p>10 evidence from Ms. Gutchner who has done thousands of</p> <p>11 compatibility analyses in the public sector, not</p> <p>12 just private clients, that this project is</p> <p>13 compatible and will be compatible.</p> <p>14 And I will represent to you, I have been</p> <p>15 practicing law -- and, again, I don't present</p> <p>16 evidence. I present argument. But I have been</p> <p>17 practicing law for almost 30 years around the</p> <p>18 State. And when you litigate compatibility cases,</p> <p>19 which is what we are coming down to here, with all</p> <p>20 due respect, I read (e)(5) to be the compatibility</p> <p>21 prong for the locational criteria, that the County</p> <p>22 created an option. If you don't meet one through</p> <p>23 four, if you can demonstrate compatibility, and</p> <p>24 it's something unique, then you ring the bell.</p> <p>25 It's not an exception. It's one of the criteria</p>	<p style="text-align: right;">Page 154</p> <p>1 that the County Commission adopted.</p> <p>2 So when I look at this, and you litigate</p> <p>3 compatibility, what creates an unduly negative</p> <p>4 impact? Lighting. We had no testimony that</p> <p>5 lighting would be a problem. Odors, noise, mass</p> <p>6 and bulk. That comes in when you have a highrise</p> <p>7 next to a single-family home, and you have the loss</p> <p>8 of privacy because the highrise is looking down in</p> <p>9 your backyard when you're using your swimming pool.</p> <p>10 Or that the scheme in the neighborhood is</p> <p>11 single-family one and two stories, and you are</p> <p>12 putting in a seven story. That changes the mass</p> <p>13 and bulk and sometimes can produce instability into</p> <p>14 a neighborhood. That creates an unduly negative</p> <p>15 impact.</p> <p>16 You had no evidence from the staff that</p> <p>17 identified anything that would cause unduly</p> <p>18 negative impact. They simply said it's not</p> <p>19 compatible because it's a commercial use near</p> <p>20 residential. You have commercial uses near</p> <p>21 residential throughout this County, throughout this</p> <p>22 state. And you can't determine that something is</p> <p>23 not compatible by simply saying it's not</p> <p>24 compatible.</p> <p>25 As a matter of law, the person saying</p>
<p style="text-align: right;">Page 155</p> <p>1 that it's not compatible has to identify why. And</p> <p>2 why is not it's residential next to commercial.</p> <p>3 Why is one of the compatible factors. And you have</p> <p>4 no evidence staff that any of the compatible</p> <p>5 factors would support a determination of not</p> <p>6 compatible.</p> <p>7 The criteria, this is an administrative</p> <p>8 appeal. And you had a slide earlier that gave a</p> <p>9 definition for arbitrary and capricious. I think</p> <p>10 it was from the Florida statutes or from case law</p> <p>11 or something. That's not what arbitrary and</p> <p>12 capricious means under your code.</p> <p>13 Your code under 2-6.10(b)(4)a, the</p> <p>14 decision of the administrative official is neither</p> <p>15 required nor supported by the comprehensive plan or</p> <p>16 the LDC and, therefore, arbitrary or capricious.</p> <p>17 What that means is if the planning</p> <p>18 director's decision is not supported by the Comp</p> <p>19 Plan or the Land Development Code, that in and of</p> <p>20 itself is arbitrary and capricious. And we submit</p> <p>21 that the decision is not supported by the</p> <p>22 Comprehensive Plan or Land Development Code.</p> <p>23 The Comp Plan clearly calls this</p> <p>24 commercial. Zoning clearly calls this commercial.</p> <p>25 And we meet the fifth criterion under subsection E</p>	<p style="text-align: right;">Page 156</p> <p>1 of the locational criteria.</p> <p>2 Our client will suffer an adverse impact.</p> <p>3 They are not going to be able to develop the Dollar</p> <p>4 General on the property. This is -- prong B deals</p> <p>5 with specific LDC provisions identified in the</p> <p>6 appeal application appropriate to the decision, and</p> <p>7 the decision was not in compliance with these</p> <p>8 provisions. That gets right down to the criteria</p> <p>9 that we have been dealing with, (e)(5).</p> <p>10 Protected interest, our client clearly</p> <p>11 has a protected interest to develop their property.</p> <p>12 And our client clearly has a greater impact than</p> <p>13 somebody in the general community.</p> <p>14 Your fifth prong is almost a standing</p> <p>15 prong. If they didn't own property, they couldn't</p> <p>16 be bringing an administrative appeal if they live</p> <p>17 ten miles away from the issue. And our client</p> <p>18 clearly has an interest in the property and,</p> <p>19 therefore, is appropriately bringing this appeal.</p> <p>20 So in sum, there are a couple of other</p> <p>21 loose ends. Then I will sit down.</p> <p>22 The issue of storm water, that is site</p> <p>23 plan issue. We haven't gotten to site plan yet.</p> <p>24 So whether there is an X zone or an AE zone and</p> <p>25 whether or not there are any flood measures that</p>

<p style="text-align: right;">Page 157</p> <p>1 need to be addressed, that is at the site plan 2 level. It's not for today. 3 The domino effect, we heard that several 4 times today. This is the only piece of property in 5 this area that has a commercial designation. It's 6 the only property in this area that will have the 7 right to come in and seek a commercial use pursuant 8 to locational criteria. 9 Mr. Holmer put the slide up, and you saw 10 a sea of high density and low density residential. 11 The only parcel that had commercial was our 12 clients. So unless somebody comes in and convinces 13 the Board of County Commissioners to rezone a 14 residential property to commercial, this isn't a 15 domino effect. It's one piece of property, and 16 it's my client's property. 17 Lastly, again, I have been doing this 18 for 30 years, and I have done all three sides. I 19 represent local governments. I represent property 20 owners that are trying to develop their properties. 21 And I have represented neighbors trying to protect 22 their neighborhood. 23 And just two years ago, I was 24 representing somebody trying to do a restaurant on 25 the beach in South Walton. And the neighbors lived</p>	<p style="text-align: right;">Page 158</p> <p>1 in the condominium next to it, and they all swore 2 up down at the hearing, we will not spin one dollar 3 in that restaurant if you approve it. The first 4 time I went there after it was built about six 5 months later, they were holding their HOA meetings 6 there because they could walk down to the sidewalk 7 to a really nice restaurant. 8 So I would submit that folks stating 9 today that they are never, ever going to shop 10 there, I frequently see that that doesn't pan out. 11 But whether they do or they don't, you also don't 12 have a criterion in your code that says there can 13 only be three Dollar Generals in a certain 14 proximity, or there can only be 200 houses in a 15 particular area. 16 Every property owner has a right to come 17 in and ask, regardless of how many other ones there 18 might be on a street or in a neighborhood or in a 19 community. 20 So we ask that you grant our 21 administrative appeal, allow us to proceed through 22 the process. We don't get approved today. That's 23 not what we are doing. We just get the right to 24 submit. And we have to go through the site plan 25 approval process and meet all your site plan</p>
<p style="text-align: right;">Page 159</p> <p>1 requirements. 2 All we're asking for today is the right 3 to be able to submit an application to get approval 4 that we meet the location criteria. 5 Thank you. 6 MR. CHAIRMAN: Board members, any questions of 7 the applicant? Any questions of the staff? 8 (No response) 9 The Chair will now entertain a motion 10 regarding this item. In your motion, please state 11 whether or not you adopt the staff's findings of 12 fact. If for any reason you do not accept staff's 13 findings of fact, specifically state why you do not 14 concur. Do we have a motion? 15 MR. STROMQUIST: I will make a motion to agree 16 with staff's findings of fact and deny the appeal. 17 MR. CHAIRMAN: Do we have second? 18 MS. GUND: I will second. 19 MR. CHAIRMAN: A motion by Bill, a second by 20 Judy. 21 Any discussion? 22 (No response) 23 Those in favor, signify by raising your 24 right hand. 25 (The board members raise their right</p>	<p style="text-align: right;">Page 160</p> <p>1 hands.) 2 A unanimous acceptance of staff's 3 findings. 4 MR. GODWIN: Mr. Chairman, I think the record 5 ought to be have that our decision is based upon 6 the competent and substantial evidence that was 7 presented by the expert witnesses that testified 8 before us today, and while we heard quite a bit of 9 comments and testimony from the neighborhood, that 10 our decision-making process was geared to that 11 expert testimony. 12 MR. CHAIRMAN: You are on the recording, and 13 that will be duly noted in the minutes. 14 (Whereupon, the hearing was adjourned at 15 12:27 p.m.) 16 17 18 19 20 21 22 23 24 25</p>

1 CERTIFICATE OF REPORTER

2
3 STATE OF FLORIDA)
4 COUNTY OF ESCAMBIA)
5

6 5

7 I, REBECCA T. FUSSELL, Court Reporter, do
8 hereby certify that I was authorized to and did
9 stenographically report the meeting of the Board of
10 Adjustment; and that the foregoing transcript, pages 1
11 through 161 is a true record of my stenographic notes.

12 I FURTHER CERTIFY that I am not a relative,
13 employee, or attorney, or counsel of any of the parties
14 nor am I a relative or employee of any of the parties',
15 attorney or counsel connected with the action, nor am I
16 financially interested in the action.

17
18
19 DATED this 8th day of November 2017.
20
21

22 _____
23 REBECCA T. FUSSELL, COURT REPORTER
24
25

**BOARD OF ADJUSTMENT
ESCAMBIA COUNTY, FLORIDA**

Teramore Development, LLC,
Petitioner

v. Parcel No. 23-3S-31-2001-000-000
 Address: 11400 block of Gulf Beach Highway,
 Pensacola Florida
 BOA Case: AP-2017-02

ESCAMBIA COUNTY, a political
subdivision of the State of Florida,
Respondent.

_____ /

NOTICE OF CONTINUANCE

COMES NOW, Respondent, Escambia County Board of County Commissioners, Development Services Department, (hereinafter, the "County") by and through its undersigned attorney, and provides this Notice of Continuance. In support thereof, the County states as follows:

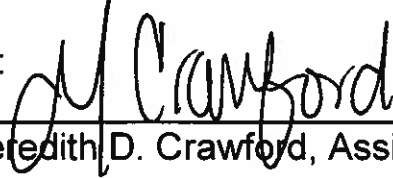
1. This matter was scheduled for hearing before the Escambia County Board of Adjustment on October 17, 2018; and
2. The Florida Panhandle was hit by Hurricane Michael on October 10, 2018; and
3. Due to the hurricane, the initial hearing was rescheduled from October 17, 2018 to November 14, 2018; and

4. In November 2018, counsel for the applicant's wife suffered an unexpected injury; and
5. On November 13, 2018, the day before the hearing, opposing counsel's wife is having surgery in Tallahassee, Florida; and
6. Citing the ongoing recovery from the recent hurricane and the wife's surgery, the applicant is requesting a continuance; and
7. Given all facts and circumstances, the County does not object to the requested continuance; and
8. The continuance is filed in good faith and not solely for the purpose of delay; and
9. The County is authorized to file this Notice on behalf of the Petitioner.

WHEREFORE, the County submits this Notice of Continuance and requests that the matter be set before the Board of Adjustment on the next mutually available date.

Respectfully submitted,
Alison P. Rogers, County Attorney
Escambia County Attorney's Office

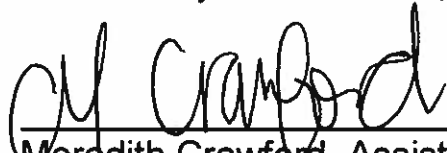
By:


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Florida Board No.: 0048086
Attorney for Escambia County, FL
mdcrawford@myescambia.com
aespinosa@myescambia.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Notice of Stipulated Continuance of the Board of Adjustment hearing was filed on November 13, 2018, via electronic mail to David A. Theriaque, Attorney for Teramore Development, LLC, at dat@theriaquelaw.com and to Kayla Meador, Clerk for the Escambia County Board of Adjustment, at krmeador@myescambia.com, this the 13th day of November, 2018.

A handwritten signature in black ink, appearing to read 'M. Crawford', is written over a horizontal line.

Meredith Crawford, Assistant
County Attorney
Attorney for Escambia County, FL