

AGENDA  
ESCAMBIA COUNTY BOARD OF ADJUSTMENT  
January 20, 2016–8:30 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 witnesses.
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 the December 16, 2015 Resume Minutes.
6. **Consideration of the following cases:**
  1. **Case No.:** CU-2015-03 - Remanded  
Address: 7251 Plantation Rd.  
Request: Communication Tower Over 150 Feet  
Requested by: Dave Hoxeng, Agent for ADX Communications of Escambia, LLC
  2. **Case No.:** V-2015-14  
Address: 4615 Mobile Hwy.  
Request: Sign Variance  
Requested by: Nader Ghobrial, Agent for Fadi Mubarak, Owner
  3. **Case No.:** V-2016-01  
Address: 13922 River Rd.  
Request: Building Height Variance  
Requested by: Jesse W. Rigby, Agent for Helen Scarbrough
  4. **Case No.:** V-2016-02  
Address: 13900 River Rd.

Request: Building Height Variance

Requested by: Jesse W. Rigby, Agent for Linda H. Dunson Banta

5. **Case No.:** CU-2016-01

Address: 9838 N. Davis Hwy.

Request: To Allow a Microbrewery in Commercial Zoning

Requested by: David and Dayna Beddick, Owners

7. Discussion Items.

8. Old/New Business.

9. Announcement.

The next Board of Adjustment Meeting is scheduled for Wednesday, February 17, 2016 at 8:30 a.m., at the Escambia County Central Office Complex, Room 104, 3363 West Park Place.

10. Adjournment.

**Board of Adjustment**  
Meeting Date: 01/20/2016

**5.**

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Attachments

Draft Resume' 12-16-15

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# DRAFT

## RESUMÉ OF THE MEETING OF THE BOARD OF ADJUSTMENT HELD December 16, 2015

CENTRAL OFFICE COMPLEX  
3363 WEST PARK PLACE, BOARD CHAMBERS  
PENSACOLA, FLORIDA  
(8:30 A.M. – 8:50 A.M.)

Present: Auby Smith  
Bill Stromquist  
Jesse Casey  
Judy Gund  
Frederick J. Gant  
Jennifer Rigby  
Blaise Adams

Staff Present: Kristin Hual, Assistant County Attorney  
Horace Jones, Director, Development Services  
Andrew Holmer, Division Manager, Planning & Zoning  
John Fisher, Senior Urban Planner, Planning & Zoning  
Debbie Lockhart, Administrative Assistant

### REGULAR BOA AGENDA

1. The meeting was called order at 8:30 A.M.
2. Members of Staff were sworn in and accepted as expert witnesses.
3. Acceptance of the BOA Meeting Package with the Development Services Staff Findings-of-Fact, into evidence.  
  
Motion by Vice Chairman Bill Stromquist, Seconded by At Large Member Jesse Casey  
**Vote:** 6 - 0 Approved
4. Proof of Publication was provided, and the reading of the legal advertisement was waived.  
  
Motion by Vice Chairman Bill Stromquist, Seconded by Board Member Frederick J. Gant  
**Vote:** 6 - 0 Approved

5. The November 18, 2015 Resume Minutes were approved.

Motion by Vice Chairman Bill Stromquist, Seconded by Board Member Judy Gund

Blaise Adams arrived at 8:33 A.M.

**Vote:** 7 - 0 Approved - Unanimously

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

1. **Case No.:** V-2015-14

Address: 4615 Mobile Hwy.

Request: Sign Variance

Requested by: Nader Ghobrial, Agent for Fadi Mubarak, Owner

Motion by At Large Member Jesse Casey, Seconded by Vice Chairman Bill Stromquist

Motion was made to grant a 30 day continuance and schedule this meeting for the January 20, 2016 meeting.

**Vote:** 7 - 0 Approved - Unanimously

2. **Case No.:** CU-2015-09

Address: 6025 & 6029 W. Nine Mile Rd.

Request: Educational Facility in LDR Zoning

Requested by: Nicholas R. King, P.E., Agent for School Board of Escambia County

Motion by Vice Chairman Bill Stromquist, Seconded by Board Member Blaise Adams

Motion was made to accept Staff Findings and approve the Conditional Use as submitted.

**Vote:** 7 - 0 Approved - Unanimously

7. Discussion Items.

8. Old/New Business.

9. Announcement.

The next Board of Adjustment Meeting is scheduled for Wednesday, January 20, 2016 at 8:30 a.m., at the Escambia County Central Office Complex, Room 104, 3363 West Park Place.

10. The meeting adjourned at 8:50 A.M.

**Board of Adjustment**

**6. 1.**

**Meeting Date:** 01/20/2016  
**CASE:** CU-2015-03  
**APPLICANT:** Dave Hoxeng, Agent for ADX Communications of Escambia, LLC  
**ADDRESS:** 7251 Plantation Rd.  
**PROPERTY REFERENCE NO.:** 30-1S-30-4101-006-002  
**ZONING DISTRICT:** C-2, General Commercial and Light Manufacturing District  
**FUTURE LAND USE:** C, Commercial  
**OVERLAY DISTRICT:** N/A

**SUBMISSION DATA:**

**REQUESTED CONDITIONAL USE:**

The Applicant is seeking Conditional Use approval to construct a 199 foot commercial communication tower within 500 feet of a residential zoning district.

**RELEVANT AUTHORITY:**

**Land Development Code of Escambia County, Florida (Ordinance 96-3 as amended), Section:7.18.D**

*D. Setback from residential zoning.* No commercial communication tower shall be located closer than the height of the tower to a residential zoning district line. In addition, **all commercial communication towers which exceed 150 feet in height (in districts where commercial communications towers are allowed), and/or are located within 500 feet of a residential area, are considered conditional uses** and shall be reviewed by the board of adjustment pursuant to sections 2.05.03 and 7.18.00.

**CRITERIA:**

**Land Development Code of Escambia County, Florida (Ordinance 96-3 as amended), Section 2.05.03**

**CRITERION (a)**

***On-site circulation.* Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, on-site parking and loading, and access in case of fire or catastrophe.**

**FINDINGS-OF-FACT**

The property in question has ample parking for the land use and is accessed by driveways connecting to Plantation Rd.

**CRITERION (b)**

***Nuisance.*** Adverse impact such as noise, glare, smoke, odor or other harmful effects (electrical interference, hazardous materials, etc.) of the conditional use on adjoining properties and properties generally in the District.

**FINDINGS-OF-FACT**

Staff does not find any anticipated nuisances associated with the proposed use.

**CRITERION (c)**

***Solid Waste.*** Refuse and service areas with particular reference to concurrency requirements and items (1) and (2) above.

**FINDINGS-OF-FACT**

Solid waste service will not be necessary for this use.

**CRITERION (d)**

***Utilities.*** Utilities with reference to concurrency requirements, location, availability and compatibility with surrounding land uses.

**FINDINGS-OF-FACT**

Any necessary utilities will be provided by the Applicant.

**CRITERION (e)**

***Buffers.*** The buffer may be a landscaped natural barrier, a natural barrier or a landscaped or natural barrier supplemented with fencing or other man-made barriers, so long as the function of the buffer and the intent of Policy FLU 1.1.9 of the Comprehensive Plan and the provisions of Section 7.01.06 of the Land Development Code are fulfilled.

**FINDINGS-OF-FACT**

The proposed use must meet any buffering requirements imposed during the site plan review process.

**CRITERION (f)**

***Signs.*** Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the District.

**FINDINGS-OF-FACT**

Any signage associated with the proposed use must meet the requirements of the Land Development Code.

**CRITERION (g)**

**Environment impact. Impacts to protected trees, wetlands, water bodies, stormwater management or other natural features of the subject parcel.**

**FINDINGS-OF-FACT**

The proposed use must comply with any environmental standards imposed during the site plan review process.

**CRITERION (h)**

**Neighborhood impact. General compatibility with adjacent properties and other property in the immediate area.**

**FINDINGS-OF-FACT**

The proposed use will be compatible with the surrounding heavy commercial zoning. The residential zoning within 500 feet is to the north across Interstate 10. Any impacts on that residential zoned area will be minimized by distance and the existing Interstate right-of-way.

**CRITERION (i)**

***Other requirements of Code.* The proposed Conditional Use is consistent with all other relevant provisions of this Code.**

**FINDINGS-OF-FACT**

The proposed use must meet all of the requirements of LDC 7.18.00 and any other standards imposed through the site plan review process. The Applicant has provided compliance with FCC, FAA, and County Emergency Management Service requirements, coverage maps for this tower and collocation information, as required for Conditional Use approval.

**STAFF FINDINGS**

Staff finds that the proposed use can meet all of the required criteria and recommends approval of the Conditional Use with the following condition:

The project must meet all conditions imposed through the site plan review process.

**BOA DECISION**

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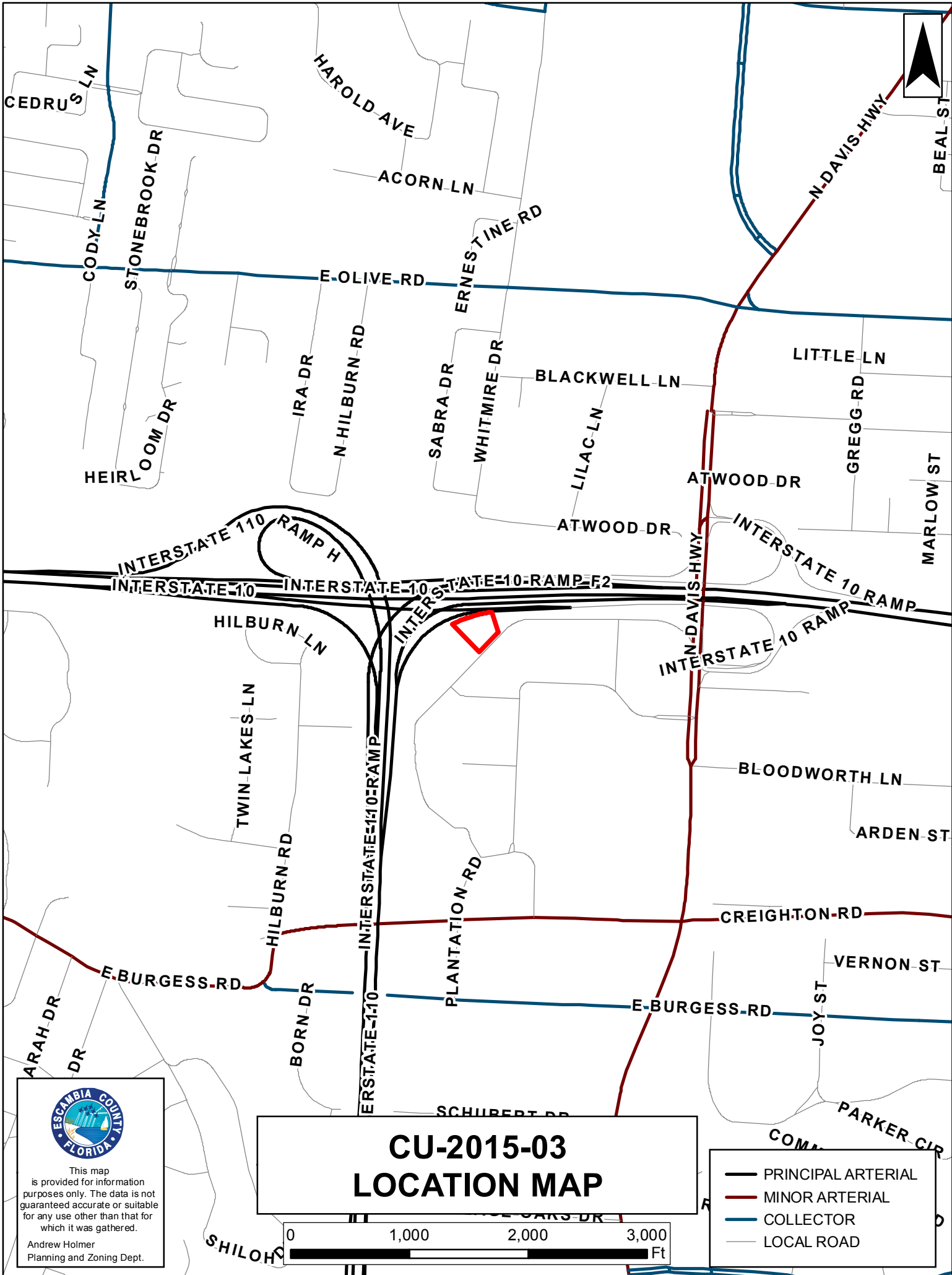

**Attachments**

Remanded Working Case File CU-2015-03

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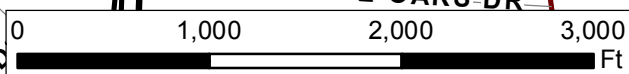
**CU-2015-03**

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.

# CU-2015-03 LOCATION MAP



- PRINCIPAL ARTERIAL
- MINOR ARTERIAL
- COLLECTOR
- LOCAL ROAD



ATWOOD DR

R-5

R-6

R-5

INTERSTATE 10

INTERSTATE 10

INTERSTATE 110 RAMP H

INTERSTATE 110 RAMP

C-2

C-2

PLANTATION RD

UNIVERSITY PLAZA DR

PLANTATION RD

C-2

C-2



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.

# CU-2015-03 500' RADIUS ZONING



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

MU-U

MU-U

MU-U

ATWOOD DR

INTERSTATE-10

INTERSTATE-10

INTERSTATE-10-RAMP-H

INTERSTATE-10-RAMP

PLANTATION RD

UNIVERSITY PLAZA DR

PLANTATION RD



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.

# CU-2015-03 FUTURE LAND USE



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



INTERSTATE 110 RAMP G

INTERSTATE 10 RAMP F2



INTERSTATE 10

INTERSTATE 10

INTERSTATE 10 RAMP E

INTERSTATE 10 RAMP B2  
INTERSTATE 110 RAMP B1

PLANTATION RD

N RD



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.

# CU-2015-03 AERIAL MAP



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



**Letter of Request for Conditional Use**

To: Escambia County Board of Adjustment

2/11/15

Re: WYCT Radio Tower Project (at 7251 Plantation Road)

GEO Number 301S30-4101-006-002

Project Name: WYCT Tower (Requesting additional 49-feet of height)

Our Property-



ADX Communications of Escambia LLC (“ADX”) owns CatCountry 98.7 radio and NewsRadio1620, and owns the property at 7251 Plantation Road. These radio stations are locally owned and operated by Dave & Mary Hoxeng.

ADX is proposing to construct a self-supporting 199-foot multi-purpose radio tower on our existing ~1.65 acre property which houses our radio stations; we are requesting an additional 49-foot of height from Board of Adjustment to do so. The tower will hold microwave relay antennas to transmit our programming signals from our Plantation Road studios to our distant transmitters for broadcast and have back-up radio transmitting antennas.

Importantly, this tower will have back-up FM broadcast antennas that will allow CatCountry 98.7 and NewsRadio 1620 to broadcast during emergencies. (For instance, 1620 was knocked off the air for weeks after a gigantic slab of concrete landed on our Palafox Street tower site during Hurricane Ivan.) NewsRadio1620 has been granted a Construction Permit by the Federal Communications Commission (“FCC”) to transmit a new FM signal at 106.5 MHz and we plan to put the back-up FM-106.5 transmitter on the new 7251 Plantation tower so that it is directly connected to our studios and newsrooms. This is important in that in hurricane times we can stay broadcasting 24/7 without needing to rely on the telephone company or microwave paths (which can be blown off course by hurricane winds).

Page two

As was seen during Hurricane Ivan, our radio stations serve a critical role providing a link between local government and citizens during disasters. Since Ivan, CatCountry 98.7 and NewsRadio1620 have installed dedicated microwave radio links to the Escambia County Emergency Operations Center (“EOC”) and the Santa Rosa County EOC to assure communications between local leaders and the general public in times of disaster. This new tower is being designed to have the high strength to hold future cellular antennas or radioheads.

This property is zoned C-2. Radio stations and 150-foot radio towers are a “permitted use” for C-2 in Escambia County Land Development Code (“LDC”).

We are herein asking permission to construct our tower 49-feet higher than the 150-foot provided for as a “permitted use” in the LDC for C-2. The physics of FM radio transmission signals are that additional antenna height provides listenable radio coverage to more citizens. The extra 49-foot height requested for this tower provides more coverage critical to **26% more residents** listening on battery-operated radios post-hurricane.

### **FM Radio Population Coverage for NewsRadio1620**

(See attached maps)

<u>Population Data for Coverage</u>	<u>(2010 Census-60 dBu)</u>
If 199-foot Tower	218,493
If 150-foot Tower	173,701
Increased Coverage	44,792 more citizens covered
% Increase	<b>26%</b>

Research & mapping by Darryl DeLawder, a professional broadcast engineer practicing on FCC matters. See resume.

We have received permission to build a 199-foot tower from a variety of other government entities as required:

- FAA ASO 2014-ASO-11673-OE dated 12/11/14
  - Pensacola International Airport letter dated 12/17/14
  - Escambia County Emergency Communications Chief dated 2/11/15
  - FCC broadcast application is pending in CDBS
- See attached documents.

**Criteria as outlined in LDC Article 2.05**

1) On-site Circulation

Public ingress and egress are unaffected. There is adequate access in case of fire or catastrophe. See enclosed Site Survey for all dimensions and locations of driveways & parking.

This property has enormous parking capacity due to its prior use as a restaurant. The radio stations' parking use is typically less than 25 cars at any given time. This project will eliminate approximately 15 parking spaces from ~82 spaces surrounding the building. There are an additional ~25 spaces available on southeast side of Plantation Road (see parking easement on survey).

2) Nuisance

There will be no noise, smoke, odor or other harmful effects (electrical interference, hazardous materials, etc.) generated by this radio tower.

3) Solid Waste

This tower will generate no waste of any kind.

4) Utilities

This tower is an upgrade to an existing radio station. The only utility that the tower will "consume" is electricity. There is abundant existing electricity provided by Gulf Power. The property has a huge 1200 Amp, 3-phase service entrance already in place.

AT&T has recently installed high-speed fiber optic service to our radio stations on this property. It is 100% underground all the way back to the AT&T Ferry Pass Central Office near Olive Road so that it will not be knocked-out during a severe storm. This Central Switching Office has national ID of CLLI: PNSCFLFPDS0.

5) Buffers

The property is fully landscaped. The tower will be constructed in the rear area and will be surrounded by 8-foot fence.

6) Signs

No signs are proposed.

No new area lighting is proposed as there is adequate area lighting in place.



Page four

7) Environmental Impact

There will be no impact to protected trees, wetlands, water bodies, storm water management or other natural features of this property.

New tower is planned to have 3 or 4 legs connecting to underground foundation of about 9 square feet each and will be built in existing asphalt parking lot. A new 12x16 (192 square feet) auxiliary building will be located to the north of tower (see survey drawing for tower location and exact lat/lon) to the south of building setback line on the existing asphalt. There will be no changes in the asphalt parking lot or driveways. There will be no change to impervious vs. pervious areas.

8) Neighborhood Impact

Area is zoned C-2 commercial. Our property is surrounded by Interstate Highway on two directions (I-110 & I-10). There is a Funeral Home on one side and a rough-looking property holding two tall hotel signs serving the Interstate Highway on the other side. Across the street is a large asphalt parking lot for an old strip center.

There is residential-zoned area more than 500 feet across Interstate 110. There is R-5 residential-zoned land across Interstate 10 to the north. There are 2 properties to the north that are commercial uses in the R-5 residential zoning (Pensacola Energy gas company & Communication Workers Local 3109 union hall). The closest building to the tower on the north is union hall which is approximately 671 feet away from tower as per Google Earth.

9) Other Requirements of the Code

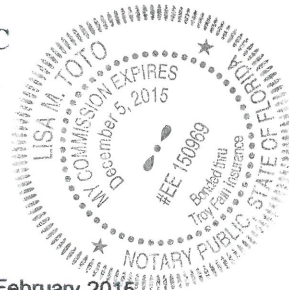
This conditional use is consistent with all other relevant provisions of the LDC.

Page five

Thank you for your consideration.

Best regards,

  
David E. Hoxeng, CRMC  
Managing Member, ADX Communications of Escambia, LLC  
dhoxeng@CatCountry987.com



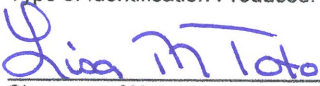
STATE OF FLORIDA

COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of February 2015, by David E. Hoxeng, Managing Member of ADX Communications of Escambia, LLC.

Personally Known  OR Produced Identification [  ].

Type of Identification Produced: \_\_\_\_\_



Signature of Notary  
(Notary seal must be affixed)

Lisa M Toto

Printed Name of Notary

APPLICATION

Please check application type:

Administrative Appeal

Development Order Extension

Conditional Use Request for: 199' tower

Variance Request for: \_\_\_\_\_

Rezoning Request from: \_\_\_\_\_ to: \_\_\_\_\_

Name & address of current owner(s) as shown on public records of Escambia County, FL

Owner(s) Name: ADX Communications of Escambia, LLC Phone: 262-6000

Address: 7251 Plantation Road, Pensacola FL 32504 Email: dhoxeng@adxc.com

Check here if the property owner(s) is authorizing an agent as the applicant and complete the Affidavit of Owner and Limited Power of Attorney form attached herein.

Property Address: 7251 Plantation Road, Pensacola FL 32504

Property Reference Number(s)/Legal Description: 301S304101006002

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 enter upon the property referenced herein at any reasonable time for purposes of site inspection and authorize placement of a public notice sign(s) on the property referenced herein at a location(s) to be determined by County staff; and
5) I am aware that Public Hearing notices (legal ad and/or postcards) for the request shall be provided by the Development Services Bureau.

[Signature]
Signature of Owner/Agent

David E. Hoxeng, Managing Member
Printed Name Owner/Agent

12/31/14
Date

Signature of Owner

Printed Name of Owner

Date

STATE OF Florida COUNTY OF Escambia

The foregoing instrument was acknowledged before me this 31st day of December 20 14, by David Hoxeng.

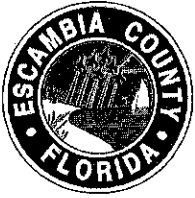
Personally Known [X] OR Produced Identification [ ]. Type of Identification Produced:

[Signature]
Signature of Notary
(notary seal must be affixed)

Lisa M Toto
Printed Name of Notary



FOR OFFICE USE ONLY
CASE NUMBER: CU-2015-03
Meeting Date(s): 02-18-15 Accepted/Verified by: DH/DL Date: 02-01-15
Fees Paid: \$ 1270.50 Receipt #: 626032 Permit #: PBA150100001



Board of County Commissioners • Escambia County, Florida

Michael D. Weaver, Director  
Public Safety Department



February 11, 2015

From: Mike Moring  
Escambia County Emergency Communications Chief

To: Dave Hoxeng  
CAT Country 98.7

Subject: Tower Replacement Proposal

Dave,

After reviewing your request to replace the radio station tower at 7251 Plantation Road, we have confirmed that a conflict does not exist with Escambia County Radio Microwave equipment. Therefore, your proposal is approved.

If you need anything further, please let me know.

*Michael T. Moring*  
Michael T. Moring  
Emergency Communications Chief  
Escambia County Public Safety  
6575 North "W" Street  
Pensacola, FL 32505

December 17, 2014

Mr. David E. Hoxeng  
CR Baldwin, LLC  
7251 Plantation Road  
Pensacola, FL 32504

Re: Potential Tower Site

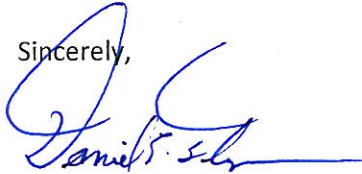
Dear Mr. Hoxeng:

It is our understanding that you are interested in a tower site located at Latitude 30-30-10.10N, Longitude 87-13-39.90W. The area appears to be roughly 13,500' northwest of the approach end of runway 17 at Pensacola International Airport. The ground elevation appears to be approximately 116'. At this distance and elevation, the FAA would need to review any proposed development over 140' AGL. Additionally, our height zoning map indicates that the maximum height we would want in the area would be 400' above sea level.

It appears that the proposed tower height would be 199' AGL and therefore would require review by the Federal Aviation Administration. Based on an overall proposed height above sea level of 315', the Pensacola Regional Airport would interpose no objections to the tower contingent upon a Determination of No Hazard to Air Navigation finding by the Federal Aviation Administration.

If you have any questions, please contact me at [dflynn@cityofpensacola.com](mailto:dflynn@cityofpensacola.com).

Sincerely,



Daniel E. Flynn  
Interim Airport Director



Mail Processing Center  
Federal Aviation Administration  
Southwest Regional Office  
Obstruction Evaluation Group  
2601 Meacham Boulevard  
Fort Worth, TX 76193

Aeronautical Study No.  
2014-ASO-11673-OE  
Prior Study No.  
2006-ASO-4184-OE

Issued Date: 12/11/2014

David E. Hoxeng  
CR Baldwin, LLC  
7251 Plantation Rd.  
Penacola, FL 32504

**\*\* DETERMINATION OF NO HAZARD TO AIR NAVIGATION \*\***

The Federal Aviation Administration has conducted an aeronautical study under the provisions of 49 U.S.C., Section 44718 and if applicable Title 14 of the Code of Federal Regulations, part 77, concerning:

Structure: Antenna Tower Microwave Tower  
Location: Pensacola, FL  
Latitude: 30-30-10.10N NAD 83  
Longitude: 87-13-39.90W  
Heights: 116 feet site elevation (SE)  
199 feet above ground level (AGL)  
315 feet above mean sea level (AMSL)

This aeronautical study revealed that the structure does not exceed obstruction standards and would not be a hazard to air navigation provided the following condition(s), if any, is(are) met:

It is required that FAA Form 7460-2, Notice of Actual Construction or Alteration, be e-filed any time the project is abandoned or:

- At least 10 days prior to start of construction (7460-2, Part 1)  
 Within 5 days after the construction reaches its greatest height (7460-2, Part 2)

Based on this evaluation, marking and lighting are not necessary for aviation safety. However, if marking/lighting are accomplished on a voluntary basis, we recommend it be installed and maintained in accordance with FAA Advisory circular 70/7460-1 K Change 2.

While the structure does not constitute a hazard to air navigation, it would be located within or near a military training area and/or route.

This determination expires on 06/11/2016 unless:

- (a) the construction is started (not necessarily completed) and FAA Form 7460-2, Notice of Actual Construction or Alteration, is received by this office.
- (b) extended, revised, or terminated by the issuing office.
- (c) the construction is subject to the licensing authority of the Federal Communications Commission (FCC) and an application for a construction permit has been filed, as required by the FCC, within

6 months of the date of this determination. In such case, the determination expires on the date prescribed by the FCC for completion of construction, or the date the FCC denies the application.

**NOTE: REQUEST FOR EXTENSION OF THE EFFECTIVE PERIOD OF THIS DETERMINATION MUST BE E-FILED AT LEAST 15 DAYS PRIOR TO THE EXPIRATION DATE. AFTER RE-EVALUATION OF CURRENT OPERATIONS IN THE AREA OF THE STRUCTURE TO DETERMINE THAT NO SIGNIFICANT AERONAUTICAL CHANGES HAVE OCCURRED, YOUR DETERMINATION MAY BE ELIGIBLE FOR ONE EXTENSION OF THE EFFECTIVE PERIOD.**

This determination is based, in part, on the foregoing description which includes specific coordinates , heights, frequency(ies) and power . Any changes in coordinates , heights, and frequencies or use of greater power will void this determination. Any future construction or alteration , including increase to heights, power, or the addition of other transmitters, requires separate notice to the FAA.

This determination does include temporary construction equipment such as cranes, derricks, etc., which may be used during actual construction of the structure. However, this equipment shall not exceed the overall heights as indicated above. Equipment which has a height greater than the studied structure requires separate notice to the FAA.

This determination concerns the effect of this structure on the safe and efficient use of navigable airspace by aircraft and does not relieve the sponsor of compliance responsibilities relating to any law, ordinance, or regulation of any Federal, State, or local government body.

Any failure or malfunction that lasts more than thirty (30) minutes and affects a top light or flashing obstruction light, regardless of its position, should be reported immediately to (877) 487-6867 so a Notice to Airmen (NOTAM) can be issued. As soon as the normal operation is restored, notify the same number.

A copy of this determination will be forwarded to the Federal Communications Commission (FCC) because the structure is subject to their licensing authority.

If we can be of further assistance, please contact our office at (404) 305-7081. On any future correspondence concerning this matter, please refer to Aeronautical Study Number 2014-ASO-11673-OE.

**Signature Control No: 232189554-236731906**

( DNE )

Michael Blaich  
Specialist

Attachment(s)  
Frequency Data

cc: FCC

Frequency Data for ASN 2014-ASO-11673-OE

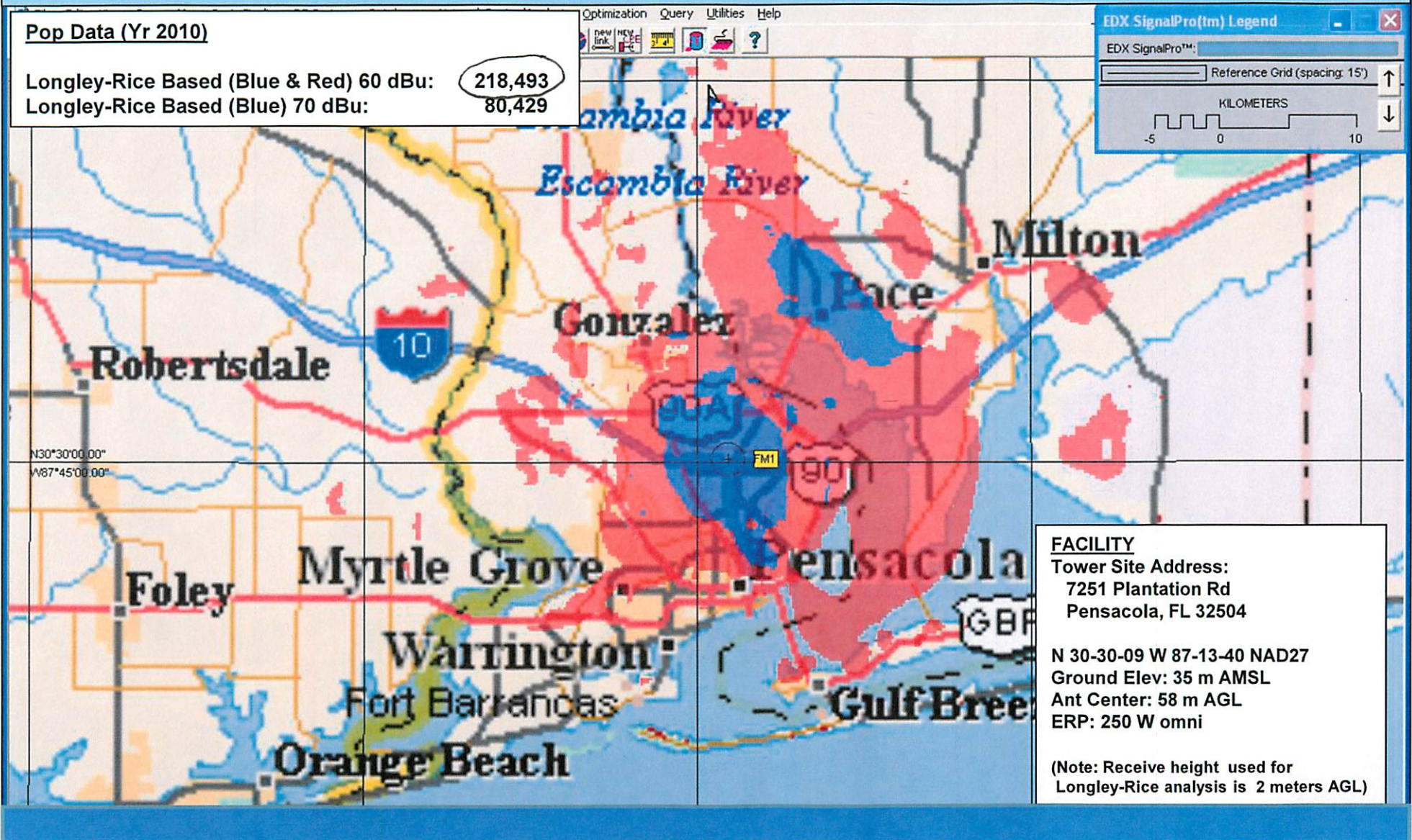
<b>LOW FREQUENCY</b>	<b>HIGH FREQUENCY</b>	<b>FREQUENCY UNIT</b>	<b>ERP</b>	<b>ERP UNIT</b>
944	952	MHz	54	dBm



# FIGURE 1 – NewsRadio1620-FM

## At 7251 Plantation Road Tower: Antenna at 190 ft (58 m) AGL Elevation

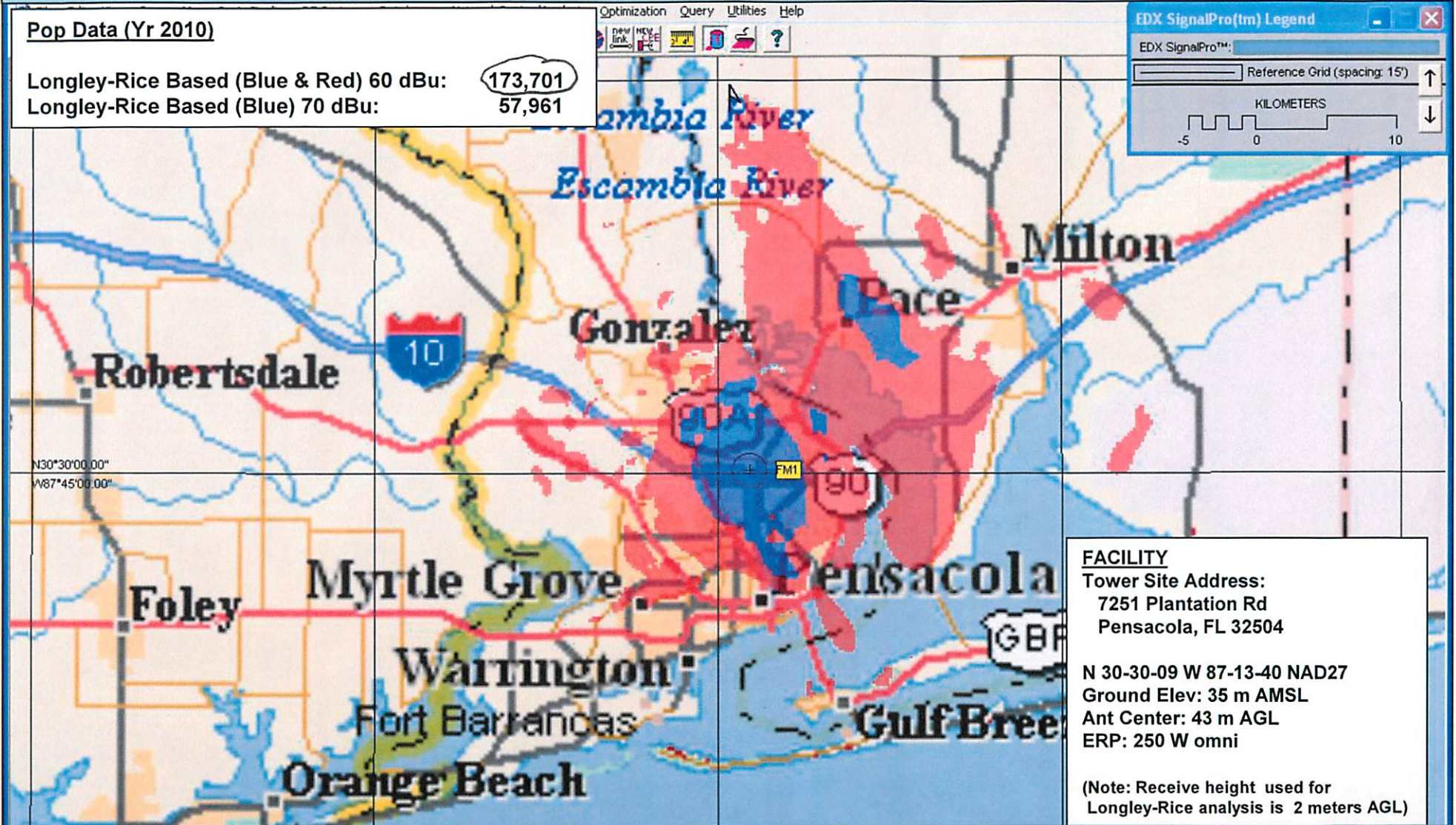
### Predicted Radio Coverage — Longley-Rice Analysis



# FIGURE 2 – NewsRadio1620-FM

## At 7251 Plantation Road Tower: Antenna at 141 ft (43 m) AGL Elevation

### Predicted Radio Coverage — Longley-Rice Analysis



# **Darryl DeLawder**

42859 Lindsey Heights Pl.  
Ashburn, Virginia 20148  
571-228-1258 cell  
delawder@aol.com

## **RESUME**

### **RF Systems Focus/Experience**

Extensive work experience and knowledge in the following areas:

- RF design of various point-to-point and point-to-multipoint wireless systems (both digital and analog systems)
- RF design work involving two-way digital broadband multi-site systems using both FDD and TDD
- Design considerations for differing modulation schemes (e.g., QPSK, 64QAM) and digital transmission technologies (e.g., CDMA, TDMA, OFDM), especially as these considerations relate to S/N and C/I system design constraints
- Interference, data capacity and service solutions due to site sectorization, polarization, null fill, beamtilting (electrical and mechanical) and other antenna-related characteristics
- Antenna fundamentals (radiation patterns, directivity, gain, etc.) and antenna theory (including smart array and multipath theory)
- Various signal propagation theories and models, including Longley-Rice, NBS Technical Note 101, TIREM and Okumura
- Co-channel and adjacent-channel interference and interference suppression
- Link budget studies
- Broadcast design for AM, FM and TV (including DTV and LPTV)- FM Station class upgrade work and City "move-in" studies (including multi-station migration solutions)
- AM antenna array design and field measurements (for station proof-of-performance)
- Low Power TV displacement studies and applications
- FCC Matters pursuant to Rule Parts 21, 22, 27, 73, 74 and 101.

### **Work Experience**

President

2/1994 - Present DeLawder Communications, Inc., Ashburn, VA

Extensive background in broadcast (AM, FM and TV), wireless broadband and other technical matters related to wireless telecommunications. More than 15 years of experience as an executive for a small telecommunications consulting firm that specializes in broadcast and wireless broadband services and their regulation by the Federal Communications Commission (FCC). Leads consulting firm with past accomplishments that include:

- Engineering of legacy one-way analog and digital wireless systems for various large and small companies (including Sprint and Clearwire) in the licensed 2.5 to 2.7 GHz frequency spectrum;
- Helping to develop methodology for Sprint's initial digital two-way wireless 2.5 GHz broadband applications for filing with the FCC;
- Providing expertise to main software vendor that developed the complex software tools used by the wireless 2.5 to 2.7 GHz industry in performing the required two-way broadband digital interference studies associated with this licensed frequency spectrum;

- Preparation of 200+ Federal Communications Commission (FCC) applications in the broadcast services (AM, FM, TV, DTV and LPTV); Preparation of 400+ FCC applications in ITFS (now EBS) and MDS (now BRS) for two of the top five companies that were developing the licensed 2.5 to 2.7 GHz frequency spectrum in the United States. This work involved system design of the following major markets: New York, Chicago, Philadelphia, Houston, Detroit, Providence, Miami, Indianapolis, Phoenix, Salt Lake City, New Orleans, Kansas City, Oklahoma City, Jacksonville and Orlando.

- Multi-site (cellular) design of complex 12.5 GHz terrestrial broadcast system for Washington, DC in support of FCC Rulemaking proposal for a terrestrial wireless system in the DBS Service.

- Extensive knowledge and use of FCC's "Appendix D" two-way software tools of CelPlan Technologies (including CelPlanner and CelFCC) for the preparation of 75+ FCC applications in the initial ITFS and MDS two-way digital filing periods.

#### **Director of Engineering**

1/1990 - 1/1994 Mordkofsky, Jackson & Dickens, Washington, DC

Lead engineering department in consulting work that specialized in FCC matters. The work included the design and application of various broadcast and microwave services.

#### **Staff and Senior Engineer**

8/1982 - 12/1989 Moffet, Larson & Johnson (MLJ), Falls Church, VA

Prepared cellular telephone and broadcast applications (specializing in AM and FM RF Engineering). Board of Directors member from 1987 to 1989.

#### **Education**

9/1978 - 5/1982 Villanova University, Villanova, PA

- Bachelor's Degree
- BS Electrical Engineering

**Legal Description:** 7251 Plantation Road, Pensacola, FL 32504

Escambia County Property Appraiser  
**301S304101006002 - Full Legal Description**

BEG AT NWLY COR OF PARCEL G PLANTATION PARK PB 10 P 88 SD PT LYING ON CURVED SLY R/W LI OF PLANTATION RD (60 FT R/W) SWLY ALG CURVE CONCAVE TO SE (RADIUS=247 4/100 FT) THRU CENTRAL ANG 23 DEG 45 MIN 7 SEC FOR ARC DIST 102 41/100 FT TO PT N 47 DEG 3 MIN 40 SEC W 60 FT S 42 DEG 56 MIN 20 SEC W 28 54/100 FT TO POB CONT S 42 DEG 56 MIN 20 SEC W 225 FT N 47 DEG 3 MIN 40 SEC W 325 19/100 FT TO PT ON CURVED SLY R/W LI OF I-110 (SR #8-A 300 FT R/W) ELY ALG SD R/W ON A CURVE CONCAVE TO SE (RADIUS=879 93/100 FT) THRU A CENTRAL ANG OF 23 DEG 5 MIN 33 SEC FOR ARC DIST 354 65/100 FT S 18 DEG 46 MIN 56 SEC E 174 76/100 FT TO POB OR 5250 P 20 LESS OR 4813 P 1138 ST OF FL DEPT OF TRANSPORTATION RD R/W (CASE 01-2072-CA-01)

Extracted 12/31/14

Source: Escambia County Property Appraiser

Navigate Mode 
  Account 
  Reference

[Restore Full Page Version](#)

**General Information**

**Reference:** 301S304101006002

**Account:** 032151785

**Owners:** ADX COMMUNICATIONS OF ESCAMBIA LLC

**Mail:** 7251 PLANTATION RD PENSACOLA, FL 32504

**Situs:** 7251 PLANTATION RD 32504

**Use Code:** OFFICE, MULTI-STORY  [CodeList](#)

**Taxing Authority:** COUNTY MSTU

**Tax Inquiry:** [Open Tax Inquiry Window](#)  
 Tax Inquiry link courtesy of Janet Holley  
 Escambia County Tax Collector

**2014 Certified Roll Assessment**

<b>Improvements:</b>	\$285,747
<b>Land:</b>	\$194,666
<b>Total:</b>	\$480,413
<a href="#">Save Our Homes:</a>	\$480,413

[Disclaimer](#)

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[Amendment 1/Portability Calculations](#)

**Sales Data**

Sale Date	Book	Page	Value	Type	Official Records (New Window)
09/2003	5250	20	\$403,800	WD	<a href="#">View Instr</a>
10/1999	4482	1935	\$1,161,000	WD	<a href="#">View Instr</a>
05/1997	4139	1710	\$1,029,100	WD	<a href="#">View Instr</a>
12/1992	3292	496	\$100	WD	<a href="#">View Instr</a>

Official Records Inquiry courtesy of Pam Childers  
 Escambia County Clerk of the Circuit Court and Comptroller

**2014 Certified Roll Exemptions**  
None

**Legal Description**  [More](#)

BEG AT NWLY COR OF PARCEL G PL ANTATION PARK PB 10 P 88 SD PT LYING ON CURVED SLY R/W LI OF PLANTATION RD (60 FT R/W) SWL...

**Extra Features**  
 ASPHALT PAVEMENT  
 ELEVATOR

**Parcel Information**


[Launch Interactive Map](#)

**Section Map Id:**  
[30-1S-30-1](#)

**Approx. Acreage:**  
1.6500

**Zoned:**  [CodeList](#)  
C-2

**Evacuation & Flood Information**  
[Open Report](#)



Internet Explorer cannot display the webpage

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What you can try:

[Diagnose Connection Problems](#)

[More information](#)





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



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

**ADX COMMUNICATIONS  
7251 PLANTATION RD  
PENSACOLA, FL 32504**

**COMMUNICATION WORKERS OF AMERICA  
1621 ATWOOD DR  
PENSACOLA, FL 32514**

In accordance with the Americans with Disabilities Act, persons needing special accommodation or an interpreter to participate in the public hearing should contact County Administrator's Office at 595-4947 at least seven days prior to the date of the hearing. If you have any questions, please contact the Development Services Department at 595-3475.

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



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

**JENNINGS VIVION R & EDGE JUDY J & JENNINGS  
EUGENE  
1505 ATWOOD DR  
PENSACOLA, FL 32514**

**PENSACOLA CITY OF  
PO BOX 12910  
PENSACOLA, FL 32521**

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

**SAI RAM KRUPA LLC  
4031 STEPHANI RD  
CANTONMENT, FL 32533**

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

**AMMONS WILLIAM S & TATUM  
1507 E STRONG ST  
PENSACOLA, FL 32501**

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

**CEJ SOUTH INC  
PO BOX 11986  
PENSACOLA, FL 32524**

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

**PENSACOLA SILVER SCREEN INC  
PO BOX 10015  
PENSACOLA, FL 32524**

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



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

**RELAX HOSPITALITY LLC  
7230 PLANTATION RD  
PENSACOLA, FL 32504**

**PLAZA ONE REALTY CO  
2205 E WASHINGTON ST  
BLOOMINGTON, IL 61701**

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



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

**OM HANUMAN HOSPITALITY INC  
7226 PLANTATION RD  
PENSACOLA, FL 32504**

**UNIVERSITY OFFICE LIMITED CO  
600 UNIVERSITY OFFICE BLVD STE 1C  
PENSACOLA, FL 32504**

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

**SERVICE PENSACOLA LLC  
404 WYMAN ST SUITE 365  
WALTHAM, MA 02451**

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

**UNIVERSITY TOWN PLAZA LLC  
ATTN PROPERTY TAX DEP  
PO BOX 7019  
INDIANAPOLIS, IN 46207**

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

**CHAVEZ FERNANDO &  
5190 MOBILE HWY  
PENSACOLA, FL 32526**

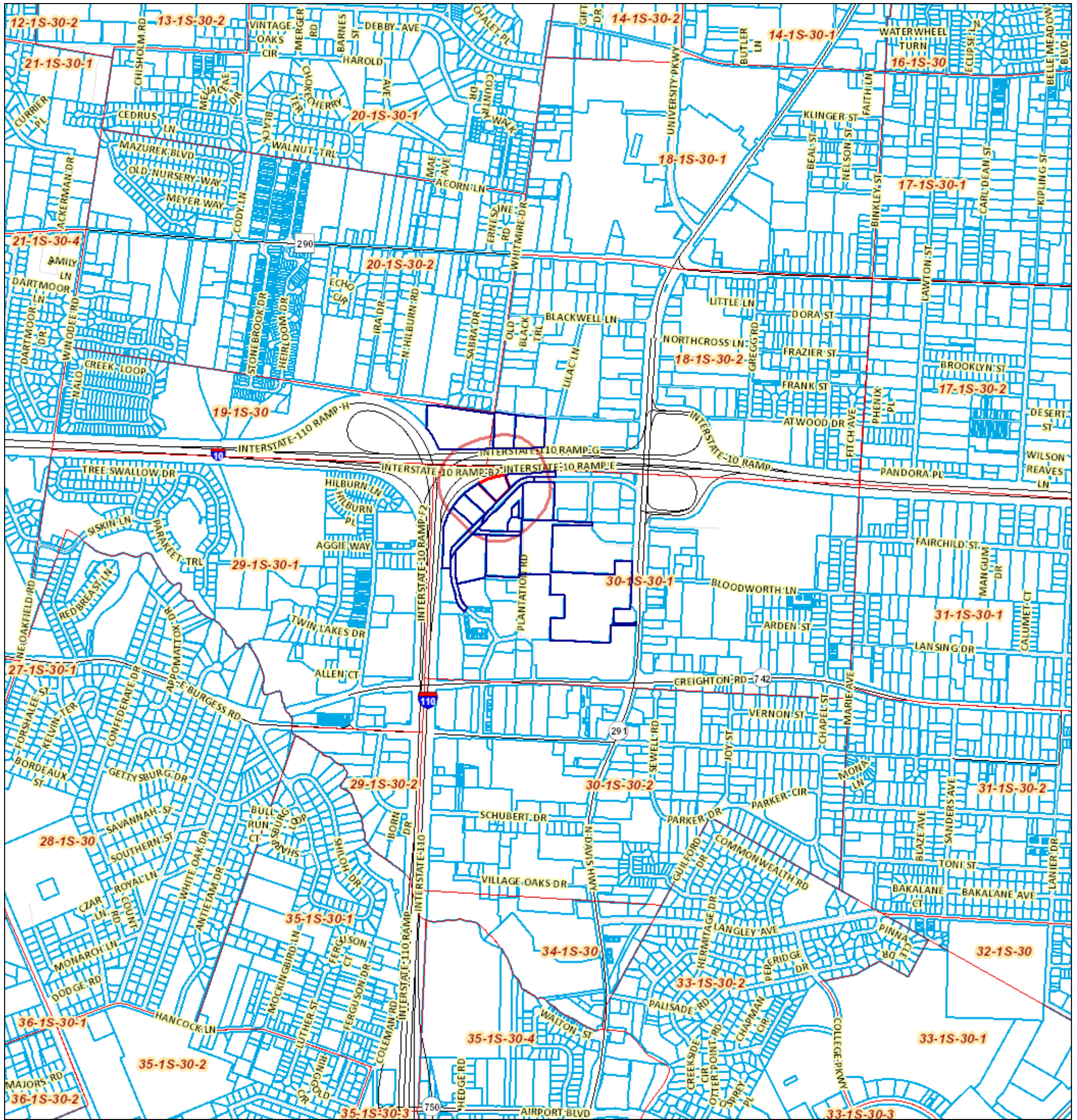
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Escambia County  
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3363 West Park Place  
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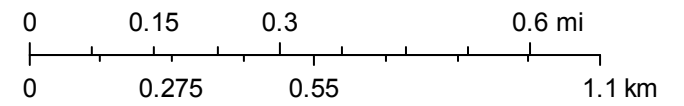
# Chris Jones Escambia County Property Appraiser



January 29, 2015

1:14,580

- ⋯ Map Grid
- City Road
- County Road
- Interstate
- State Road
- US Highway
- All Roads
- ⋯ Property Line





Development Services Department  
Building Inspections Division  
3363 West Park Place  
Pensacola, Florida, 32505  
(850) 595-3550  
Molino Office - (850) 587-5770

## RECEIPT

Receipt No. : **626032**

Date Issued. : 01/08/2015

Cashier ID : VHOWENS

Application No. : PBA150100001

Project Name : CU-2015-03

### PAYMENT INFO

Method of Payment	Reference Document	Amount Paid	Comment
<b>Check</b>			
	633	\$1,270.50	App ID : PBA150100001
		<b>\$1,270.50</b>	Total Check

Received From : DAVID E. HOXENG ADX COMMUNICATIONS OF ESCAMBIA, LLC

Total Receipt Amount : **\$1,270.50**

Change Due : \$0.00

### APPLICATION INFO

Application #	Invoice #	Invoice Amt	Balance	Job Address
PBA150100001	716823	1,270.50	\$0.00	7251 PLANTATION RD, PENSACOLA, FL

**Total Amount :**

**1,270.50**

\$0.00

Balance Due on this/these  
Application(s) as of 1/8/2015

Radio Tower Vertical Use Diagram 3.13.14 at 199.xls												
As of 9/14/11, 5/26, 6/16/13, 2/20, 3/15/14, 2/17/15			<b>ADX-WYCT Studio Tower Planning</b>									
116 = Site elevation (115.89' per survey)			At 7251 Plantation Road, Pensacola					Use Stainless Steel hardware on all mounts				
Approx Feet AMSL	Approx Feet AGL*	South Face	Planned Top AGL	Planned Bottom AGL	Antenna	Degrees Azimuth	N Leg	Planned Top AGL	Planned Bottom AGL	Antenna	Degrees Azimuth	
315	199	~Top of A-3 spurs						199	~Top of A-3 spurs			
314	198	Top of tower; Side mount of ERI A-3 Lightning Protection Spurs						198	Top of tower; Side mount of ERI A-3 Lightning Protection Spurs			
312.5	196.5	X	198	195	2x ARC 900 MHz		X	196.5	195	RocketDish 3 GHz to WNW		
311	195		Ice Shield at 195-feet to protect ARC					195	Ice Shield at 195-feet to protect Rocket Dish			
306	190	∧	195	185	Bext TFC-106.5 MHz (NR1620)		∧	190	184	Telwave ANT450D6-9 on 6' pole		
301	185		Ice Shield at 185' to provide RF seperation					∨				
296	180	∧	185	175	ERI FM-98.7 Mhz		X	183	180	PR-950 Grid Dish		
291	175	∨					X	180	175	Mark P9A72 Grid Dish		
286	170	∧	175	165	Cellular Provider #1		∧	175	165	Cellular Provider #1		
281	165	∨					∨					
276	160	∧	165	155	Cellular Provider #4		∧	165	155	Cellular Provider #4		
271	155	∨					∨					
266	150	∧	155	145	Cellular Provider #2		∧	155	145	Cellular Provider #2		
261	145	∨					∨					
256	140	∧	145	135	Cellular Provider #5		∧	145	135	Cellular Provider #5		
251	135	∨					∨					
246	130	∧	135	125	Cellular Provider #3		∧	135	125	Cellular Provider #3		
241	125	∨					∨					
* AGL is height on tower "above ground level" (in feet)												
<u>Color Key-</u>												
FM Broadcast Antenna (VHF) - NewsRadio1620 on 106.5, CatCountry 98.7 on 98.7												
Remote Broadcast Communications Antenna for Marti (UHF)												
Microwave Antennas for Studio-to-Transmitter & Transmitter-to-Studio Communications												
Cellular Communications Antenna Systems												

Radio Tower Vertical Use Diagram 3.13.14 at 199.xls												
As of 9/14/11, 5/26, 6/16/13, 2/20, 3/15/14, 2/17/15			<b>ADX-WYCT Studio Tower Planning</b>									
116 = Site elevation (115.89' per survey)			At 7251 Plantation Road, Pensacola					Use Stainless Steel hardware on all mounts				
Approx Feet	Approx Feet	South Face	Planned Top AGL	Planned Bottom AGL	Antenna	Degrees Azimuth	N Leg	Planned Top AGL	Planned Bottom AGL	Antenna	Degrees Azimuth	
AMSL	AGL*											
315	199		~Top of A-3 spurs					199	~Top of A-3 spurs			
314	198		Top of tower; Side mount of ERI A-3 Lightning Protection Spurs					198	Top of tower; Side mount of ERI A-3 Lightning Protection Spurs			
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311	195		Ice Shield at 195-feet to protect ARC					195	Ice Shield at 195-feet to protect Rocket Dish			
306	190	∧	195	185	Bext TFC-106.5 MHz (NR1620)		∧	190	184	Telwave ANT450D6-9 on 6' pole		
301	185		Ice Shield at 185' to provide RF separation				∨					
296	180	∧	185	175	ERI FM-98.7 Mhz		X	183	180	PR-950 Grid Dish		
291	175	∨					X	180	175	Mark P9A72 Grid Dish		
286	170	∧	175	165	Cellular Provider #1		∧	175	165	Cellular Provider #1		
281	165	∨					∨					
276	160	∧	165	155	Cellular Provider #4		∧	165	155	Cellular Provider #4		
271	155	∨					∨					
266	150	∧	155	145	Cellular Provider #2		∧	155	145	Cellular Provider #2		
261	145	∨					∨					
256	140	∧	145	135	Cellular Provider #5		∧	145	135	Cellular Provider #5		
251	135	∨					∨					
246	130	∧	135	125	Cellular Provider #3		∧	135	125	Cellular Provider #3		
241	125	∨					∨					
* AGL is height on tower "above ground level" (in feet)												
<u>Color Key-</u>												
FM Broadcast Antenna (VHF) - NewsRadio1620 on 106.5, CatCountry 98.7 on 98.7												
Remote Broadcast Communications Antenna for Marti (UHF)												
Microwave Antennas for Studio-to-Transmitter & Transmitter-to-Studio Communications												
Cellular Communications Antenna Systems												

**WYCT Commercial Communications Tower Project at 7251 Plantation Road, Pensacola**

Seeking Board of Adjustment approval for additional 49 feet to make it a 199 foot tower

Prepared by Dave Hoxeng 2/16/15

**We have designed our Commercial Communications Tower project to fully comply with Escambia County Land Development Code (LDC). It is a multi-purpose communications tower to provide our WNRP/WYCT radio stations with Studio-to-Transmitter (STL) radio links, to hold FM Broadcast (VHF) backup antennas for use after hurricanes and to hold antenna systems for five cellular communications providers. This document addresses Article 7 Performance Standards.**

**"Article 7 PERFORMANCE STANDARDS"**

Hoxeng responses are in **bold**.

**7.18.00. Commercial communication towers.**

A commercial communication tower is a structure which supports communications equipment (not including amateur radio operations, VHF marine, or other similar operators.) Communication antennas are designated to transmit and/or receive communications as authorized by the Federal Communications Commission (FCC), not including amateur radio operators licensed by same; said antennas are usually located on communication towers.

**A. Antennas.** A commercial communication antenna may be located on an existing nonresidential structure, without conditional use approval, provided the commercial communication tower or antenna does not extend more than 50 feet above the existing structure and the building and new antenna together do not exceed the district height allowed.

**B. Collocation.** It is important to provide service required by the market while limiting unnecessary commercial communication towers. Therefore, approvals for all new towers will be conditioned on the applicant providing for collocation.

- 1. If the commercial communication tower is 150 feet or lower, collocation shall be provided for at least one other communication provider; if greater than 150 feet, collocation shall be provided for two or more additional providers.**

**Proposed tower will be strongly designed and have space for Colocation for up to five additional providers of cellular services.**

- 2. If the applicant is not collocating on the proposed commercial communication tower of another provider, evidence must be submitted that reasonable efforts to collocate have been made.**

**Proposed tower is being collocated with the radio studios of NewsRadio1620 (WNRP) and CatCountry 98.7 (WYCT). This location is essential in that low-power studio-to-transmitter radio link systems will be directly wired to this tower using AES/EBU standards from four existing broadcast studios. Two backup broadcast antennas on tower will be directly connected using 1-5/8 inch coaxial cable to existing Continental 3-phase radio transmitter within this building.**



C. *Environmentally sensitive land.* Commercial communication towers are allowed on wetlands and on lands containing endangered species or historical sites, provided the applicant can demonstrate to the satisfaction of the development review committee that there will be no adverse impact to endangered species or historical sites, and that a variance is otherwise appropriate under the standards specified in section 7.18.00N.

**This property is not environmentally sensitive.**

D. *Setback from residential zoning.* No commercial communication tower shall be located closer than the height of the tower to a residential zoning district line. In addition, all commercial communication towers which exceed 150 feet in height (in districts where commercial communications towers are allowed), and/or are located within 500 feet of a residential area, are considered conditional uses and shall be reviewed by the board of adjustment pursuant to sections 2.05.03 and 7.18.00.

**Proposed 199 foot tower will be located greater than 200 feet from residential zoning lines. We have applied to Board of Adjustment for its permission to exceed 150 feet mark mentioned above by 49 feet.**

E. *Lighting.* Ground or security lighting for commercial communication towers shall be designed so as to be shielded from being directly visible from nearby residences.

**There is adequate existing ground and security lighting. The nearest residence is more than 750 feet away across 10 lanes of Interstate Highway 10.**

F. *Color.* Commercial communication towers not requiring FAA painting/marketing shall have either a galvanized finish or be painted gray or black.

**Proposed tower will have a galvanized finish.**

G. *Failure.* Commercial communication towers shall be designed and constructed to meet TIA/EIA 222 standards (latest revision) to ensure that the structural failure of the tower will not create a safety hazard.

**Proposed tower will be designed and constructed to meet TIA/EIA-222-G standards, which is the latest revision.**

H. *Security.* A minimum six-foot fence or wall shall be required around all commercial communication tower sites, access shall be through a locked gate, and an appropriate anticlimbing device shall be installed on the tower. Fences in residential districts may not exceed a height of six feet; in commercial districts the maximum height is eight feet.

**An 8-foot fence is proposed. Gate will be locked. An anti-climbing device will be installed on the tower ladder.**

I. *Screening.* Landscaping and buffering shall be addressed through article [sections] 2.05.03C.5., 7.01.05, and 7.01.06.

**We will do landscaping and buffering as required in article [sections] 2.05.03C.5., 7.01.05, and 7.01.06.**

J. *Emissions.* No location for placement, construction or modification of a commercial communication tower or communication antenna shall be regulated on the basis of the environmental effects of radio frequency emissions to the extent that commercial communication towers and antennas comply with the FCC regulations concerning such emissions.

**Applies.**

K. *Abandonment.* Any commercial communication tower whose use has been discontinued for a period of 12 months shall be deemed to be abandoned. The owner/operator of the tower shall have 180 days to reactivate the use of the tower, transfer the tower to another owner/operator, or dismantle and remove the tower.

**Does not apply.**

L. *Preexisting towers.* Pre-existing towers shall be allowed to continue their usage. Routine maintenance shall be permitted. Additional antennas and other communication devices may be co-located on preexisting towers, if the towers are structurally designed to accommodate them and the new combined height does not exceed district height allowed. If a preexisting tower is a legal nonconforming use, it can be replaced with a new tower of equal or lesser height. The replacement tower can be located on the site of the preexisting tower or on an alternative site on the existing parcel: provided however, that if the replacement tower is to be placed on an alternative site it must meet the performance standards specified in this article. If the tower is nonconforming with regard to height, the requirements of article 11 shall apply.

**Does not apply.**

M. *Airport/airfield zoning.* Any tower located within an area subject to article 11 of this Code (Airport/Airfield Environs) shall be subject to administrative review to determine its elevation above the runway elevation, its distance from the runway and approach zones, and height limitations unique to the Airport/Airfield Environs.

**This tower location is not located in Airport/Airfield Environs. However, Pensacola International Airport management has reviewed our location and approved it on 12/17/14 subject to FAA approval. FAA approval (2014-ASO-11673-OE) was dated 12/11/14.**

N. *Variances.* A deviation from the requirements of this section may be granted only upon a finding by the board of adjustment that, in addition to the criteria in section 2.05.02, the following standard is met: All other reasonable siting alternatives have been explored and the deviation is necessary due to extenuating factors such as: location of existing uses, trees, structures or other features on or adjacent to the property, or compatibility with existing contiguous uses or with the general character of the area.

**County Development Services Department staff has indicated that no variance is necessary for this project. We are not asking for exceptions to Escambia County Conditional Use Standards.**

O. *Application requirements.* In addition to the site plan requirements of article 4, part II, an applicant for development permit shall submit the following documents for use in assessing conformance with these performance criteria:

1. A geotechnical exploration report.

**Will be provided with application for development permit as per footnote below from LDC.**

2. An FCC/NEPA environmental compliance checklist.

**Will be provided with application for development permit as per footnote below from LDC.**

3. Compliance with FCC, FAA, and county emergency management services requirements.

**Site Plan has been submitted to Board of Adjustment  
Pensacola International Airport okay dated 12/17/14  
FAA okay dated 12/11/14 (2014-ASO-11673-OE)  
Escambia County Emergency Communications Chief okay dated 2/11/15  
Will fully comply with FCC requirements. FCC application is pending in CDBS.  
See submitted documents.**

4. Coverage maps for this tower.

**See submitted coverage maps.**

5. Collocation information.

**Proposed tower will be strongly built and have space for Collocation for up to five additional providers of cellular services.**

Note: Items 3 through 5 shall also be submitted for BOA review of conditional use applications. The applicant shall submit a site plan to the BOA sufficient for a review of items 3 through 5 and the conditional use criteria. (Ord. No. 97-59, § 2, 12-4-1997; Ord. No. 98-42, § 3, 9-9-1998; Ord. No. 98-53, § 1, 12-3-1998; Ord. No. 2000-8, § 2, 3-2-2000; Ord. No.2006-30, § 2, 4-6-2006; Ord. No. 2012-36, § 9-13-2012))



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ESCAMBIA COUNTY BOARD OF ADJUSTMENT

All items with an asterisk \* are required.

Please Print Clearly

\*Name: Dave Hoxens Phone: 262-6000

\*Address: 7251 Plantation \*City, State, and Zip: 32504

\*Agenda Item (CASE NO. #) 2015-03 Meeting Date: 2/18

Please check here if you are: (X) In Favor ( ) Against

Accepted by Board as an Expert: ( ) Yes ( ) No

Please check here if you do not wish to speak: Present for the record only.

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\*Name: Jesse W. Rigby Phone: 434-3282
Clark Partington Mart
\*Address: 125 W. Romana St Ste 800 \*City, State, and Zip: Pen. 32502
\*Agenda Item (CASE NO. #) CU-2015-03 Meeting Date: 2/18/15

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Accepted by Board as an Expert: ( ) Yes ( ) No

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\*Name: Mark McMillen Phone: 850-221-2949
\*Address: 10917 Bridge Creek Dr. \*City, State, and Zip: Pensacola, FL 32506
\*Agenda Item (CASE NO. #) CU-2015-03 Meeting Date: 2/18/15

Please check here if you are: ( ) In Favor (X) Against

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\*Name: Kevin Watts Phone: 850-200-2238
\*Address: 7253 Plantation Rd \*City, State, and Zip: Pensacola, FL 32504
\*Agenda Item (CASE NO. #) CU-2015-03 Meeting Date: 2/18/2015

Please check here if you are: ( ) In Favor (X) Against

Accepted by Board as an Expert: ( ) Yes (X) No

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\*Name: Kerry Anne Schultz Phone: 939-3535  
\*Address: 3869 Paradise Bay Dr. \*City, State, and Zip: Unit, Brevard FL  
\*Agenda Item (CASE NO. #) CU-2015-03 Meeting Date: 2/18/15 32543

\_\_\_\_\_ Please check here if you are: ( ) In Favor (  ) Against

Accepted by Board as an Expert: ( ) Yes ( ) No

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ESCAMBIA COUNTY BOARD OF ADJUSTMENT

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\*Name: NATHAN SMITH Phone: \_\_\_\_\_

\*Address: 905 KENNY DR \*City, State, and Zip: PENSACOLA, FL, 32504

\*Agenda Item (CASE NO. #) CU-2015-03 Meeting Date: 2-18-15

\_\_\_\_\_ Please check here if you are:  In Favor ( ) Against

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## ESCAMBIA COUNTY BOARD OF ADJUSTMENT

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Please Print Clearly

\*Name: Jamila Doxy Phone: (708) 937-5079

\*Address: 1857 Atwood Drive \*City, State, and Zip: \_\_\_\_\_

\*Agenda Item (CASE NO. #) CU-2015-03 Meeting Date: \_\_\_\_\_

\_\_\_\_\_ Please check here if you are: ( ) In Favor (  ) Against

Accepted by Board as an Expert: ( ) Yes ( ) No

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\*Name: Julia Ferris Phone: 850 479-1000
\*Address: 7230 Plantation \*City, State, and Zip: Pensacola, Fl. 32504
\*Agenda Item (CASE NO. #) 6-2 Meeting Date: 2-18-15

Please check here if you are: [X] In Favor ( ) Against

Accepted by Board as an Expert: ( ) Yes ( ) No

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\*Name: Teri Wyatt Phone: 221-6940  
\*Address: At wood drive \*City, State, and Zip: Pensacola 32505  
\*Agenda Item (CASE NO. #) CU-2015-03 Meeting Date: \_\_\_\_\_

\_\_\_\_\_ Please check here if you are: ( ) In Favor (  ) Against

Accepted by Board as an Expert: ( ) Yes (  ) No

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ESCAMBIA COUNTY BOARD OF ADJUSTMENT

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\*Name: Shantek Brown Phone: 850 461-8107

\*Address: At wood drive, Pensacola, FL \*City, State, and Zip: 32605

\*Agenda Item (CASE NO. #) Don't have one Meeting Date: 2-18-15

Please check here if you are: ( ) In Favor (X) Against

Accepted by Board as an Expert: ( ) Yes (X) No

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\*Name: Charles Noble Phone: 850-291-4240

\*Address: 1325 atwood drive \*City, State, and Zip: 32505

\*Agenda Item (CASE NO. #) CW-2015-03 Meeting Date: 2-18-15

\_\_\_\_\_ Please check here if you are: ( ) In Favor (  ) Against

Accepted by Board as an Expert: ( ) Yes (  ) No

[Signature] Please check here if you do not wish to speak: Present for the record only.  
would like to speak

\*\*\*\*\*

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\*Name: Brittini Forsell Phone: (850) 291-3848  
\*Address: 1919 Crown Pointe Blvd \*City, State, and Zip: Pensacola FL 32506  
\*Agenda Item (CASE NO. #) CD-2015-03 Meeting Date: 2-15-17  
 Please check here if you are: ( ) In Favor (  ) Against  
Accepted by Board as an Expert: ( ) Yes (  ) No

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\*Name: Kenneth Whalen Phone: 850-377-8850  
\*Address: 1325 Atwood Dr \*City, State, and Zip: Pensacola FL 32505  
\*Agenda Item (CASE NO. #) CJ-2015-03 Meeting Date: 2-18-15

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\*Name: Michael McVay Phone: 954-999-7194
\*Address: 222 4015 Ln 3B \*City, State, and Zip: Pensacola, FL 32507
\*Agenda Item (CASE NO. #) CU-2015-03 Meeting Date: 2-18-15

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\*Name: CHRIS JENSEN Phone: 850 8144476
\*Address: 7253 PLANTATION RD. \*City, State, and Zip: PENSACOLA, FL 32504
\*Agenda Item (CASE NO. #) CU-2015-03 Meeting Date: 2/18/15

Please check here if you are: ( ) In Favor (X) Against

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



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Development Services Department  
3363 West Park Place  
Pensacola, FL 32505

**ADX COMMUNICATIONS  
7251 PLANTATION RD  
PENSACOLA, FL 32504**

**JENNINGS VIVION R, EDGE JUDY, JENNINGS EUGENE  
1505 ATWOOD DR  
PENSACOLA, FL 32514**

In accordance with the Americans with Disabilities Act, persons needing special accommodation or an interpreter to participate in the public hearing should contact County Administrator's Office at 595-4947 at least seven days prior to the date of the hearing. If you have any questions, please contact the Development Services Department at 595-3475.

In accordance with the Americans with Disabilities Act, persons needing special accommodation or an interpreter to participate in the public hearing should contact County Administrator's Office at 595-4947 at least seven days prior to the date of the hearing. If you have any questions, please contact the Development Services Department at 595-3475.



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



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

**COMMUNICATION WORKERS OF AMERICA  
1621 ATWOOD DR  
PENSACOLA, FL 32514**

**SAI RAM KRUPA LLC  
4031 STEPHANI RD  
CANTONMENT, FL 32533**

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Pensacola, FL 32505

**AMMONS WILLIAM S & TATUM  
1507 E STRONG ST  
PENSACOLA, FL 32501**

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**PENSACOLA CITY OF  
PO BOX 12910  
PENSACOLA, FL 32521**

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**PENSACOLA SILVER SCREEN INC  
PO BOX 10015  
PENSACOLA, FL 32524**

In accordance with the Americans with Disabilities Act, persons needing special accommodation or an interpreter to participate in the public hearing should contact County Administrator's Office at 595-4947 at least seven days prior to the date of the hearing. If you have any questions, please contact the Development Services Department at 595-3475.



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

**RELAX HOSPITALITY LLC  
7230 PLANTATION RD  
PENSACOLA, FL 32504**

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Escambia County  
Development Services Department  
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Pensacola, FL 32505

**CEJ SOUTH INC  
PO BOX 11986  
PENSACOLA, FL 32524**

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

**OM HANUMAN HOSPITALITY INC  
7226 PLANTATION RD  
PENSACOLA, FL 32504**

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Escambia County  
Development Services Department  
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Pensacola, FL 32505

**PLAZA ONE REALTY CO  
2205 E WASHINGTON ST  
BLOOMINGTON, IL 61701**

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

**UNIVERSITY OFFICE LIMITED CO  
600 UNIVERSITY OFFICE BLVD STE 1C  
PENSACOLA, FL 32504**

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



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

**AWW PENN LLC  
45 BRODAWAY STE 3010  
NEW YORK, NY 10006**

**UNIVERSITY TOWN PLAZA LLC  
ATTN PROPERTY TAX DEP  
PO BOX 7019  
INDIANAPOLIS, IN 46207**

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Pensacola, FL 32505



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Development Services Department  
3363 West Park Place  
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**CHAVEZ FERNANDO &  
5190 MOBILE HWY  
PENSACOLA, FL 32526**

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Jesse W. Rigby  
Clark, Partington, Hart  
125 W. Romana St., Suite 800  
Pensacola, FL 32502

Mark McMillan  
10917 Bridge Creek Dr.  
Pensacola, FL 32506

Kevin Watts  
7253 Plantation Rd.  
Pensacola, FL 32504

Kerry Anne Shultz  
3869 Paradise Bay Dr.  
Gulf Breeze, FL 32563

Nathan Smith  
905 Kenny Dr.  
Pensacola, FL 32504

Jamile Doxy  
1857 Atwood Dr.  
Pensacola, FL 32505

Julia Ferris  
7230 Plantation Rd.  
Pensacola, FL 32504

Teri Wyatt  
Atwood Drive  
Pensacola, FL 32505

Shantelle Brown  
Atwood Drive  
Pensacola, FL 32505

Charles Noble  
1325 Atwood Dr.  
Pensacola, FL 32505

Brittini Forsell  
1919 Crown Pointe Blvd.  
Pensacola, FL 32506

Kenneth Whalen  
1325 Atwood Dr.  
Pensacola, FL 32505

Michael McVay  
222 Weis Lane  
Pensacola, FL 32507

Chris Jensen  
7253 Plantation Rd.  
Pensacola, FL 32504



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ESCAMBIA COUNTY, FLORIDA

DEVELOPMENT SERVICES DEPARTMENT
3363 WEST PARK PLACE
Pensacola, FL 32505
(850) 595-3475 - Phone
(850) 595-3481 - FAX
www.myescambia.com

Development Services
Department

Horace L. Jones
Department Director

ESCAMBIA COUNTY BOARD OF ADJUSTMENT

All items with an asterisk \* are required.

Please Print Clearly

\*Name: Chris Jensen Phone: 9508144476

\*Address: P.O. Box 11986 \*City, State, and Zip: Pensacola, FL

\*Agenda Item (CASE NO. #) Meeting Date: 3/11/15

Please check here if you are: ( ) In Favor (X) Against

Accepted by Board as an Expert: ( ) Yes ( ) No

Please check here if you do not wish to speak: Present for the record only.

\*\*\*\*\*

Chamber Rules

- 1. All who wish to speak will be heard.
2. You must sign up to speak. This form must be filled out and given to the Clerk in order to be heard.
3. When the Chairman calls your name to speak, please come to the podium, adjust the microphone so you can be heard clearly, then state your NAME and ADDRESS for the record.
4. You are requested to keep your remarks BRIEF and FACTUAL.
5. Both sides of an issue will be granted uniform time to speak, normally 3 - 5 minutes.
6. Should there be a need for information to be handed out, the procedure is:
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ESCAMBIA COUNTY BOARD OF ADJUSTMENT

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\*Name: Julia Ferris Phone: 850 479 1000  
\*Address: 7230 Plantation \*City, State, and Zip: Pensacola, Fl. 32504  
\*Agenda Item (CASE NO. #) CU-2015-03 Meeting Date: \_\_\_\_\_

\_\_\_\_\_ Please check here if you are:  In Favor ( ) Against

Accepted by Board as an Expert: ( ) Yes  No

Please check here if you do not wish to speak: Present for the record only.

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ESCAMBIA COUNTY BOARD OF ADJUSTMENT

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\*Name: Scott Bridgford Phone: 850-939-3535
\*Address: 2045 Fountain Prof Ct, Ste A \*City, State, and Zip: Navarre FL 32566
\*Agenda Item (CASE NO. #) CU-2015-03 Meeting Date: 3-11-15

Please check here if you are: ( ) In Favor (X) Against

Accepted by Board as an Expert: ( ) Yes (X) No

Please check here if you do not wish to speak: Present for the record only.

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Development Services  
Department

Horace L. Jones  
Department Director

ESCAMBIA COUNTY BOARD OF ADJUSTMENT

All items with an asterisk \* are required.

Please Print Clearly

\*Name: Jesse W. Rigby Phone: 434-3282  
125 W. Romana St.  
\*Address: Suite 800 \*City, State, and Zip: Pensac. 32502  
\*Agenda Item (CASE NO. #) CU-2015-03 Meeting Date: 3/11/2015

\_\_\_\_\_ Please check here if you are:  In Favor ( ) Against

Accepted by Board as an Expert: ( ) Yes ( ) No

\_\_\_\_\_ Please check here if you do not wish to speak: Present for the record only.

\*\*\*\*\*

Chamber Rules

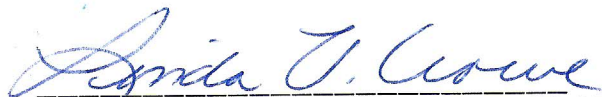
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## CERTIFICATE OF REPORTER

STATE OF FLORIDA  
COUNTY OF ESCAMBIA

I, LINDA V. CROWE, Court Reporter and Notary Public at Large in and for the State of Florida, hereby certify that the foregoing Pages 2 through 96 both inclusive, comprise a full, true, and correct transcript of the proceeding taken on Wednesday, February 18, 2015; that said proceeding was taken by me stenographically, and transcribed by me as it now appears; that I am not a relative or employee or attorney or counsel of the parties, or relative or employee of such attorney or counsel, nor am I interested in this proceeding or its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on 3rd day of March 2015.



LINDA V. CROWE, COURT REPORTER  
Notary Public - State of Florida  
My Commission No.: EE 860695  
My Commission Expires: 02-05-2017

Linda V. Crowe  
Notary Public, State of Florida  
Commission No. EE 860695  
Exp. February 5, 2017

IN AND FOR ESCAMBIA COUNTY, FLORIDA  
ESCAMBIA COUNTY PLANNING BOARD

Quasi-judicial proceedings held before the Escambia County Board of Adjustment, on Monday, February 18, 2015, at the Escambia County Central Office Complex, 3363 West Park Place, First Floor, Pensacola, Florida, commencing at 8:30 a.m.

CU-2015-03  
7251 Plantation Road

---

BOARD OF ADJUSTMENT:

AUBY SMITH, CHAIRMAN  
TIMOTHY BRYAN  
JUDY GUND  
FREDERICK J. GANT (Not present)  
BLAISE ADAMS  
BILL STOMQUIST  
JENNIFER RIGBY  
KRISTIN HUAL, ASSISTANT COUNTY ATTORNEY

COUNTY STAFF:

HORACE JONES, DIRECTOR  
ANDREW HOLMER, SENIOR PLANNER  
DEBBIE LOCKHART, SENIOR OFFICE SUPPORT ASSISTANT

ALSO PRESENT:

JESSE W. RIGBY, ESQUIRE  
Clark, Partington, Hart, Larry,  
Bond & Stackhouse  
125 West Romana Street  
Pensacola, Florida 32502

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P R O C E E D I N G S

MR. SMITH: Case Number 2015-03, 7251  
Plantation Road.

Board members, have there been any  
ex parte communications regarding this case?  
Seeing none.

Does anyone have knowledge or information  
obtained from a site visit or other sources?  
Seeing none.

Does any Board member intend to refrain  
from voting due to a voting conflict of  
interest? Seeing none.

Would the individuals who are a party to  
this item please come to the podium and  
identify yourself, state your name and address  
and be sworn in by the Clerk. We have a  
barrister, and I don't believe you have to be  
sworn in, sir.

MR. RIGBY: Again, for the record, my name  
is Jesse Rigby. I'm an attorney with Clark  
Partington Hart law firm here in Pensacola,  
and I'm representing ADX Communications of  
Escambia, LLC. Mr. David Hoxeng is the  
managing member of that LLC and he will be  
offering testimony. I will have comments, but

1           frankly, I don't believe I'll be offering any  
2           testimony. I don't have any -- I realize that  
3           to the extent anything I tell you, it's under  
4           oath in that sense.

5           MR. SMITH: And, sir, you will be sworn  
6           in, now, please.

7           (David Hoxeng sworn.)

8           MR. SMITH: You understand that all the  
9           criteria must be met?

10          (Presentation by Mr. Rigby.)

11          MR. RIGBY: We do, sir. What I would like  
12          to do is start and cover a couple of  
13          preliminary issues, and then Mr. Hoxeng will  
14          come forward and actually offer testimony to  
15          the Board. It is my understanding that the  
16          Board has accepted the full staff report into  
17          the record at this point.

18          MR. HOLMER: Yes, sir.

19          MR. RIGBY: That's correct. And we have  
20          no objection to the staff findings. I realize  
21          that we're going to go first and to some  
22          extent, it will be repetitive, but again, we  
23          consider the staff report to be evidence and I  
24          assume Mr. Holmer will be addressing that  
25          later.



1           The other point that I want to address  
2           preliminarily is what is not before the Board  
3           today. And I want to go over this because I  
4           think it will prevent some confusion. The  
5           Land Development Code in Section 7.18.00 that  
6           deals with communication towers has in,  
7           Paragraph J, the following statement:

8           Emissions. No location for placement,  
9           construction or modification of a commercial  
10          communication tower or communication antenna  
11          shall be regulated on the basis of the  
12          environmental effects of radio frequency  
13          emissions to the extent commercial  
14          communication towers and antennas comply with  
15          FCC regulations concerning such emissions.

16          That is based upon a federal statute that  
17          was enacted sometime ago by Congress. And  
18          that statute again prohibits any consideration  
19          by local government concerning communication  
20          towers on the basis of radio frequency  
21          emissions. And of course, before this tower  
22          can be built, as part of the review process  
23          the applicant will have to confirm to the  
24          County that it has all the required FCC  
25          permits and permissions. That will be part of

1 the development review process. And, of  
2 course, if they can't do that, then, of  
3 course, it can't be built.

4 I do anticipate persons being here today  
5 who want to testify about radio frequency  
6 emissions and I ask that the Board conclude,  
7 based upon the Land Development Code provision  
8 that I read and the federal statute which is  
9 in 47 United States Code Section 332, that  
10 such testimony is not relevant to this Board.  
11 I've provided this information to Ms. Hual  
12 yesterday to alert her so that she would have  
13 time to review statutes and all if she had any  
14 questions.

15 Again, I would ask for a motion to  
16 preclude any testimony concerning radio  
17 frequency emissions.

18 MS. HUAL: I just wanted to clarify one  
19 thing. In reviewing the federal statute, this  
20 particular provision actually references  
21 personal wireless service facilities and by  
22 the definition, that's what we all know as  
23 cell towers. However, our Land Development  
24 Code provision essentially lumps all  
25 communication towers into one big category.

1           So the federal statute is more specific.  
2           However, the Land Development Code does  
3           pertain to any type of tower.

4           MR. RIGBY: We will be offering testimony  
5           and an exhibit that shows that the tower  
6           design, itself, is designed really in part to  
7           comply with the County's code, that we provide  
8           where possible, collocation opportunities for  
9           cell towers and Mr. Hoxeng will offer  
10          testimony and exhibits showing there are  
11          five -- for the height of the tower, five  
12          locations on that tower for cellular providers  
13          to, in effect, lease space and place their  
14          antennas on the tower, which is common in the  
15          industry. So it will be, if you will, in part  
16          a personal wireless services tower along with  
17          the high frequency radio communications that  
18          Mr. Hoxeng will describe.

19          Again, if the Board does not desire to  
20          address that up front, again I would just have  
21          an objection to anybody who seeks to offer any  
22          testimony concerning radio frequency emissions  
23          to the Board.

24          MR. SMITH: Let me give the Board a chance  
25          to address it. We are going to ask that --

1           because we do have a number of speakers, we're  
2           going to ask them to limit their presentation  
3           to no more than three minutes. So that's  
4           going to be one thing that we're going to ask.

5           But in the meantime, does the Board have  
6           any desire to move that we eliminate any  
7           discussion as to any type of emissions that  
8           might be created, based on the federal  
9           statute? Is there a motion to eliminate that  
10          topic on any speaker's subject? Seeing none.

11          MR. RIGBY: The other preliminary matter I  
12          might be able to take care of that will kind  
13          of help move things forward when Mr. Hoxeng  
14          gets up here, is there -- Mr. Hoxeng will be,  
15          of course, providing testimony from some of  
16          the documents that are in the package that's  
17          before you, that he provided to the County,  
18          and that's included in your package.

19          In addition, he's going to offer testimony  
20          that's been described by him, that goes  
21          through, again, the criteria. And there's a  
22          document here that we would like to offer into  
23          evidence that he will be testifying, if you  
24          will, from, and he's competent to offer that  
25          testimony. And I would like to go ahead and

1           just provide to the Board, and Mr. Hoxeng will  
2           describe it, we can ask at that time that it  
3           be admitted. But it's basically the -- it's a  
4           spreadsheet that shows the various heights and  
5           where the various antenna locations for cell  
6           providers would be at what height, et cetera,  
7           on the tower. That will be an exhibit. If  
8           it's convenient, we would ask that those be  
9           passed out at this point and then we can offer  
10          them into evidence when Mr. Hoxeng testifies.

11           MR. SMITH: Does staff have any objection?

12           MR. HOLMER: No, sir. Staff has reviewed  
13          this.

14           MR. SMITH: The Chair will entertain a  
15          motion to accept that presentation into  
16          evidence.

17           MS. RIGBY: I'll make a motion.

18           MR. STROMQUIST: Second.

19           MR. SMITH: We have a second. Is there  
20          any discussion? Those in favor raise your  
21          right hand.

22           (Board Members Vote.)

23           MR. SMITH: It passes.

24           (Motion passes unanimously.)

25           MR. RIGBY: Mr. Chairman, with your

1 permission, I would like to ask that  
2 Mr. Hoxeng come forward and offer testimony.  
3 I may have some questions for him, but quite  
4 frankly, I think it's just going to be a  
5 presentation from him and then I'll ask  
6 questions if he's left any gaps.

7 MR. SMITH: Thank you, sir.

8 Mr. Hoxeng, I believe we already swore  
9 you. Right?

10 MR. HOXENG: Yes, sir.

11 (Testimony by David Hoxeng.)

12 MR. HOXENG: Good morning. I'm Dave  
13 Hoxeng. My wife, Mary, and I own and operate  
14 News Radio 1620 and Cat Country 98.7, I'm a  
15 little nervous today because this is very  
16 important to us.

17 You know, you guys do this for free, and I  
18 guess I should recognize your service because  
19 we appreciate that you're willing to do these  
20 proceedings that sometimes take a long time.  
21 So thank you.

22 Our building is located in a C-2 zoned  
23 area behind what used to be called University  
24 Mall, and in C-2 the Land Development Code of  
25 our county allows for radio and television

1 studios with towers of up to 150 feet. We are  
2 asking for permission to go for another 49  
3 feet and the other reason for the conditional  
4 use is that we don't meet the 500-foot  
5 distance from a residential neighborhood.  
6 I'll get into that a little bit later.

7 The reason that we need -- I don't know.  
8 Do you guys have tabbed copies of the  
9 evidence? If I direct you to the letter for  
10 request for conditional use, is that something  
11 you can easily see that is part of the case,  
12 the letter for request for conditional use.  
13 It has a picture of the radio station at the  
14 top of it.

15 MR. SMITH: That will be presented by  
16 staff.

17 MR. HOXENG: You don't have that yet?

18 MR. HOLMER: It's in your package.

19 MR. HOXENG: Okay. It says Cat Country in  
20 the upper left-hand corner. I would like to  
21 direct you to page two of that in the middle  
22 of the page, which explains our desire to get  
23 the extra 49 feet.

24 In FM radio the ability to provide  
25 coverage to people has everything to do with

1 height. The higher you are, the more  
2 geography you can cover. That's because the  
3 earth is curved. This is a very small tower  
4 compared to most towers where it would be  
5 broadcasting FM. For instance, our main  
6 tower, which is in Alabama is 942 feet, and it  
7 covers a vast territory. But as we have  
8 learned in hurricanes, sometimes towers fall  
9 down and usually it's the tornado that's spun  
10 off by the hurricane that will twist the tower  
11 into the ground.

12 So Mary and I have made a lot of efforts  
13 for Cat Country and News Radio 1620 to have a  
14 good backup plan so we can always stay on the  
15 air. Cat Country 98.7 was the only radio  
16 station serving our area that stayed on the  
17 air before, during and after Ivan, and the  
18 reason we were able to do that was because of  
19 having a Plan B and a Plan C. So as we expand  
20 our operations on Plantation Road, this a part  
21 of our Plan B.

22 The thing that's driving the need to  
23 construct that tower today is that when we  
24 originally bought this building and built our  
25 940-foot tower in Alabama, we had a microwave



1 connection from the top of the building to the  
2 tower in Alabama. This was in 2003. We  
3 hadn't occupied the building yet, but when the  
4 tower crew was here building the tall tower we  
5 had them go ahead and line up the microwave.  
6 It worked great.

7 But then unbeknownst to me, because I was  
8 new to Pensacola, the Department of  
9 Transportation built what's known as the  
10 I-10/110 interchange which is directly next to  
11 our building, and now the microwave system  
12 that we set up could no longer work because  
13 the concrete blocked it, and we had to build a  
14 tower to get over the new interstate. And,  
15 frankly, I just didn't have the money to do it  
16 until recently, when a local bank offered us  
17 financing to build the tower that's before you  
18 today.

19 So really, there's three components of  
20 this tower in terms of what antennas. The  
21 tower is just a bunch of steel that holds up  
22 the antennas. The antennas connect by the  
23 wires to the ground, to various electronic  
24 devices. So there will be microwave  
25 connections that will go to the Alabama tower,

1           microwave connections that go to the tower at  
2           the City of Pensacola for News Radio 1620.  
3           There will be a place for five cellular  
4           customers. I have already entered into  
5           discussions with Verizon and there is interest  
6           there, and also the backup for our other two  
7           towers should they fall down.

8                        Now, in Hurricane Ivan, when it was over,  
9           we were off the radio on News Radio 1620 so we  
10          drove down Palafox and found a hunk of  
11          concrete about as wide as your desk and about  
12          to here. We think it had been the cover for a  
13          gas station's gas pumps, and the wind just  
14          picked it up and anyway, it knocked us off the  
15          air. So in storms bad things happen, and so  
16          it's very important for us to have a backup  
17          site, which is what this tower will provide.

18                       And the reason we're asking for the extra  
19          49 feet, is you look at the center of page two  
20          of the letter of request for conditional use  
21          you will see that we cover about 45,000 more  
22          people with the extra 49 feet, which is  
23          another 26 percent of coverage. Now,  
24          remember, it's a permitted use in C-2 to build  
25          a 150-foot tower. We're just asking for the

1 extra 49 feet.

2 I would like to go through the document  
3 that you were just handed, which is entitled  
4 WYCT Commercial Communications Tower Project.  
5 So before we bought this building we did  
6 consult the Land Development Code because we  
7 wanted to be sure we could do our business  
8 there, because in some areas, for instance,  
9 you can't build towers and we knew we would  
10 eventually have to build a tower. So  
11 everything we've done in preparation for today  
12 complies with the Land Development Code.  
13 However, we do need your permission to build  
14 what we've proposed here. So I would just  
15 like to go through this and make a couple of  
16 comments.

17 Under A, Antennas, it just explains that  
18 the tower just holds up antennas and you can  
19 put different antennas on it. All  
20 transmitting antennas have to be approved by  
21 the FCC. It's a lengthy process and they do  
22 pay attention to what Jesse mentioned on the  
23 emissions, and they have strict regulations on  
24 that. The exception of that is some  
25 unlicensed bands, for instance, your wireless

1 phone in your home and WiFi. Those are  
2 unlicensed bands.

3 B is collocation. We've proposed  
4 collocation for five cell towers. We have  
5 room for others, as well. For instance, if  
6 the sheriff's department wanted to put an  
7 antenna there, we would have space for that,  
8 although it's not currently planned.

9 In the second part of collocation I'm  
10 pointing out that the tower is collocated in  
11 this case with the radio station, and that's  
12 really essential because we have all this  
13 equipment that we have to connect to it with  
14 sometimes little cables and sometimes cables  
15 that are almost two inches from the  
16 transmitters at the base of tower in the  
17 building.

18 C is environmentally sensitive land. This  
19 is not.

20 D is the setback from residential zoning.  
21 If I may, I would like to offer as evidence  
22 some maps which have to do with the distances  
23 to the residential zoning in the area.

24 May I do that?

25 MR. SMITH: Does staff have any objection

1 at this point?

2 MR. HOLMER: No objection, but we will be  
3 covering that in the maps and I'll be  
4 describing the distances.

5 MR. SMITH: So are we going to have these  
6 same --

7 MR. HOLMER: We're going to have the ones  
8 that the County has created, and I can explain  
9 the distances off of those.

10 MR. SMITH: The Chair would entertain a  
11 motion as to whether we accept additional maps  
12 into evidence. No motion, sir.

13 MR. HOXENG: So the criteria in the Land  
14 Development Code is 500 feet. And as you  
15 know, I think, our building is directly in the  
16 pocket of Interstate 10, that's ten lanes of  
17 traffic, and interstate I-110, which is at  
18 that point I think it's six lanes. Across the  
19 interstate is the residentially zoned area.  
20 Within 500 feet there are three pieces of  
21 property. One is owned by the City of  
22 Pensacola and they do their gas operations  
23 there. One is owned by the union that  
24 represents the people who work for AT&T, and  
25 there is one very large property which

1 includes a home on it.

2 Interestingly enough, I've learned that  
3 the residential zoning line starts at the  
4 midpoint of I-10, even though it's a long way  
5 from the actual residential property line. So  
6 the -- this is the radio station. This yellow  
7 line starts at the tower, goes across the  
8 interstate to this home, and it's about 750  
9 feet away. I would argue that even though the  
10 gas company and the AT&T union are in a  
11 residential zoned area, they're not  
12 residential uses.

13 And there's another criteria that we have  
14 to meet which has to do with the height of the  
15 tower versus the distance to the residential  
16 zoning line, and with the residential zoning  
17 line being in the middle of the interstate,  
18 we're more than the height of the tower to  
19 that.

20 Number E, Criterion E, is lighting from  
21 the Land Development Code and we don't propose  
22 any changes in lighting, and with the nearest  
23 residence being more than 750 feet away it  
24 probably really wouldn't matter anyway.

25 F, is color, and we'll comply with the

1 Land Development Code with a galvanized  
2 finish.

3 G is failure which says that if the tower  
4 falls down it can't touch a residential  
5 property line, or maybe it says the zoning  
6 line. I'm not sure which. But in any case we  
7 meet both criteria.

8 As far as security is concerned we're  
9 proposing an eight foot fence which is allowed  
10 in commercial areas. We'll have a gate which  
11 will be locked, and we'll have on the ladder  
12 what's called an anti climbing device, which  
13 is essentially a big plate of steel which is  
14 locked so you can't get to the rungs to climb  
15 the tower should you jump the eight foot  
16 fence.

17 I is screening, and we'll comply with the  
18 Land Development Code sections that are noted  
19 there, and as the County has mentioned, this  
20 project, after you approve it, has to go to  
21 the Development Review Committee and that's  
22 where things like this get dealt with in  
23 detail, but certainly I promise to comply with  
24 those things.

25 Earlier you heard discussion about J,

1           which is emissions, from Jesse, and aside from  
2           whatever the federal government says, we have  
3           a very specific part of our Land Development  
4           Code says you can't consider emissions or  
5           complaints about emissions as long as I comply  
6           with the FCC regulations, which I have to do  
7           that because I won't get the licensing from  
8           the FCC if I don't, and then there's a safety  
9           check at the DRC to be sure that I have that  
10          paperwork proving that I have complied with  
11          the FCC regulations.

12                 Are there any questions about that? I  
13          think what's important here is to realize the  
14          radio stations Mary and I run are regulated by  
15          the federal government and we're very strictly  
16          regulated. Certainly the reason we're here  
17          today is because the federal government  
18          doesn't preempt you to say how big a building  
19          I can build or something like that, but as far  
20          as the electronics and safety and stuff like  
21          that, the federal government is very  
22          aggressive about enforcing those rules.

23                 Continuing with the Land Development Code  
24          K, abandonment doesn't apply.

25                 L, preexisting towers, doesn't apply.



1           Airport zoning. So we are not anywhere  
2 close to the airport. However, we did get a  
3 letter from the airport approving our location  
4 which they made subject to the FAA and we have  
5 written permission from the FAA to build a  
6 199-foot tower at this site. So we have  
7 passed the wickets as to the height, with the  
8 airport and with the federal government.

9           As far as variances are concerned, staff  
10 says that we don't need a variance and we are  
11 not asking for any exceptions to the  
12 conditional use standards that we're  
13 discussing today.

14           As far as application requirement, which  
15 is 0, we'll be submitting a geotechnical  
16 report with the DRC, as well as a FCC/NEPA  
17 checklist. The things that we have to comply  
18 with at this meeting have to do with  
19 compliance with various other governmental  
20 agencies. I mentioned the airport has okayed  
21 the project. The FAA has approved the height.  
22 Escambia County Emergency Communications has  
23 approved the tower location and the height and  
24 we will fully comply with the FCC regulations.

25           You have coverage maps that are in your

1 package. And then we discussed the number  
2 five collocation which is that we have space  
3 for up to five additional cell phone  
4 providers.

5 A comment about cell phones. Things have  
6 really changed in the past five year in the  
7 wireless communication industry, and we seem  
8 to be talking on our phones less but the data  
9 needs are skyrocketing. So the need for  
10 towers, honestly, to provide the connectivity  
11 we need so when we're at the mall near my  
12 office or the neighborhoods, is data. It's  
13 all about data. And so Verizon, AT&T, T  
14 Mobile, they're all trying to build up their  
15 infrastructure to provide more data. So  
16 that's part of why we included the project  
17 with five collocations. The County requires  
18 two locations in the Land Development Code.

19 So in conclusion, we have complied fully  
20 with the Land Development Code in every way.  
21 We do ask your permission to go the extra 49  
22 feet.

23 Are there any questions I can entertain  
24 from y'all?

25 MR. SMITH: Does the Board have any

1 questions of the Applicant?

2 MR. BRYAN: I have a question, if I may.  
3 I'm just curious why only 49 feet? Was this  
4 based on administrative or was it based on  
5 cost benefit, that is revenue per foot versus  
6 costs to build an extra foot of tower? I'm  
7 just curious.

8 MR. HOXENG: It is true that every extra  
9 foot you build on a tower, it goes up.  
10 Geometrically, the cost per foot goes up with  
11 the height, because there's a very large  
12 foundation on the ground. The reason is  
13 because the FAA rules change at 200 feet.

14 MR. BRYAN: That's what I thought.

15 MR. HOXENG: And so by limiting it to 199,  
16 it makes it simpler to permit with the FAA.

17 MR. BRYAN: Thank you.

18 MS. RIGBY: Are you adding to the 150-foot  
19 tower you have or are you tearing that one  
20 down and putting up a whole new tower?

21 MR. HOXENG: No, we don't currently have  
22 a tower. This will be a new project.

23 MS. RIGBY: Okay. Well, you said  
24 something about 150.

25 MR. HOLMER: The code allows, in that

1 zoning district, for a tower up to 250. When  
2 it goes over 150 it comes to this Board.

3 MS. RIGBY: Thought I read somewhere that  
4 this was a -- this was -- that this was like  
5 an old tower was being removed.

6 MR. HOXENG: Actually, we had permission  
7 in 2006 from the federal government to build  
8 this tower, from the FAA and the FCC.  
9 Actually, it was to build a 283 foot tower,  
10 but then when we got the price quotes I  
11 realized that there was absolutely no way I  
12 could afford that tower, so this is the  
13 replacement project.

14 MS. RIGBY: So currently there is no tower  
15 there.

16 MR. HOXENG: No, ma'am.

17 MS. RIGBY: What is the base square  
18 footage?

19 MR. HOXENG: Of the building?

20 MS. RIGBY: Of the tower, what will it be?

21 MR. HOXENG: Well, the way it's designed  
22 is you have a lot of concrete under ground and  
23 then three or four pillars come up that are  
24 about this big that the tower bolts to. So as  
25 far as pervious and impervious, it really

1                   won't make any difference.

2                   MS. RIGBY: I mean, is the tower, the base  
3 of the tower 100 square feet, 200 square feet?

4                   MR. HOXENG: Oh, I see. Well, it's three  
5 or four legs that come down, depending on what  
6 the designer decides.

7                   MS. RIGBY: You're going to build a fence  
8 around this thing, right?

9                   MR. HOXENG: Yes, ma'am.

10                  MS. RIGBY: How big is the fence.

11                  MR. HOXENG: It's an eight foot fence.

12                  MS. RIGBY: It's going to go around how  
13 much of an area?

14                  MR. HOXENG: Oh, I see. Our proposal is  
15 30 feet by 30 feet.

16                  MS. RIGBY: 30 by 30, okay.

17                  Was the military contacted?

18                  MR. HOXENG: As part of the process with  
19 the FAA, yes. The FAA sends all requests for  
20 towers to the military for review.

21                  MS. RIGBY: So FAA contacted them. You  
22 did not?

23                  MR. HOXENG: No, the FAA does that.

24                  MR. JONES: It will be reviewed by the  
25 DRC, so they will be -- they sit as one of our

1 reviewing authority in the DRC process, so  
2 that's part of the process.

3 MS. RIGBY: For the military.

4 MR. JONES: Yes, it is.

5 MS. RIGBY: Okay.

6 MR. HOXENG: But basically the federal  
7 government looks at towers that are 200 feet  
8 as being benign to the air space. They don't  
9 want them right next to an airport, of course,  
10 which is part of why you have to go through  
11 review, but generally speaking, 199-foot tower  
12 would not even require a -- if I were not a  
13 broadcaster or if it was not a cell tower, if  
14 it was like a receiving tower for TV or  
15 something like that, you wouldn't even be  
16 required to get FCC permission, but because  
17 it's a transmitter tower I would have to get  
18 permission anyway, even though it's only 199  
19 feet.

20 MS. RIGBY: That's all.

21 MR. RIGBY: If I might, I have one  
22 question.

23 MR. SMITH: Yes, sir.

24 MR. RIGBY: Mr. Hoxeng, I would like for  
25 you to clarify. We offered a spreadsheet that

1 shows the various locations for cells. How  
2 was that prepared, or did you prepare it or  
3 have your design team prepare that for you?

4 MR. HOXENG: I am the design team. Yes, I  
5 should have spoken to that for a moment. So  
6 in the process of making our plans for, well,  
7 ultimately how much this is going to cost, you  
8 have to lay out the tower, figure out the size  
9 of the wires that connect things and then it  
10 normally goes to tower engineers and they  
11 design how thick the individual steel has to  
12 be at every height, so they have to  
13 reinforce -- well, not reinforce, because it's  
14 a new build. They have to build the steel  
15 thick enough at each particular location as  
16 you go up the tower, to support the actual  
17 antennas you will have on the tower. It has  
18 to do with wind loading as well as downward  
19 loading.

20 So this is the layout that I did earlier  
21 this year and then color coded for you all  
22 yesterday. I prepared it and it's -- I could  
23 answer any questions. It's pretty technical,  
24 but basically it's just the layout. It's like  
25 the map for how the tower is going to load.

1           The other thing I think I should say is  
2           that all the maps -- well, you didn't take the  
3           maps. Everything that has been presented to  
4           you, I prepared personally.

5           MR. RIGBY: And there is a site plan as  
6           part of the application. It might be a little  
7           difficult to see, but the actual tower  
8           location would be at the northwest corner  
9           right up -- but meeting, of course, the County  
10          setback, up as close to Interstate 10,  
11          basically, and that property line as it can  
12          get and meet the setbacks. It's up in the  
13          northwest corner of that property near the  
14          interstate.

15          MR. HOXENG: But to be specific we are  
16          well within the setbacks. We're not right on  
17          the setback.

18          MR. RIGBY: Thank you.

19          MR. SMITH: Does staff have any questions?

20          MR. HOLMER: No, not at this time.

21          MR. SMITH: Thank you, sir.

22          MR. HOXENG: Thank you.

23          MR. SMITH: Will staff make your  
24          presentation.

25                 (Presentation by Andrew Holmer, previously



1 sworn.)

2 MR. HOLMER: Yes, sir. Again this is  
3 Conditional Use Case CU-2015-03, 7251  
4 Plantation Road. This is a conditional use  
5 approval to construct 199-foot commercial  
6 communication tower within 500 feet of a  
7 residential zoning district.

8 (Presentation of Maps and Photographs.)

9 MR. HOLMER: This is the location map.  
10 You will see the parcel outlined in red. The  
11 500-foot radius map showing the zoning on site  
12 as C-2 and to the north you see residential  
13 zoning. Now, from measurement off of the  
14 County's GIS, the distance from the  
15 approximate tower location to the residential  
16 zoning, as we would consider it where the  
17 parcel line begins there on the residential,  
18 is 445 feet. The distance to the nearest  
19 residence is 750 feet. I'm going to get into  
20 why that's important, here in a minute.

21 The Future Land Use on site is commercial.  
22 The aerial map of the site. The public  
23 hearing sign posted on site.

24 This is looking north into the site from  
25 Plantation. This is looking north across

1           Plantation. As you can see there to the left  
2           side of the building, which is going to be the  
3           western side, that's back there in the back  
4           where the tower is going to be going.

5           Here I have an overall site plan. One  
6           point I want to point out on here is the  
7           amount of parking. This was formerly a  
8           restaurant and it had met the parking  
9           requirements for a restaurant, which are much  
10          more than the current use.

11          And the approximate tower location. Mind  
12          you, the foundation of this, the supports are  
13          going to be a bit larger than what I've  
14          circled there.

15          As to the staff findings, the requested  
16          conditional use, because our LDC, the part on  
17          communication towers mentions setbacks from  
18          residential zoning, and in that it says that  
19          all commercial communication towers, which  
20          exceed 150 feet in height or in districts  
21          where those towers are allowed and/or are  
22          located within 500 feet of a residential area,  
23          those are considered conditional uses, which  
24          is why we're here for both of those items.

25          As to the first criterion, On-Site

1           Circulation, the property in question has  
2           ample parking for the land use and is accessed  
3           by driveways connecting to Plantation Road.

4           Criterion (2), Nuisance. Staff does not  
5           find any anticipated nuisances associated with  
6           the proposed use.

7           Criterion (3), Solid Waste. Solid waste  
8           service will not be necessary for this use.

9           Criterion (4) Utilities. Any necessary  
10          utilities will be provided by the applicant.

11          Criterion (5) Buffers. The proposed use  
12          must meet any buffering requirements imposed  
13          during the site plan review process.

14          Criterion (6), which is Signs. Any  
15          signage associated with the proposed use must  
16          meet the requirements of the Land Development  
17          Code.

18          Criterion (7), Environmental Impact. The  
19          proposed use must comply with any  
20          environmental standards imposed during the  
21          site plan review process.

22          Criterion (8) Neighborhood Impact. The  
23          proposed use will be compatible with the  
24          surrounding heavy commercial zoning.  
25          Residential zoning within 500 feet just to the

1 north across Interstate 10 and impacts on that  
2 residential zoned area will be minimized by  
3 distance and existing interstate right-of-way.

4 Criterion (9) Other Requirements of the  
5 Code. As was mentioned several times  
6 previously, Chapter 7 Section 18 of our Land  
7 Development Code covers commercial  
8 communication towers. The proposed use must  
9 meet all the requirements of that section and  
10 any other standards imposed in the site plan  
11 review process. The applicant has provided  
12 compliance with FCC, FAA and County Emergency  
13 Management Service requirements. He's  
14 provided coverage maps for the towers and  
15 collocation information as required for  
16 conditional use approval.

17 Recommendation. Staff finds the proposed  
18 use can meet all the required criteria and  
19 recommends approval of the proposed  
20 conditional use with the following condition:  
21 The project must meet all conditions imposed  
22 through the site plan review process.

23 MR. SMITH: Does the Board have any  
24 questions for staff?

25 MR. HOLMER: One more thing from staff's

1           standpoint. I would like to, second of all, I  
2           guess, third, the mention of this idea of  
3           emissions. Our Land Development Code tells  
4           us, the staff, what we are to address and what  
5           we're not to address. In this case we're  
6           addressing the use here, the use of the tower,  
7           the location from the residential zoning line  
8           and the height. Our code does not allow us to  
9           go into anything about emissions as long as it  
10          meets FCC approval. So I'm sure, in addition  
11          to the applicant and his agent, staff will be  
12          objecting to any testimony that falls outside  
13          what this Board is here to hear today.

14                 MR. SMITH: Does the applicant have any  
15                 questions of staff? Seeing none, we will now  
16                 begin with our speakers. And again, we'll ask  
17                 you to come forward and be sworn in.

18                 MR. RIGBY: Mr. Smith, may I ask  
19                 Mr. Hoxeng to come up because there's a  
20                 question a Board member asked about previous  
21                 tower and you've got these coverage maps. I  
22                 think it will help if he goes into a little  
23                 more detail about what this tower is really  
24                 doing in two functions. One is in, I'm going  
25                 to call it the day-to-day transmission and

1 operation of his station, and then the  
2 coverage maps, which he'll explain, which I  
3 believe really are in the emergency backup  
4 setting. I think that will help the Board  
5 understand this whole project a little bit  
6 better.

7 MR. HOLMER: And that's a good point I  
8 would like to address to Ms. Rigby. You had  
9 asked about the Navy. That's going to be  
10 under our review. Keep in mind for anyone  
11 flying in the area, towers that are out there  
12 and permitted through the FAA and FCC are  
13 considered obstacles that they're aware of.  
14 Just so you know, I did some research on my  
15 own. To the north of this tower, 4,000 feet  
16 north of this, just north of Olive Road and in  
17 line is a 300 foot tower, and 1,500 feet to  
18 the south and once again in line, is a 146  
19 tower, so there's already obstacles in that  
20 way.

21 MR. BRYAN: If I could point out as a  
22 former Navy pilot, that the Navy and the other  
23 armed forces when they fly, are supported by  
24 the FAA. The FAA is responsible for putting  
25 out the publications, maps, charts, et cetera,

1 as well as notices to airmen when they're  
2 subject to deviations and variations that are  
3 required. So as stated, it's perfectly  
4 rational that when FAA grants approval they  
5 coordinate that and communicate that to  
6 everybody who flies in the area.

7 MR. SMITH: Thank you, sir.

8 MR. HOXENG: Dave Hoxeng, again. Yeah, I  
9 probably wasn't as clear as I could have been.  
10 So this tower, the three uses that we talked  
11 about. One is the microwave connections to  
12 both of our main tall towers, one for News  
13 Radio 1620 and one for Cat Country 98.7, the  
14 backup transmitters for both stations for  
15 emergencies, and then cell tower space.

16 MR. HOXENG: Currently our -- Cat Country  
17 97 is live from 5:00 in the morning until  
18 midnight and presently all of our online  
19 personalities have to drive up to the tower in  
20 Alabama to perform on the radio. We don't  
21 have a connection between the two buildings.  
22 This tower will give us the connection so that  
23 we can actually use the studios we have on  
24 Plantation Road as they were intended.

25 Everything was fine until that interchange

1 got built, which, not being from here, I  
2 wasn't aware of and so this tower answers that  
3 connectivity problem between Plantation Road  
4 and our tall tower, almost 1,000 foot tower in  
5 Alabama.

6 Any questions? Thank you.

7 MR. SMITH: Thank you.

8 Speakers, as I call you, please come  
9 forward and be sworn in, and again, we ask you  
10 to limit your talking points unless you're  
11 being questioned, to three minutes, and we  
12 appreciate that.

13 Michael McVay. Good morning.

14 (Michael McVay sworn.)

15 MR. McVAY: Good morning. My name is  
16 Michael McVay. I'm an accountant here in  
17 Pensacola, Florida. I've got several clients  
18 in the area of the actual proposed tower at  
19 Plantation Road. I do come up with several  
20 objections to it and I wish I could voice  
21 those opinions now.

22 MR. RIGBY: Mr. Chairman, I'm going to  
23 object to this witness testifying about what  
24 other people might have told him or his  
25 clients might have had to say. Again, he



1 needs to testify from personal knowledge, not  
2 imparting, if you will, a survey of other  
3 people and I would object to any testimony.

4 MR. McVAY: I do have my own research.  
5 Thank you.

6 MR. SMITH: Thank you.

7 MR. McVAY: First of all, with several  
8 clients in the area University Mall has become  
9 a great place now, you know. It's beautiful.  
10 The aesthetic part of University Mall is great  
11 now. I would think that this tower would  
12 definitely take away from that.

13 Along with -- I know we talked about  
14 transmissions, but if you do your research on  
15 it, that is not actually 100 percent true is  
16 what my investigation is. There is still  
17 controversy out there with the radio  
18 transmissions.

19 MR. HOLMER: Once again, we've got to go  
20 with the objection, we're not going there.  
21 The code doesn't allow that.

22 MR. McVAY: Well, that's my opinion and  
23 research, so I just wanted to bring it up to  
24 you.

25 Property values, they have been known to

1 drop in the area.

2 MR. HOLMER: Objection. Are you a  
3 property appraiser?

4 MR. McVAY: No, I'm not.

5 MR. HOLMER: The board can only accept  
6 opinion testimony from someone who is  
7 recognized as an expert witness.

8 MR. McVAY: Interesting.

9 Hurricanes. There have been known towers  
10 that do topple over during hurricanes,  
11 depending on the strength. That is a fact.

12 I would just ask that the residences of  
13 the area, the businesses in the area, at least  
14 have their opinion heard of their objections  
15 of this 199-foot tower. I would like to  
16 interject also that the signage on most of my  
17 clients are restricted to a lot less than  
18 that. Do we really want 199-foot tower  
19 sitting at the center of great piece of parcel  
20 in our community?

21 Thank you very much.

22 MR. SMITH: Any questions of the speaker  
23 by the Board?

24 Any questions by the staff?

25 MR. HOLMER: Just a statement. The public

1 is notified per our Land Development Code.  
2 This is a public meeting and that's why this  
3 Board exists, and the development review  
4 process is also an open public meeting.

5 MR. JONES: Also, we do want to make it  
6 clear that in this forum we do allow the  
7 public to speak as it pertains to matters.  
8 Your opinion can be heard with the  
9 understanding that it is just your opinion.  
10 We don't want you to feel like I came and they  
11 don't want to hear it. It's a quasi-judicial  
12 hearing. Your opinion -- everyone has the  
13 right to be heard, but when it comes to  
14 matters of law, as Mr. Rigby stated on those  
15 FAA rules, we're not -- and I believe that the  
16 Board is aware of that, so that's the only  
17 thing, but your opinions --

18 MR. McVAY: I understand. I was wanting  
19 to voice my opinion. Thank you.

20 MR. SMITH: That's good. Thank you very  
21 much.

22 Kenneth Whalen.

23 (Kenneth Whalen sworn.)

24 MR. WHALEN: I would like to voice my  
25 concern as a resident.

1 MR. SMITH: State your address, Kenneth.

2 MR. WHALEN: 1325 Atwood. As being a  
3 resident of the area and having a child, I  
4 have a child and a niece, I have concerns, I  
5 guess it's an opinion, of the radioactive  
6 whatever it puts off on the towers.

7 MR. HOLMER: Once again, I'm sorry.

8 MR. WHALEN: I mean, I understand we can't  
9 dispute that. I just want to express my  
10 opinions and the concerns that I have for my  
11 children and being in that area and other  
12 residents of the area, we have concern with.

13 And also as that being in the area having  
14 a 200 foot tower sticking in the air, I mean,  
15 you can't dispute property values or none of  
16 that. I'm not an expert, so. Just I have  
17 concerns with it for my children.

18 MR. SMITH: Thank you, sir. Board, any  
19 questions of the speaker?

20 Staff, any questions?

21 MR. HOLMER: No, sir.

22 MR. SMITH: Thank you, sir.

23 Charles Noble.

24 (Charles Noble sworn.)

25 MR. NOBLE: I'm also a resident.

1 MR. JONES: Yes, sir, please get closer to  
2 the mike so that we can make sure --

3 MR. SMITH: And state your address.

4 MR. NOBLE: I'm also a resident at 1325  
5 Atwood. I come up here sharing the same  
6 concerns as far as the harmful effects that  
7 could come from the tower. It's mostly just  
8 my opinion. Just in case a hurricane or  
9 anything was to come in the area, the danger  
10 it would pose to the surrounding residents.  
11 Also the electrical magnetic radiation, the  
12 ground levels of it, which they say we're not  
13 really -- I'll just state my opinion.

14 Overall, just the overall health of the  
15 residents in the surrounding area. I just  
16 wanted to come out and show my public support.

17 MR. SMITH: Thank you very much.

18 Board, any questions of the speaker?

19 Staff, any questions of the speaker?

20 Applicant, any questions of the speaker?

21 Thank you very much.

22 Shontelle Brown.

23 (Shontelle Brown sworn.)

24 MS. BROWN: Hi. I also live at 1325

25 Atwood. I also work at Burlington Coat

1           Factory that's in the University Mall area and  
2           I am -- I have a lot of health problems and I  
3           know I am often, as well as some of the people  
4           that work with me, I have looked up some of  
5           the health and I had lung cancer, as well, and  
6           I saw there's a one percent, but just like  
7           there's a one percent that I'm a 27-year-old  
8           that had lung cancer and cervical cancer and a  
9           mini stroke, there's that one percent. We  
10          have kids. We have pregnant women. We have  
11          mothers that come in and out of the store  
12          where this tower is going to be built. And I  
13          know there's just that one percent, but, I  
14          mean, there are sick people like me that shop  
15          in this place, that go around there. I'm just  
16          voicing my concern. There's a lot of, you  
17          know, neurological, cancer, you know, all  
18          kinds of different stuff and I just don't see  
19          the point in -- there's a lot of towers and I  
20          understand that. And Cat Country, I love Cat  
21          Country, but it's just an eyesore and all the  
22          risks, including me, while I'm working there.

23                   MR. SMITH: Thank you.

24                   Board, any questions of the speaker?

25                   Staff, any questions of the speaker.

1 MR. HOLMER: No, sir.

2 MR. SMITH: Applicant, any questions of  
3 the speaker?

4 Thank you very much.

5 Teri Wyatt.

6 (Teri Wyatt sworn.)

7 MS. WYATT: I also live at 1325 Atwood  
8 Drive, and like the others, I'm sharing the  
9 same concerns about my health and my  
10 grandchildren's health. I'm just worried if  
11 that tower is built there, also with the  
12 weather, I'm just -- I'm not in favor of  
13 having that built.

14 MR. SMITH: Thank you, ma'am.

15 Board, any questions of the speaker?

16 Staff, any questions?

17 MR. HOLMER: No, sir.

18 MR. SMITH: Applicant, any questions?

19 Thank you very much.

20 MS. WYATT: Thank you.

21 MR. SMITH: Julia Ferris.

22 (Julia Ferris sworn.)

23 MS. FERRIS: Yes, I'm Julia Ferris. I'm  
24 the general manager of Main Stay Suites, which  
25 is located at 7230 Plantation Road. We are

1           one business down from Cat Country and we are  
2           100 percent in favor of the building of the  
3           tower.

4           MR. SMITH: Any questions from the Board?  
5           Staff?

6           Applicant?

7           Thank you very much.

8           Jamila Doxy.

9           (Jamila Doxy sworn.)

10          MS. DOXY: Hi. I'm a resident at 1857  
11          Atwood Drive and I am from Illinois. I just  
12          moved here about in March, but Pensacola is so  
13          beautiful to me. But I think building a tower  
14          would be a big eyesore. I'm also concerned  
15          about the health of the children in the area,  
16          also. So I'm not in favor of the tower.

17          MR. SMITH: Thank very much. Any  
18          questions from the Board?

19          From the staff?

20          MR. HOLMER: No, sir.

21          MR. SMITH: From the applicant?

22          Thank you very much.

23          Nathan Smith.

24          (Nathan Smith sworn.)

25          MR. NATHAN SMITH: My address is 905 Kenny



1 Drive and I am in support of the conditional  
2 use of this tower.

3 MR. SMITH: Thank you. Any questions from  
4 the Board?

5 Staff?

6 Applicant?

7 Thank you, Mr. Smith.

8 Kerry Schultz, Kerry Anne Schultz.

9 MS. RIGBY: She's an attorney.

10 MS. SCHULTZ: Good morning, fellow Board  
11 members, Kerry Anne Schultz, a local attorney.  
12 I have the pleasure of representing the  
13 neighbor next door, which is Family Funeral  
14 and Cremation.

15 I'm going to go through some of the  
16 criteria. There's a reason why I do that.  
17 There's a reason why the Land Development Code  
18 only supports 150 feet. There's a reason for  
19 that, safety concerns and other things. These  
20 laws are not just put in place gently without  
21 taking into consideration the effects on the  
22 neighborhood, the impact to the environment  
23 and the all criterion that's required for a  
24 conditional use is taken into consideration  
25 when the law is implemented and codified.

1           The applicant here, today, is seeking to  
2           increase this by 49 feet. It's completely  
3           based on financial interests of the applicant,  
4           which is unnecessary. 150 feet is  
5           satisfactory. The radio station has been  
6           there for quite some time and it's obviously  
7           used their purpose.

8           You've heard testimony today from several  
9           neighbors, both business and residential, that  
10          are adamantly opposed to this. We are, as  
11          well as, adamantly opposed.

12          I would like to offer into evidence,  
13          although these individuals could not be here  
14          today, we do have a petition signed by  
15          business owners and neighbors within the 500  
16          feet that have signed a petition saying that  
17          they're just opposed to it. While I recognize  
18          the law that they cannot speak before the  
19          County Commissioners unless they preserve  
20          that, this is just further evidence to show  
21          that the neighborhood within the 500 feet is  
22          adamantly opposed to this increase of 49 feet  
23          to increase it to 199 feet, of that tower,  
24          that I would like to offer.

25                 MR. RIGBY: Mr. Chairman, I would object.

1           Again, Ms. Schultz knows this doesn't go to  
2           the County Commission. There's no question  
3           about who gets to speak.

4           Number two, she knows that Florida law  
5           does not allow petitions of this to be offered  
6           in quasi-judicial hearings to be considered.  
7           And so, again, I think it's just inappropriate  
8           that she took this approach to provide that  
9           information to you, and I would object to your  
10          consideration.

11          MR. SMITH: Board, is there any desire --  
12          having heard the testimony from both parties,  
13          is there any desire to move to accept these  
14          petitions into evidence? Seeing none.

15          MS. SCHULTZ: We have discussed this with  
16          82 people in the area that are adamantly  
17          opposed to this increase. There is no reason  
18          for that.

19          Let's go on to the criteria. First of  
20          all, the applicant has to know that all  
21          criteria is satisfied and even though the  
22          staff comments have shown that they can meet  
23          those, we can show you why that that cannot be  
24          met and we're asking you to vote against this  
25          today.

1           Number one is nuisance. There will be  
2           potentially noise and harmful effects. While  
3           I recognize the federal law regarding  
4           emissions, that statute was stopped and the  
5           rest of the statute was not read to this  
6           honorable Board with respect to that. There  
7           are other neighbors, including my client,  
8           that's very concerned about any radioactivity  
9           regarding any towers. It doesn't take a  
10          rocket scientist -- and I'm not a medical  
11          professional and I'm also not an engineer or  
12          scientist before you -- I'm simply a lawyer,  
13          but there is concern regarding radioactivity.  
14          We've got 150 feet. Let's keep it at 150  
15          feet. There's no reason to increase this.  
16          It's a nuisance.

17                 In addition to nuisance, 199 feet, let's  
18          look at the hurricane. The applicant  
19          continues to press upon this Board that it's  
20          essential for communications during a  
21          hurricane. The last large hurricane we had  
22          was Hurricane Ivan in 2004 and Dennis in 2005.  
23          Communication was properly fine. There was no  
24          issue with communication, whatsoever. The  
25          County did a fabulous job with its management

1 in that type of situation, and there's no  
2 issue with respect to that.

3 We're more concerned with this 199-foot  
4 tower topping over the interstate, causing  
5 debris and steel to be all over the area,  
6 including surrounding neighbors and affecting  
7 them. With wind capacity as they are in  
8 hurricanes, that is troubling to my client.  
9 We don't have an expert here today to state  
10 that a 199 feet versus 150 feet toppling over  
11 tower would cause -- common sense clearly  
12 dictates that that would a concern. That is a  
13 nuisance and that is a criteria that we  
14 believe that the applicant cannot satisfy.

15 The other concern is buffers. While I  
16 recognize that a site plan will be considered,  
17 if you really look at -- we have photographs.  
18 If I can go ahead and have you look at the  
19 photographs that were taken just few days ago  
20 by my client to show that there is not a  
21 buffer. Although the applicant -- you've seen  
22 photographs on there that show that when you  
23 look at behind the property of where the tower  
24 is actually proposed to be situated, there is  
25 not a buffer there. While I do recognize that

1           the applicant could create a buffer, to the  
2           extent that this was passed, right now there  
3           is not proper landscape there to show that  
4           between the back of the property where the  
5           proposed -- which would currently meet the  
6           Land Development Code. So it's our position  
7           that under the current Land Development Code  
8           the buffer area that is required, including  
9           this purported eight foot fence, does not  
10          exist at this time, and we believe that they  
11          cannot meet the buffer requirements between  
12          that.

13                 Additionally, the environmental impact,  
14          while there does not appear to wetlands bodies  
15          of water, storm management may be a concern.  
16          I have not seen the report that this tower  
17          being on an asphalt parking lot will create  
18          any issues to the subterranean with stormwater  
19          management, but that could be a concern. I  
20          think that this needs to be further explored,  
21          so I'm asking you to, on that basis, look at  
22          that as an issue that may need more testimony  
23          or more evidence with respect to potential  
24          effects on stormwater management and other  
25          issues relating to environmental concerns.

1           The biggest one is neighborhood impact.  
2           It's obvious today, you've heard testimony  
3           from others, we have discussed this with other  
4           people. My client especially, the neighboring  
5           property is very, very concerned about the  
6           neighborhood impact. It's interesting because  
7           we came before this Honorable Board, which was  
8           a different Board, of some of you members,  
9           regarding my client's request in the C-2 area  
10          for a cinerator that would be housed in an  
11          accessory building for cremations, which is  
12          already happening in C-2. It's just my client  
13          was denied that opportunity, unfortunately.  
14          That was adamantly opposed by the applicant  
15          and that applicant, during that testimony,  
16          determined that this was not a heavy C-2 area.  
17          Now they're arguing it is heavy C-2 and that  
18          we should support 49 feet of an increase on a  
19          tower. It just doesn't make sense. It's not  
20          logical and it's not rational.

21          The neighborhood impact is very serious.  
22          You've heard from neighbors. It doesn't  
23          matter. The interstate may divide, but those  
24          neighbors have concerns. How would you like  
25          to look out your window and see not only 150

1 feet, which the law already allows, which the  
2 applicant has, but another 199 feet. Why is  
3 it necessary? You've heard from neighbors  
4 discussing that. You've heard from people at  
5 the mall that are extremely concerned about  
6 this. Yes, this area has revitalized itself.  
7 It's beautiful and the mall has brought a lot  
8 of business, a lot of restaurants. My  
9 client's funeral home, which was just a  
10 delapidated restaurant, to some extent, and a  
11 restaurant that didn't exist for quite some  
12 time, is now a beautiful funeral home that  
13 provides tremendous service to our county.

14 Based on those criterion, without having  
15 to get into emissions and the federal statute  
16 and all of that, based on common sense and  
17 based on the client's concerns, as well as  
18 other neighbors, we're asking this Honorable  
19 Board to deny this request. The applicant can  
20 use the 150-foot tower that it currently has  
21 for communications. 199 feet is just  
22 unacceptable. It poses a safety risk. It's a  
23 nuisance and it's not supported by the other  
24 neighbors. Thank you for your time.

25 MR. SMITH: I would ask the Board if they



1 have any questions of the speaker.

2 MR. STROMQUIST: I have one. You made the  
3 statement that there were no communication  
4 problems after Ivan. I was in emergency  
5 management during Ivan and we had massive  
6 communication problems, and I know that for a  
7 fact, so where are you getting your  
8 information?

9 MS. SCHULTZ: Just having -- living in  
10 this area and having clients that are also in  
11 the communication industry. Some of them have  
12 advised me that they really didn't have  
13 issues. The radio station was able to  
14 communicate.

15 I've been appointed by the governor, I'm  
16 on Volunteer Florida, that deals with this in  
17 this area. So I'm the commissioner in this  
18 area for those emergency management -- i was  
19 not appointed at the time in 2004. We've  
20 looked at those studies, and based on those  
21 studies the County did everything they  
22 possibly could with the communication they had  
23 available to help those in need. So while  
24 communication may not have been full speed,  
25 there was communication. There's no evidence

1 to support that a 199-foot tower is going to  
2 provide better communication than a 150-foot  
3 tower. I think the other concerns outweigh  
4 the benefit of any better use of  
5 communication. There's other radio  
6 communication providers in the area that may  
7 be competitive to the applicant. However, I  
8 mean, this is just a business decision that  
9 the applicant has made under the guise that,  
10 hey, it can help us during a hurricane. Well,  
11 we don't know what will help us in a  
12 hurricane. We don't know if the 199-foot  
13 tower will be existing and standing up and  
14 operational post hurricane wind driven speed  
15 winds.

16 MR. STROMQUIST: Just for your  
17 information, none of the County Nextel phones  
18 worked for a couple of weeks after Ivan. They  
19 had to come in and put in a new communication  
20 system.

21 MS. SCHULTZ: I don't know if they did  
22 work or did not work.

23 MR. SMITH: Any other questions from the  
24 Board?

25 Any questions from the staff?

1 MR. HOLMER: No, sir.

2 MR. SMITH: Applicant.

3 MR. RIGBY: I have one question of  
4 Ms. Schultz.

5 Ms. Schultz, I want to show you a  
6 photograph, and your client, is it Family  
7 Funeral and Cremation?

8 MS. SCHULTZ: Yes, that's correct,  
9 Mr. Rigby.

10 MR. RIGBY: And does this photograph  
11 depict their sign in front of their building?

12 MS. SCHULTZ: First of all --

13 MR. RIGBY: Does it?

14 MS. SCHULTZ: I would like to object to  
15 this photograph. Can you tell me who took the  
16 photograph? Let's go ahead and do the --  
17 let's go ahead and verify the authenticity of  
18 the photograph.

19 MR. RIGBY: You've been out there. You  
20 can verify it yourself, and if you don't know,  
21 then tell us you don't know if that's your  
22 client's sign.

23 MS. SCHULTZ: This sign, right here?

24 MR. RIGBY: Yes.

25 MS. SCHULTZ: My client has a larger sign

1 on the property.

2 MR. RIGBY: Well, again, if you don't  
3 know, just tell us you don't know, and I'll  
4 ask somebody else.

5 MS. SCHULTZ: I don't know if I've  
6 actually seen this sign.

7 MR. RIGBY: Very well. Thank you.

8 MR. JONES: I want to say something to  
9 address the Board as far as the wind rating  
10 system. Every structure like that definitely  
11 -- the building code has a wind rating system  
12 that they've got to meet. All of those  
13 standards, wind load, those things will be  
14 addressed, the building code, the wind  
15 velocity, wind speed before they even begin  
16 construction. There is a system for as far as  
17 the wind rating of those structures of that  
18 magnitude.

19 MR. SMITH: Kevin Watts.

20 (Kevin Watts sworn.)

21 MR. WATTS: Good morning, Board. My name  
22 is Kevin Watts. I am the funeral director and  
23 manager at Family Funeral and Cremation. I  
24 just want to go on the record saying I am  
25 opposed to the tower. And the following

1 points that I want to bring up are my opinion:

2 The aesthetics. Unlike a radio station  
3 our business relies on the public using our  
4 building and foot traffic coming into our  
5 building for services provided on a daily  
6 basis.

7 In my opinion, property values -- the  
8 tower is going to provide an eyesore that will  
9 detract from the appearance and value of our  
10 property located next door at 7253 Plantation  
11 Road.

12 In any opinion, health factors. Years of  
13 documented facts relating to health factors,  
14 radio frequency radiation, leukemia, uterine  
15 cancer, breast cancer, as well as cardiac,  
16 reproductive and neurological health issues.

17 In my personal opinion, all this talk of  
18 towers falling in strong winds in hurricane  
19 conditions, that scares me in regards to  
20 falling on our building, our professional  
21 vehicles parked next door or onto the vehicles  
22 traveling down the interstate causing a chain  
23 reaction accident disaster.

24 Thank you for your time.

25 MR. SMITH: Thank you, sir. Any questions

1 from the Board?

2 MR. BRYAN: I have one. I'm just curious,  
3 sir, with respect to the aesthetics, your  
4 customers or clients coming to your  
5 establishment, it's your feeling, and I'm only  
6 speaking for your customers, that they would  
7 be able to discern and negatively view a  
8 199-foot tower versus a 150-foot tower, which  
9 would be authorized under the building code?

10 MR. WATTS: Yes, sir.

11 MR. BRYAN: That extra 49 feet would be  
12 detrimental to your business?

13 MR. WATTS: Any feet is going to be  
14 detrimental to our business. The extra 49  
15 will be more detrimental.

16 MR. BRYAN: Thank you.

17 MR. SMITH: Any questions by staff?

18 MR. HOLMER: No, sir.

19 MR. SMITH: Applicant.

20 Mark McMillen.

21 (Mark McMillen sworn.)

22 MR. McMillin: Good morning. My name is  
23 Mark McMillen. I live at 10917 Bridge Creek  
24 Drive, and I would like to state that I'm  
25 opposed to this tower. In hearing the

1 testimony here, I want everybody to know  
2 there's not a tower there. It seems like  
3 there's some discussions about whether there's  
4 a tower there. There's not a tower there.

5 I know that we don't want to talk about  
6 the frequencies and stuff. There are many  
7 studies that can be looked up and talk about  
8 those type of things. My major concern is  
9 with the aesthetics and possibility of it  
10 falling on us or the interstate.

11 We talked about Hurricane Ivan and the  
12 issues with being able to communicate. What  
13 about the massive traffic and everything.  
14 Remember all the traffic issues during  
15 Hurricane Ivan. If that thing fell on the  
16 interstate and onto a federal highway with all  
17 the problems we have with Interstate 10 and  
18 the bridge there, we could have some real  
19 issues.

20 That's just basically what I have. Like I  
21 said, there's not a tower there and it's very  
22 close to the next door building and  
23 interstate. I think the gentleman spoke about  
24 when he put -- the building was there and the  
25 interchange hadn't been built yet and now it

1 is and it's very close to the back of their  
2 building, so I'm not really even sure where  
3 they can put it back there. But to me, that  
4 would be a major concern. That's about all I  
5 have.

6 MR. SMITH: Thank you, sir. Questions  
7 from the Board?

8 From the staff?

9 MR. HOLMER: No, sir.

10 MR. SMITH: From the applicant?

11 MR. RIGBY: No, sir.

12 MR. SMITH: Thank you, sir.

13 Chris Jensen.

14 (Chris Jensen sworn.)

15 MR. JENSEN: Good morning, Board. My name  
16 is Chris Jensen. I own the property at 7253  
17 Plantation Road, which is directly adjacent to  
18 where they want to erect this tower.

19 The first thing I would like to ask the  
20 Board is since I'm so closely affected by  
21 that, could I please have a few extra minutes  
22 to go through my suggestions here?

23 MR. SMITH: Sure.

24 MR. JENSEN: First off, I would like to  
25 say, you know, as far as the emissions,



1           everybody keeps objecting, but no one has read  
2           the actual act. I was on the phone yesterday  
3           with the FCC. The FCC Act says the Board  
4           cannot solely base their denial upon  
5           emissions. It doesn't mean it can't be part  
6           of it.

7           Also, you know, it seems that y'all have  
8           been extremely misled by staff and the  
9           applicant, I mean extremely misled. If I  
10          looked through this stuff -- you know, the  
11          applicant made the comment that they're  
12          governed by the FCC and so forth and, you  
13          know, they've got all these approvals. The  
14          FCC has nothing on file with them, absolutely  
15          nothing. You can go to the FCC website. I  
16          put every name in there under the sun and  
17          talked to them yesterday. They don't even  
18          have an application at this time. There is  
19          nothing with the FCC. If there was something  
20          approved back in '06, maybe there was, maybe  
21          there wasn't, who knows. But if he didn't  
22          need your approval, then they wouldn't be  
23          here. The FCC says that you can do the  
24          approval based on your local authorities only  
25          if the local authorities give their blessing.

1           Okay?

2                   Mr. Hoxeng himself mentioned several times  
3           about the hurricanes. You know, keep in mind  
4           about the hurricanes. I mean that's a  
5           legitimate concern with something 199 feet in  
6           the air. You know, everybody talks about well  
7           150 feet is already approved. I understand  
8           that. When they apply for that permit I can  
9           assure you I will vigorously be after that  
10          when they apply for that permit, if they do,  
11          for 150 feet.

12                   Let's talk about some of these things on  
13          the criteria. In one part of it, you know,  
14          it's going to hold cellular towers, radio  
15          heads and things of that nature. If you read  
16          up on that stuff, I mean, that's really just a  
17          money making thing for Mr. Hoxeng. You know,  
18          he's going to rent space on this tower to all  
19          sorts of different places. I mean, there's a  
20          reason why his tower now is over in Alabama.  
21          Towers are meant to be out away from  
22          everything. I mean, this thing is a public  
23          danger. It is a nuisance.

24                   Other harmful effects. You know they say  
25          it can't solely be. It doesn't have to be

1           solely be based on that, but it certainly is  
2           worth talking about. It is a real concern.  
3           I've got studies here signed by 50, 60, 70  
4           doctors.

5           You know, another thing that staff said is  
6           they don't find any anticipated nuisances. I  
7           mean -- I mean that's a visual nuisance if  
8           I've ever seen one. I mean, that's an  
9           absolute visual nuisance. You know, to  
10          everybody, not only us, everybody in the area,  
11          everybody coming to our town, when they come  
12          down I-10 or I-110 or something, I mean, that  
13          is a visual nuisance.

14          Also, you know, I would think that the EPA  
15          would have something to do with this. You  
16          know, the EPA would -- I don't see anything  
17          mentioned in here, but you think that you  
18          would need an air permit from the EPA to do  
19          something like this. If this is going to go  
20          forward, I mean, I think we need a complete  
21          study of exactly what the effects are by  
22          somebody that knows a whole lot more than I do  
23          or any of us probably in this room. To my  
24          knowledge, we don't have any doctors of  
25          environmental, engineering or anything in here

1           today. If we did, I think they would tell you  
2           a whole different thing.

3           The harmful effects, you know, under  
4           nuisance, it is known that these things  
5           interfere with telephones, computers and so  
6           forth. I mean, business nowadays is driven by  
7           that stuff. You know, we don't need that next  
8           door.

9           Also, I don't know if this applies, staff  
10          would have to let me know, but I would think  
11          that you've got to spend a certain amount on  
12          ADA requirements if you're going to improve  
13          the facility. It says right here the tower is  
14          an upgrade. Well, if the tower is an upgrade,  
15          the code clearly says that if you're going to  
16          upgrade your facility you've to spend a  
17          certain percentage on ADA requirements. I  
18          don't see that mentioned anywhere. I would  
19          certainly like that to get addressed.

20          The picture, number five there, buffers,  
21          it says the property is fully landscaped.  
22          I've got pictures that were taken just  
23          yesterday. There's absolutely no landscaping  
24          anywhere in between my property, his property.  
25          In between the back where this tower is

1           supposedly going to go and the interstate,  
2           there is a chain link fence. That's it.

3           Also, staff themselves have testified  
4           before this Board, themselves, saying this  
5           isn't an industrial area, this is nothing to  
6           do with an industrial area. Now they're  
7           calling it, not only industrial, but heavy  
8           industrial. I mean, the applicant has said  
9           the same thing. Mr. Rigby has been up here  
10          himself saying it's not an industrial area.  
11          Now it's a heavy industrial area. I mean,  
12          come on. You can stand there and the picture  
13          shows, you stand right at the front of this  
14          place, right across the street there's a  
15          restaurant. There's a new bar right there.  
16          There's hotels right over the thing -- across  
17          the street that way. You know, they talked  
18          about, well, the interstate is a buffer. I  
19          mean that's flat. I don't know what kind of  
20          buffer that is. You know, this thing is 199  
21          feet in the air. I don't see how the  
22          interstate can be a buffer.

23          These houses and these people that live  
24          right here are within 500 feet. The code  
25          clearly says within 500 feet you've got a have

1 a conditional use. I think you should  
2 absolutely consider that.

3 Some of these other things here that I was  
4 looking at, you know, the environment,  
5 environmental impact. I have studies here.  
6 Again, the code does say your decision can't  
7 solely be based on radiation, but it says  
8 nothing to the effect that that can't be part  
9 of it.

10 So you're not getting the whole story.  
11 You're absolutely not getting the whole story  
12 from staff or from the applicant and I think  
13 you should really look at it really hard.

14 The sign limits in the area are 50 feet.  
15 Fifty feet is the sign limits in the area.  
16 You know, why would we want something 199 feet  
17 there. If you look at the hotels and the  
18 restaurants in the area, there's probably  
19 1,000 people that spend over eight, nine hours  
20 a day in this general area. They say, well,  
21 nobody is living there. How long do you  
22 really stay at your house? I mean, what are  
23 you there, ten, twelve hours a day maybe?  
24 There's well over 1,000 people that spend that  
25 much time there.

1           Most of these radio towers, I do believe,  
2           should be out in the middle of nowhere. I  
3           mean, that's just a given fact. If a  
4           hurricane blows one of these things down,  
5           you're going to have a major problem in your  
6           hands if that thing goes across the interstate  
7           and the traffic is backed up and everybody is  
8           trying to get out of town. I think there  
9           could seriously be serious consequences to the  
10          County, if something like that were going to  
11          happen. You know, your whole thing is based  
12          on what ifs. I get it. Yeah, there's  
13          safeguards to protect that thing from falling  
14          down. I get it. I understand that, but that  
15          doesn't mean it couldn't happen.

16                 And as far as the ill effects and so forth  
17                 from the environment or from the radio waves,  
18                 I think if there's any chance you're putting  
19                 not even one citizen in any piece of danger  
20                 whatsoever it is your job to protect the  
21                 citizens.

22                 One last thing, I am not a real estate  
23                 agent, I'll tell you right off the bat, but I  
24                 have plenty of studies right here that are  
25                 done by professional real estate agents and

1 doctors. 94 percent of people polled would  
2 not want this thing next door to them and if  
3 they went to buy something next door to them  
4 it would seriously affect what they're willing  
5 to pay for it. Will it affect real estate  
6 values? Absolutely it will. Ask yourself  
7 that question.

8 MR. HOLMER: Unless you're an appraiser,  
9 they can't take that.

10 MR. JENSEN: I've got a study right here,  
11 if you would like to see it.

12 MR. HOLMER: It's the Board's pleasure.

13 MR. JENSEN: Again, I think the Board has  
14 been extremely misled by staff and also by the  
15 applicant, so I encourage you to do your own  
16 research, look at it and, I mean, a lot of  
17 these things here today are opinions, but  
18 that's what you're here for. I mean,  
19 otherwise we wouldn't be before the Board. If  
20 they didn't need your approval, they wouldn't  
21 be here. They definitely need your approval.  
22 There's no buffers, there's no anything here.  
23 This thing doesn't belong here. I think you  
24 should absolutely keep that in mind and ask  
25 yourself the question. Would you want to be



1 next door to it?

2 MR. SMITH: Board members, any questions  
3 of the speaker.

4 MR. STROMQUIST: I have one question. You  
5 keep bringing up we're being misled by staff.  
6 We depend on our staff, and I don't see where  
7 they were misleading us at all, and they're  
8 the experts in this. They do this all the  
9 time. You know, they give us the facts. We  
10 have to go by the facts that they give us.  
11 There is no facts that they're putting out  
12 that are untrue. You know, they don't give us  
13 bad information. They just give us the facts  
14 that they can give us according to the Land  
15 Development Code and what they're allowed to  
16 tell us.

17 They don't go on a campaign for anybody  
18 that comes in with an application. They're  
19 strictly here to support the Board of  
20 Adjustment and to give us their  
21 Findings-of-Fact.

22 MR. JENSEN: Yes, sir.

23 MR. JONES: Mr. Stromquist, thank you for  
24 that. If Mr. Jensen has any, any concerns  
25 that he may see where staff is not giving

1           adequate information, as the director I will  
2           be glad to talk to him, as he knows before.  
3           We have had many discussions with Mr. Jensen  
4           on other issues, so he's aware of my open door  
5           policy to sit down and discuss these matters.  
6           If he can present us with the information, we  
7           would be glad to review it. But as  
8           Mr. Stromquist stated, we are here to provide  
9           you with the facts. Everybody may not like  
10          the facts that we present, but it is the facts  
11          and we do that respectfully and carefully.

12                 MS. HUAL: I just wanted to interject for  
13          the Board's benefit. I'm sure you've all  
14          reviewed Article 7, Section 7.18.00 relating  
15          to commercial communication towers which is  
16          referenced in the criterion. The provision  
17          that is being discussed is sub J, relating to  
18          emissions and it states: No location for  
19          placement, construction or modification of a  
20          commercial communication tower or  
21          communication antenna shall be regulated on  
22          the basis of the environmental effects of  
23          radio frequency emissions to the extent that  
24          commercial communication towers and antenna  
25          comply with the FCC regulation concerning such

1 emissions. And that was a "shall".

2 MR. JENSEN: If I may respond to those  
3 things, I mean, I listened, but if you go a  
4 step further it says: Comply with the FCC.  
5 If you look on the FCC's website, the Act is  
6 right on there and it says solely. You cannot  
7 base it solely upon that.

8 Another thing here, you know, yes, sir, I  
9 appreciate what you say that staff does their  
10 work and staff generally does a pretty good  
11 job, but in the beginning of this it was asked  
12 has anybody been out there? No. No one has  
13 been out there. No one really knows what's  
14 going on here.

15 And I can easily point to something that  
16 absolutely can be proven extremely easy.  
17 Criterion Number (8), Findings-of-Fact from  
18 the staff: The proposed use will be  
19 compatible within the surrounding heavy  
20 industrial zoning.

21 That's what the staff told you. Staff has  
22 testified under oath right here in this very  
23 room that that is not heavy industrial zoning.

24 MR. JONES: Mr. Jensen, could you give us  
25 an opportunity to respond?

1           MR. JENSEN: I mean, it says it right here  
2           in black and white.

3           MR. JONES: Could you give us an  
4           opportunity to respond.

5           MR. JENSEN: It says it right here in  
6           black and white, guys. You've got it right in  
7           front of you, Number (8). Please look at it.

8           MR. JONES: Respectfully.

9           MR. STROMQUIST: I don't see industrial in  
10          there anywhere.

11          THE WITNESS: Heavy commercial zoning.

12          MR. SMITH: Point of order.

13          MR. HOLMER: Staff hasn't had a chance --  
14          I have a statement and a question of the  
15          witness.

16          MR. SMITH: All right.

17          MR. HOLMER: First, my statement. You can  
18          see there in black and white, as you said,  
19          that staff, in fact, referred to this as  
20          commercial zoning, not industrial in any way,  
21          shape or form. Although the zoning does allow  
22          for light industrial we were referring to the  
23          commercial nature of it.

24                 Now, there's been a question of  
25          development standards. Once again, this

1 project does have to go through development  
2 review. These things will get addressed at  
3 that time.

4 You mentioned several times -- here comes  
5 the question. You mentioned several times  
6 that the tower, any tower, is going to be a  
7 nuisance there, it's going to be a visual  
8 nuisance, something that nobody wants near  
9 them and it's going to be some new hazard,  
10 correct? Do I have the gist of that?

11 MR. JENSEN: What's that? I'm sorry.

12 MR. HOLMER: I'm sorry. You mentioned  
13 that it's a nuisance having a tower there?

14 MR. JENSEN: Yes.

15 MR. HOLMER: And this is some new thing in  
16 the area that's going to cause a problem?

17 MR. JENSEN: Correct.

18 MR. HOLMER: Up on the screen, if you  
19 would, that's the photograph I took of our  
20 public hearing sign. And just for  
21 clarification, I'm going to pull it up because  
22 that's in the PowerPoint and you can't see as  
23 well. With this you can zoom in a little bit.  
24 So just to get my reference, that's your sign  
25 there, correct?

1           MR. JENSEN: I don't have my glasses. I  
2           can't really see that. It appears to be, yes.

3           MR. HOLMER: Can you tell me what this  
4           metal lattice work structure 260 feet to the  
5           southwest of your front door is?

6           MR. JENSEN: I mean, I'm no engineer. I  
7           can't even speculate what that is, but I think  
8           it's a power line.

9           MR. HOLMER: Yes, sir, it is.

10          MR. JENSEN: I think. And also that's  
11          where the homeless slept across from the hotel  
12          there.

13          MR. HOLMER: But the structure, I don't  
14          think anybody would disagree, I mean, I could  
15          pull up the street view show you, it is a Gulf  
16          Power high tension line tower connecting to a  
17          number of other ones where the power lines run  
18          along that side of the interstate.

19          Was that there before this incident? I  
20          mean, has it been there?

21          MR. JENSEN: I don't know. I would assume  
22          so.

23          MR. HOLMER: Okay. That's all.

24          MR. JENSEN: I mean, it's -- yeah, it's  
25          Gulf Power. I know anything new that's gone

1 in the area has absolutely gone underground,  
2 even Mr. Hoxeng refers to that.

3 But I do think you folks should absolutely  
4 look at everything here. You know, some of  
5 the numbers that are given to you and some of  
6 the things that are happening here, it seems  
7 to me that you've been misled a little. I  
8 think you ought to look into it just a little  
9 bit, because it is not heavy zoning.

10 I also have pictures here that I would  
11 like to show you. The only thing heavy  
12 commercial zoning it looks like in that area  
13 is the applicant's property. I mean, I do  
14 have the pictures.

15 MR. JONES: And, Mr. Jensen, you've been  
16 stating as you've been speaking -- C-2 zoning  
17 it does allow for industrial type uses.  
18 However, this particular area, it does not  
19 have industrial type uses. So the zoning  
20 itself, it does allow for that, so that is --  
21 now, if you want me to explain it to you I  
22 will be glad to explain it to you. We'll go  
23 through the code completely, but the zoning  
24 and the conditional use criteria, that's the  
25 issue at hand. Whether or not you may feel

1           like that is not zoned correctly, that's this  
2           Board's decision. That's for another case.  
3           Staff has done and is doing what the Land  
4           Development Code requires for the zoning, and  
5           presenting to them the Findings-of-Fact based  
6           upon the zoning. All the other issues I will  
7           be glad to sit down with you and your attorney  
8           and our attorney and we will discuss these  
9           matters.

10           MR. SMITH: Any other questions from the  
11           Board for the speaker?

12           Any other questions from staff?

13           MR. HOLMER: No, sir.

14           MR. SMITH: Questions from the applicant?

15           MR. HOXENG: No, sir.

16           MR. SMITH: Thank you, Mr. Jensen.

17           Does the Board have any questions?

18           MR. JENSEN: My pictures, no? Does  
19           anybody want to see those?

20           MR. HOLMER: Yeah, that's at the Board's  
21           pleasure.

22           MR. JENSEN: I would like to show you what  
23           the area looks like, since everybody says they  
24           haven't seen it.

25           MR. SMITH: At this point the Chair would



1           entertain any motion to accept the film into  
2           evidence.

3           MR. BRYAN: I'll move to accept those,  
4           please.

5           MR. SMITH: We have a motion to accept the  
6           film into evidence. Is there a second? The  
7           motion dies for lack of a second.

8           MR. JENSEN: Thank you.

9           MR. SMITH: Does the Board have any  
10          questions of the applicant?

11          MR. BRYAN: I do have some. I must have  
12          lost it a little bit. There's been a lot of  
13          conversation. Would you refresh why the  
14          additional 49 feet is necessary for you to go  
15          through this application process for  
16          conditional use, that otherwise could have  
17          been met by simply compiling with the code at  
18          150 feet?

19          MR. HOXENG: Yes, sir. Again, I'm Dave  
20          Hoxeng. Mary and I own the radio stations.

21          If you go to the package that the staff  
22          prepared, there's a map. There's actually two  
23          maps in there. Do y'all have those?

24          MR. BRYAN: I do now.

25          MR. HOXENG: Again, this is a multi use

1 communication tower and the very top of the  
2 tower will have a microwave, which goes to the  
3 two regular tall towers. Our everyday program  
4 will be fed on those.

5 MR. BRYAN: I just need a simple answer,  
6 sir. What does this extra 49 feet buy you,  
7 provide for you, accommodate, that otherwise  
8 would not have been met by 150 feet?

9 MR. HOXENG: So if you look at the two  
10 coverage maps -- do you have both of them  
11 there?

12 MR. BRYAN: I don't really want to look at  
13 them. I would just like to hear a statement  
14 from you that answers my question.

15 MR. HOXENG: So the coverage of 150-foot  
16 tower would be 173,701 people, and with the  
17 extra 49 feet it goes up almost 45,000 people  
18 to 218,493, so it gives better coverage during  
19 times of emergency.

20 MR. BRYAN: Okay. But there is a code  
21 that says 150 that would provide you with a  
22 certain degree of coverage and, therefore,  
23 revenue, I presume. This allows you for  
24 additional revenue because of more coverage,  
25 more advertising dollars it could pull in

1           because of people reached, I presume?

2           MR. HOXENG: No, sir. Our every day  
3           configuration is we broadcast off a 940-foot  
4           tower in Alabama. It's on a 40-acre property.  
5           It's a huge tower. Towers like that can fall  
6           down in hurricanes because of tornadoes,  
7           because they twist them and they fall down.  
8           It's a guy tower. So this is the backup tower  
9           for that tower and also the backup tower for  
10          the tower that's down on Palafox, which was  
11          put out of commission by Hurricane Ivan when  
12          that huge chunk of concrete landed next to us.  
13          So this is back up. It has nothing to do with  
14          revenue.

15          This tower would only be used for  
16          broadcast after we lost one of our main  
17          towers, for any reason. It could fall down.  
18          We could lose the communications. We could  
19          lose the power.

20          MR. BRYAN: I understand. I want to ask  
21          again. I guess, I'm still unclear what the 49  
22          feet buys you. So as a backup, in particular,  
23          150-foot backup tower is adequate.

24          MR. HOXENG: It buys us 26 percent. We  
25          can reach 26 percent more citizens with the

1 extra 49 feet.

2 MR. BRYAN: Okay. That's good enough for  
3 me.

4 MR. HOLMER: And one extra thing I know  
5 has come up several times. Keep in mind this  
6 conditional use is not a variance. A variance  
7 is based on a need as opposed to a want. A  
8 conditional use you can approach it as a want.

9 MR. BRYAN: That's a good point. Thank  
10 you.

11 MR. RIGBY: Mr. Chairman, I would -- and  
12 again, most times I would simply sit down  
13 here, and staff has addressed the accusations  
14 made against staff for misleading this Board.  
15 Those accusations have also been aimed at me,  
16 and my reputation in this business is based  
17 upon what I do and say in front of boards like  
18 you.

19 And I want to address one issue. Ms. Hual  
20 addressed the County code provision. There's  
21 no reference in there to solely or any of  
22 those comments. I have for you the federal  
23 statute. It's very short. I can read it and  
24 I can pass it out to you. And what this  
25 statute says is: No state or local government

1 or instrumentality thereof, may regulate the  
2 placement, construction and modification of  
3 personal wireless service facilities on the  
4 basis of the environmental effects of radio  
5 frequency emissions to the extent that such  
6 facilities comply with the commissions'  
7 regulations concerning such emissions.

8 If that had said not solely, I would have  
9 told you that. That's the statute, and I have  
10 copies here for every member of the Board, if  
11 you want to see it. And so I wanted to  
12 address that fact that implied that I had in  
13 some fashion led you to believe something that  
14 was not true.

15 In rebuttal, I would like Mr. Hoxeng to  
16 identify the photograph I showed Ms. Schultz.  
17 Frankly, you've seen the base of that tower,  
18 but Mr. Hoxeng can identify this and offer one  
19 other bit of testimony as to what he sought to  
20 do in prior years to avoid having to put up a  
21 tower so that he can also transmit to those  
22 other towers, if I might do so.

23 MR. SMITH: And if we will, we'll let this  
24 be the closing statement.

25 MR. RIGBY: That will be fine.

1           Mr. Hoxeng, I'm going to show you this  
2           photograph. Did you take it?

3           MR. HOXENG: Yes, I took it yesterday.

4           MR. RIGBY: Just describe what it depicts.

5           MR. HOXENG: It's a photograph taken from  
6           my parking lot. Looking across my neighbor's  
7           parking lot you can see the Family Funeral and  
8           Cremation sign, and it shows the large high  
9           tension power tower directly -- in the parking  
10          lot directly across from the Family Funeral  
11          and Cremation facility.

12          MR. HOLMER: If I may, staff doesn't  
13          object or dispute showing these photographs,  
14          but that wasn't accepted into evidence. Are  
15          you presenting it?

16          MR. RIGBY: He's identified what it is and  
17          where he's taken it. I would like to offer it  
18          into evidence. He's then going to offer one  
19          bit of testimony concerning an effort to talk  
20          to Gulf Power concerning potential use of that  
21          structure for his microwave.

22          MR. SMITH: Board, we have photos that  
23          have been offered into evidence. We would  
24          need to accept or not accept that, keeping in  
25          mind that we did not accept the last effort to

1           enter photos into evidence. But the Chair is  
2           open to a motion to this item that's been  
3           introduced. Seeing none, the motion fails.

4           MR. RIGBY: Mr. Hoxeng, with respect to  
5           that tower, is there a tower directly across  
6           the street from Family Cremation?

7           MR. HOXENG: Yes, sir, it's a Gulf Power  
8           high tension line tower.

9           MR. RIGBY: Did you, in the past, make any  
10          effort to see if you could locate a microwave  
11          station on the top of that tower to avoid a  
12          tower at your location?

13          MR. HOXENG: Yeah. The project that I'm  
14          asking you guys to approve today is hundreds  
15          of thousand of dollars, and I did ask. I met  
16          with Gulf Power a couple of years ago to see  
17          if we could put a microwave system on that  
18          tower to shoot over the highway, and their  
19          engineers just essentially vetoed it as  
20          dangerous, so we weren't able to do that. But  
21          the neighborhood already has these high  
22          tension line towers and I guess that's part of  
23          my point.

24          MR. RIGBY: Do you know the height of that  
25          tower?

1 MR. HOXENG: I don't.

2 MR. RIGBY: Thank you. No other  
3 questions.

4 MR. SMITH: Thank you, sir. Board, any  
5 questions of the applicant?

6 Staff, would you like to make a closing  
7 statement?

8 MR. HOLMER: No, sir.

9 MR. SMITH: All right. The Chair will now  
10 entertain a motion regarding this item. In  
11 your opinion --

12 MR. JONES: I'm sorry. First I  
13 would again -- normally, I don't do this, but  
14 do -- I would like to defend Mr. Andrew Holmer  
15 and everyone on my staff. He is a man of  
16 integrity, for the record. He does his job  
17 very, very well. In all of these cases he  
18 tries to be content neutral, remaining fair to  
19 everyone. So any accusation that he or myself  
20 or any person in my staff is trying to mislead  
21 you today, respectfully, I take offense to  
22 that for that remark. I want to make that for  
23 the record, that we try our best to be a team  
24 that is professional and operates with a  
25 standard of ethnics and integrity. I just



1 want to make that for the record. Thank you.

2 MR. SMITH: I see someone in the audience,  
3 but did you fill out one of these?

4 THE WITNESS: Yes, sir, I did. Brittni  
5 Forsell. I filled one out.

6 MR. SMITH: We missed you?

7 MS. FORSELL: Yes.

8 MR. SMITH: Oh, I'm terribly sorry.  
9 Please come forward and be sworn in.

10 (Brittni Forsell sworn.)

11 MS. FORSELL: I would just like to express  
12 my opinion. I've seen a few places around  
13 here, including a couple of the two-story  
14 condos over there off Plantation Road right  
15 around the corner from Main Stay Hotel, and  
16 I've also seen a few homes right there off of  
17 Whitmire Road. You know, I've done research  
18 myself and my opinion also is it's an eyesore.  
19 Not only that, with the hurricane, who's to  
20 say with the hurricane and the winds are  
21 blowing and the weather, who's to say where  
22 that thing is going to blow. No one knows  
23 which direction it's going to go. It could go  
24 all the way across the interstate and into the  
25 apartments. That's the residents here.

1           And I just, you know, and all of the  
2           cancer, the leukemia. There's doctors'  
3           offices literally right across the street from  
4           Cat Country, not even a half of a football  
5           yard across the street and, I mean, I'm very  
6           concerned for the pregnant women and for the  
7           children. There's a child care there, as well  
8           and around the corner there's another set of  
9           doctors' offices. They couldn't be here today  
10          because they have to work, and I'm here to  
11          actually speak for them, you know. They're  
12          very concerned, as well Wendy's. Even Wendy's  
13          has a right to health.

14          I just have one thing. I want to know  
15          why, how come the backup tower they want to  
16          put here in the residential area rather than  
17          put the backup tower somewhere like far out.  
18          I mean, I don't understand why you would put a  
19          backup tower nearby a residential area or even  
20          by a mall, for that matter. Why would you put  
21          the backup near the residents? I just don't  
22          understand that. I didn't understand that  
23          when they were talking about it.

24                 MR. SMITH: Thank you.

25                 MS. FORSELL: Thank you.

1 MR. SMITH: Thank you very much.

2 Any questions from the Board for the  
3 speaker?

4 Staff, any questions?

5 MR. HOLMER: No, sir.

6 MR. SMITH: Applicant, any questions.

7 MR. HOXENG: No, sir.

8 MR. SMITH: Thank you, ma'am.

9 The Chair will now entertain a motion  
10 regarding this item.

11 MR. BRYAN: Mr. Chairman, could I ask a  
12 direct question to the staff prior to any  
13 motion?

14 MR. SMITH: Sure.

15 MR. BRYAN: Thank you, sir.

16 Drew, do we know why the 150-foot limit  
17 exists, what the preconditions and the  
18 rationale that the existing code stands at 150  
19 feet for which we're here today to  
20 conditionally modify?

21 MR. HOLMER: That predates my time with  
22 the County. I'm not sure why that was taken,  
23 that height. There are a number of  
24 measurements that we have that they do vary by  
25 jurisdiction and I'm not -- I wasn't here when

1           they imposed some of these distances.

2           MR. BRYAN: I ask because I don't even  
3 know what the reasons are, but it is a code,  
4 it's an established and existing code. A  
5 homeowner who lives within a 500-foot radius  
6 as delineated in that code, should be, it  
7 seems to me, to expect the provisions of the  
8 code to be upheld. When is a homeowner, one  
9 buys in that area, perhaps sells that real  
10 estate to another buyer, with the expectation  
11 that code is going to be maintained and  
12 preserved unless there's other good reasons  
13 that things have changed, there's requirements  
14 that were modified or called for some reason  
15 to again change the code. I haven't heard  
16 anything today that's been offered why that  
17 150-foot limit, for whatever reason it was  
18 imposed, should be challenged. It is  
19 conditional, as you correctly cited. It would  
20 be expedient perhaps, helpful, but there are  
21 those who live within the bounds of the  
22 existing code that would be affected and they  
23 would not benefit by that conditional  
24 modification.

25           So I just ask if we could be enlightened

1           -- and I didn't really expect that you would  
2           have the details of that particular aspect of  
3           the code at your fingertips -- but if you see  
4           my point, if we see the point here, that we're  
5           asked to modify something, the grounds by  
6           which we really don't know the basis for that  
7           150 foot having been imposed in the first  
8           place.

9           MR. STROMQUIST: I would be more inclined  
10          to look at the difference, the 200-foot  
11          difference, that where the criteria changes  
12          was set up by, I would assume, the FCC. You  
13          know, do they take the precedence? Did  
14          Escambia County come in and say we're just  
15          going to do three-quarters?

16          MR. BRYAN: It's all supposition.

17          MR. STROMQUIST: You know, we don't even  
18          know what the reason was that they picked 150  
19          feet. And I know the difference when you get  
20          over 200 feet it's a whole new ball game, so I  
21          don't necessarily have a problem with anything  
22          that's under 200 feet. I have a question like  
23          you do as why did the County get to 150 feet  
24          instead of 200.

25          MR. HOLMER: Once again, that predates me.

1           Like I said, there's a number of these  
2           measurements. In some places, alcohol near a  
3           school could be 300 feet. Well, in Escambia  
4           County it's 1,000. These are varied by  
5           localities and it's based on what the elected  
6           officials deem appropriate.

7           This is a perfect example of why we have  
8           the Board of Adjustment, why the Board of  
9           Zoning Adjustment, which you will often hear  
10          it referred to, why it's exists. You know,  
11          with staff everything is black and white. And  
12          as Mr. Jones said we play it right down the  
13          middle. We do offer our opinion. That's  
14          something that's sought by the Boards, that  
15          you want to know what we think due to our  
16          experience and expertise in the area. But at  
17          the end of the day we're black white, and this  
18          is a one of those things there is some gray to  
19          it and that's why you're here. Lucky you.  
20          It's a lot easier on us to go with the black  
21          and white.

22          MR. BRYAN: You make a good point, if I  
23          may finish the thought. When code is  
24          established it is established by a Board  
25          that's generally either appointed or elected,

1           and it represents, as in representative  
2           government, the wishes of the people  
3           presumably. It's codified. It exists. And  
4           in my view as a citizen, it should stand for  
5           something. If it's going to be challenged it  
6           should be challenged on fact changing  
7           circumstances, et cetera, particularly, if it  
8           were to affect me, as a homeowner or citizen,  
9           in some other capacity and it seems to me that  
10          we're asked -- and I understand the gray area  
11          and I perfectly understand the nature of the  
12          existence of a board such as this to  
13          subjectively apply code with some temperament,  
14          with some consideration of the realities and  
15          the exigencies of life as they exist.  
16          Nonetheless, I think it's incumbent on us,  
17          before we modify existing code that's in  
18          place, to understand the basis for which we  
19          are saying, you know what, that code was  
20          probably okay, but in this case it doesn't and  
21          shouldn't apply.

22                 MR. HOLMER: You're not modifying the  
23                 code.

24                 MR. BRYAN: No, no. We're making a  
25                 modification.

1 MR. HOLMER: An exception to a code.

2 MR. BRYAN: But you see the gist of my  
3 point here. That's all. And I hope my fellow  
4 Board members -- the only reason I'm taking  
5 the time here in a very lengthy morning  
6 already, and I think a good morning, is to get  
7 that point across.

8 MR. HOLMER: Codes are designed that way.  
9 You know, there are certain things in there  
10 that there is no exception to.

11 MR. BRYAN: Right.

12 MR. HOLMER: Other ones that there is an  
13 exception to come before you guys.

14 MR. BRYAN: Fair enough. Fair enough.  
15 Thank you.

16 MR. STROMQUIST: I'll make a motion.

17 MR. SMITH: Does the Board have any other  
18 questions? Those comments are highly  
19 relevant. Thank you.

20 The Chair will now entertain a motion.

21 (Motion by Mr. Stromquist.)

22 MR. STROMQUIST: I will make a motion to  
23 accept staff's Findings-of-Fact and approve  
24 the conditional use with the following  
25 condition that the project must meet all



1 conditions imposed through the site plan  
2 review process.

3 MR. SMITH: We have a motion. Do we have  
4 a second?

5 MR. ADAMS: Second.

6 MR. SMITH: We have a second. Any further  
7 discussion?

8 MS. GUND: Mr. Chairman, before we vote, I  
9 just wanted to make a disclosure that Dave  
10 Hoxeng and I served on several boards  
11 together, Leadership Pensacola, and Mary  
12 Hoxeng and I have served on the Impact One  
13 Hundred Board and that Kerry Anne Schultz and  
14 I have had some common clients. I just to  
15 make that disclosure. There's no financial  
16 interest with any of the three of those  
17 people.

18 MR. SMITH: I see no reason to recuse  
19 yourself.

20 All right. We have a motion. We have a  
21 second. Any discussion? Those in favor  
22 signify by raising your right hand.

23 (Ms. Gund, Mr. Adams and Mr. Stromquist in  
24 favor.)

25 MR. SMITH: Those opposed?

1                   (Mr. Bryan, Mr. Smith and Ms. Rigby  
2                   opposed.)

3                   MR. SMITH: Three three.

4                   MR. HOLMER: It fails at that point. It's  
5                   a denial. If there's not a positive vote,  
6                   it's a denial.

7                   MR. RIGBY: If I can, just so there's no  
8                   surprises here later, the federal law also  
9                   requires that you make your findings in  
10                  writing. If you object to siting of the tower  
11                  you're required to make those findings in  
12                  writing and essentially, immediately. There's  
13                  a recent case, but basically it said waiting  
14                  until the next meeting to do so is not good  
15                  enough.

16                  MR. BRYAN: Are you sure, sir?  
17                  Personally, I'm not objecting to the  
18                  construction of a tower.

19                  MS. HUAL: And again, that provision  
20                  relates strictly to personal wireless service  
21                  facilities.

22                  MR. RIGBY: Which this tower does include.

23                  MS. HUAL: It will.

24                  MR. RIGBY: You never have a tower  
25                  existing before you get approval for it, so it

1 will have those. Again, I simply bring  
2 that -- I don't want this to be a surprise 30  
3 days later to somebody.

4 MR. BRYAN: We need clarification because  
5 again my point was I'm not objecting to a  
6 tower. I'm objecting to a tower that's over  
7 150 feet in height.

8 MR. RIGBY: I understand that, but that  
9 still requires --

10 MR. BRYAN: We need counsel to advise us  
11 on that.

12 MR. RIGBY: Okay. And again, so however  
13 you want to deal with that, but I brought  
14 those statutes to Ms. Hual's attention. It's  
15 in the same 47 U.S. Code, Section 332 that  
16 requires those written findings by the Board  
17 that makes the decision.

18 MR. BRYAN: If that's it, that's it.

19 MR. SMITH: Thank you, sir.

20 I have one item of business, but as far as  
21 this part of the session, everyone is welcome  
22 to leave or you're certainly welcome to stay.  
23 We now have a full board and we need to elect  
24 a vice chairman. So the Chair would seek a  
25 motion to nominate a vice chair.

1 MS. RIGBY: I'll nominate Mr. Stromquist.

2 UNIDENTIFIED BOARD MEMBER: Second.

3 MR. SMITH: We have a motion. We have a  
4 second. Any discussion? Those in favor,  
5 raise your right hand.

6 (Board members vote.)

7 MR. SMITH: It passes unanimously.

8 Congratulations.

9 The meeting is adjourned.

10 (The proceedings concluded at 10:53 a.m.).

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## 1 CERTIFICATE OF REPORTER

2  
3 STATE OF FLORIDA

4 COUNTY OF ESCAMBIA

5  
6 I, LINDA V. CROWE, Court Reporter and  
7 Notary Public at Large in and for the State of  
8 Florida, hereby certify that the foregoing Pages 2  
9 through 96 both inclusive, comprise a full, true, and  
10 correct transcript of the proceeding taken on  
11 Wednesday, February 18, 2015; that said proceeding  
12 was taken by me stenographically, and transcribed by  
13 me as it now appears; that I am not a relative or  
14 employee or attorney or counsel of the parties, or  
15 relative or employee of such attorney or counsel, nor  
16 am I interested in this proceeding or its outcome.

17 IN WITNESS WHEREOF, I have hereunto set my  
18 hand and affixed my official seal on 3rd day of March  
19 2015.

20  
21 \_\_\_\_\_  
22 LINDA V. CROWE, COURT REPORTER  
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24 My Commission No.: EE 860695  
25 My Commission Expires: 02-05-2017

IN AND FOR ESCAMBIA COUNTY, FLORIDA  
 ESCAMBIA COUNTY PLANNING BOARD

Quasi-judicial proceedings held before the Escambia County Board of Adjustment, on Monday, February 18, 2015, at the Escambia County Central Office Complex, 3363 West Park Place, First Floor, Pensacola, Florida, commencing at 8:30 a.m.

CU-2015-03  
 7251 Plantation Road

BOARD OF ADJUSTMENT:

AUBY SMITH, CHAIRMAN  
 TIMOTHY BRYAN  
 JUDY GUND  
 FREDERICK J. GANT (Not present)  
 BLAISE ADAMS  
 BILL STOMQUIST  
 JENNIFER RIGBY  
 KRISTIN HUAL, ASSISTANT COUNTY ATTORNEY

COUNTY STAFF:

HORACE JONES, DIRECTOR  
 ANDREW HOLMER, SENIOR PLANNER  
 DEBBIE LOCKHART, SENIOR OFFICE SUPPORT ASSISTANT

ALSO PRESENT:

JESSE W. RIGBY, ESQUIRE  
 Clark, Partington, Hart, Larry,  
 Bond & Stackhouse  
 125 West Romana Street  
 Pensacola, Florida 32502

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**1** PROCEEDINGS  
**2** MR. SMITH: Case Number 2015-03, 7251  
**3** Plantation Road.  
**4** Board members, have there been any  
**09:04AM 5** ex parte communications regarding this case?  
**6** Seeing none.  
**7** Does anyone have knowledge or information  
**8** obtained from a site visit or other sources?  
**9** Seeing none.  
**09:04AM 10** Does any Board member intend to refrain  
**11** from voting due to a voting conflict of  
**12** interest? Seeing none.  
**13** Would the individuals who are a party to  
**14** this item please come to the podium and  
**09:05AM 15** identify yourself, state your name and address  
**16** and be sworn in by the Clerk. We have a  
**17** barrister, and I don't believe you have to be  
**18** sworn in, sir.  
**19** MR. RIGBY: Again, for the record, my name  
**09:05AM 20** is Jesse Rigby. I'm an attorney with Clark  
**21** Partington Hart law firm here in Pensacola,  
**22** and I'm representing ADX Communications of  
**23** Escambia, LLC. Mr. David Hoxeng is the  
**24** managing member of that LLC and he will be  
**09:05AM 25** offering testimony. I will have comments, but  
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**1** frankly, I don't believe I'll be offering any  
**2** testimony. I don't have any -- I realize that  
**3** to the extent anything I tell you, it's under  
**4** oath in that sense.  
**09:06AM 5** MR. SMITH: And, sir, you will be sworn  
**6** in, now, please.  
**7** (David Hoxeng sworn.)  
**8** MR. SMITH: You understand that all the  
**9** criteria must be met?  
**10** (Presentation by Mr. Rigby.)  
**11** MR. RIGBY: We do, sir. What I would like  
**12** to do is start and cover a couple of  
**13** preliminary issues, and then Mr. Hoxeng will  
**14** come forward and actually offer testimony to  
**09:06AM 15** the Board. It is my understanding that the  
**16** Board has accepted the full staff report into  
**17** the record at this point.  
**18** MR. HOLMER: Yes, sir.  
**19** MR. RIGBY: That's correct. And we have  
**09:06AM 20** no objection to the staff findings. I realize  
**21** that we're going to go first and to some  
**22** extent, it will be repetitive, but again, we  
**23** consider the staff report to be evidence and I  
**24** assume Mr. Holmer will be addressing that  
**09:06AM 25** later.  
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1 The other point that I want to address  
 2 preliminarily is what is not before the Board  
 3 today. And I want to go over this because I  
 4 think it will prevent some confusion. The  
 09:07AM 5 Land Development Code in Section 7.18.00 that  
 6 deals with communication towers has in,  
 7 Paragraph J, the following statement:  
 8 Emissions. No location for placement,  
 9 construction or modification of a commercial  
 09:07AM 10 communication tower or communication antenna  
 11 shall be regulated on the basis of the  
 12 environmental effects of radio frequency  
 13 emissions to the extent commercial  
 14 communication towers and antennas comply with  
 09:07AM 15 FCC regulations concerning such emissions.  
 16 That is based upon a federal statute that  
 17 was enacted sometime ago by Congress. And  
 18 that statute again prohibits any consideration  
 19 by local government concerning communication  
 09:08AM 20 towers on the basis of radio frequency  
 21 emissions. And of course, before this tower  
 22 can be built, as part of the review process  
 23 the applicant will have to confirm to the  
 24 County that it has all the required FCC  
 09:08AM 25 permits and permissions. That will be part of

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1 the development review process. And, of  
 2 course, if they can't do that, then, of  
 3 course, it can't be built.  
 4 I do anticipate persons being here today  
 09:08AM 5 who want to testify about radio frequency  
 6 emissions and I ask that the Board conclude,  
 7 based upon the Land Development Code provision  
 8 that I read and the federal statute which is  
 9 in 47 United States Code Section 332, that  
 09:08AM 10 such testimony is not relevant to this Board.  
 11 I've provided this information to Ms. Hual  
 12 yesterday to alert her so that she would have  
 13 time to review statutes and all if she had any  
 14 questions.  
 09:09AM 15 Again, I would ask for a motion to  
 16 preclude any testimony concerning radio  
 17 frequency emissions.  
 18 MS. HUAL: I just wanted to clarify one  
 19 thing. In reviewing the federal statute, this  
 09:09AM 20 particular provision actually references  
 21 personal wireless service facilities and by  
 22 the definition, that's what we all know as  
 23 cell towers. However, our Land Development  
 24 Code provision essentially lumps all  
 09:09AM 25 communication towers into one big category.

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1 So the federal statute is more specific.  
 2 However, the Land Development Code does  
 3 pertain to any type of tower.  
 4 MR. RIGBY: We will be offering testimony  
 09:09AM 5 and an exhibit that shows that the tower  
 6 design, itself, is designed really in part to  
 7 comply with the County's code, that we provide  
 8 where possible, collocation opportunities for  
 9 cell towers and Mr. Hoxeng will offer  
 09:10AM 10 testimony and exhibits showing there are  
 11 five -- for the height of the tower, five  
 12 locations on that tower for cellular providers  
 13 to, in effect, lease space and place their  
 14 antennas on the tower, which is common in the  
 09:10AM 15 industry. So it will be, if you will, in part  
 16 a personal wireless services tower along with  
 17 the high frequency radio communications that  
 18 Mr. Hoxeng will describe.  
 19 Again, if the Board does not desire to  
 09:10AM 20 address that up front, again I would just have  
 21 an objection to anybody who seeks to offer any  
 22 testimony concerning radio frequency emissions  
 23 to the Board.  
 24 MR. SMITH: Let me give the Board a chance  
 09:10AM 25 to address it. We are going to ask that --

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1 because we do have a number of speakers, we're  
 2 going to ask them to limit their presentation  
 3 to no more than three minutes. So that's  
 4 going to be one thing that we're going to ask.  
 09:11AM 5 But in the meantime, does the Board have  
 6 any desire to move that we eliminate any  
 7 discussion as to any type of emissions that  
 8 might be created, based on the federal  
 9 statute? Is there a motion to eliminate that  
 09:11AM 10 topic on any speaker's subject? Seeing none.  
 11 MR. RIGBY: The other preliminary matter I  
 12 might be able to take care of that will kind  
 13 of help move things forward when Mr. Hoxeng  
 14 gets up here, is there -- Mr. Hoxeng will be,  
 09:12AM 15 of course, providing testimony from some of  
 16 the documents that are in the package that's  
 17 before you, that he provided to the County,  
 18 and that's included in your package.  
 19 In addition, he's going to offer testimony  
 09:12AM 20 that's been described by him, that goes  
 21 through, again, the criteria. And there's a  
 22 document here that we would like to offer into  
 23 evidence that he will be testifying, if you  
 24 will, from, and he's competent to offer that  
 09:12AM 25 testimony. And I would like to go ahead and

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1 just provide to the Board, and Mr. Hoxeng will  
 2 describe it, we can ask at that time that it  
 3 be admitted. But it's basically the -- it's a  
 4 spreadsheet that shows the various heights and  
 09:12AM 5 where the various antenna locations for cell  
 6 providers would be at what height, et cetera,  
 7 on the tower. That will be an exhibit. If  
 8 it's convenient, we would ask that those be  
 9 passed out at this point and then we can offer  
 09:13AM 10 them into evidence when Mr. Hoxeng testifies.  
 11 MR. SMITH: Does staff have any objection?  
 12 MR. HOLMER: No, sir. Staff has reviewed  
 13 this.  
 14 MR. SMITH: The Chair will entertain a  
 09:13AM 15 motion to accept that presentation into  
 16 evidence.  
 17 MS. RIGBY: I'll make a motion.  
 18 MR. STROMQUIST: Second.  
 19 MR. SMITH: We have a second. Is there  
 09:13AM 20 any discussion? Those in favor raise your  
 21 right hand.  
 22 (Board Members Vote.)  
 23 MR. SMITH: It passes.  
 24 (Motion passes unanimously.)  
 09:13AM 25 MR. RIGBY: Mr. Chairman, with your  
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1 permission, I would like to ask that  
 2 Mr. Hoxeng come forward and offer testimony.  
 3 I may have some questions for him, but quite  
 4 frankly, I think it's just going to be a  
 09:14AM 5 presentation from him and then I'll ask  
 6 questions if he's left any gaps.  
 7 MR. SMITH: Thank you, sir.  
 8 Mr. Hoxeng, I believe we already swore  
 9 you. Right?  
 09:14AM 10 MR. HOXENG: Yes, sir.  
 11 (Testimony by David Hoxeng.)  
 12 MR. HOXENG: Good morning. I'm Dave  
 13 Hoxeng. My wife, Mary, and I own and operate  
 14 News Radio 1620 and Cat Country 98.7, I'm a  
 09:14AM 15 little nervous today because this is very  
 16 important to us.  
 17 You know, you guys do this for free, and I  
 18 guess I should recognize your service because  
 19 we appreciate that you're willing to do these  
 09:14AM 20 proceedings that sometimes take a long time.  
 21 So thank you.  
 22 Our building is located in a C-2 zoned  
 23 area behind what used to be called University  
 24 Mall, and in C-2 the Land Development Code of  
 09:15AM 25 our county allows for radio and television  
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1 studios with towers of up to 150 feet. We are  
 2 asking for permission to go for another 49  
 3 feet and the other reason for the conditional  
 4 use is that we don't meet the 500-foot  
 09:15AM 5 distance from a residential neighborhood.  
 6 I'll get into that a little bit later.  
 7 The reason that we need -- I don't know.  
 8 Do you guys have tabbed copies of the  
 9 evidence? If I direct you to the letter for  
 09:15AM 10 request for conditional use, is that something  
 11 you can easily see that is part of the case,  
 12 the letter for request for conditional use.  
 13 It has a picture of the radio station at the  
 14 top of it.  
 09:15AM 15 MR. SMITH: That will be presented by  
 16 staff.  
 17 MR. HOXENG: You don't have that yet?  
 18 MR. HOLMER: It's in your package.  
 19 MR. HOXENG: Okay. It says Cat Country in  
 09:15AM 20 the upper left-hand corner. I would like to  
 21 direct you to page two of that in the middle  
 22 of the page, which explains our desire to get  
 23 the extra 49 feet.  
 24 In FM radio the ability to provide  
 09:16AM 25 coverage to people has everything to do with  
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1 height. The higher you are, the more  
 2 geography you can cover. That's because the  
 3 earth is curved. This is a very small tower  
 4 compared to most towers where it would be  
 09:16AM 5 broadcasting FM. For instance, our main  
 6 tower, which is in Alabama is 942 feet, and it  
 7 covers a vast territory. But as we have  
 8 learned in hurricanes, sometimes towers fall  
 9 down and usually it's the tornado that's spun  
 09:16AM 10 off by the hurricane that will twist the tower  
 11 into the ground.  
 12 So Mary and I have made a lot of efforts  
 13 for Cat Country and News Radio 1620 to have a  
 14 good backup plan so we can always stay on the  
 09:16AM 15 air. Cat Country 98.7 was the only radio  
 16 station serving our area that stayed on the  
 17 air before, during and after Ivan, and the  
 18 reason we were able to do that was because of  
 19 having a Plan B and a Plan C. So as we expand  
 09:17AM 20 our operations on Plantation Road, this a part  
 21 of our Plan B.  
 22 The thing that's driving the need to  
 23 construct that tower today is that when we  
 24 originally bought this building and built our  
 09:17AM 25 940-foot tower in Alabama, we had a microwave  
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1 connection from the top of the building to the  
 2 tower in Alabama. This was in 2003. We  
 3 hadn't occupied the building yet, but when the  
 4 tower crew was here building the tall tower we  
 09:17AM 5 had them go ahead and line up the microwave.  
 6 It worked great.  
 7 But then unbeknownst to me, because I was  
 8 new to Pensacola, the Department of  
 9 Transportation built what's known as the  
 09:17AM 10 I-10/110 interchange which is directly next to  
 11 our building, and now the microwave system  
 12 that we set up could no longer work because  
 13 the concrete blocked it, and we had to build a  
 14 tower to get over the new interstate. And,  
 09:18AM 15 frankly, I just didn't have the money to do it  
 16 until recently, when a local bank offered us  
 17 financing to build the tower that's before you  
 18 today.  
 19 So really, there's three components of  
 09:18AM 20 this tower in terms of what antennas. The  
 21 tower is just a bunch of steel that holds up  
 22 the antennas. The antennas connect by the  
 23 wires to the ground, to various electronic  
 24 devices. So there will be microwave  
 09:18AM 25 connections that will go to the Alabama tower,  
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1 microwave connections that go to the tower at  
 2 the City of Pensacola for News Radio 1620.  
 3 There will be a place for five cellular  
 4 customers. I have already entered into  
 09:18AM 5 discussions with Verizon and there is interest  
 6 there, and also the backup for our other two  
 7 towers should they fall down.  
 8 Now, in Hurricane Ivan, when it was over,  
 9 we were off the radio on News Radio 1620 so we  
 09:19AM 10 drove down Palafox and found a hunk of  
 11 concrete about as wide as your desk and about  
 12 to here. We think it had been the cover for a  
 13 gas station's gas pumps, and the wind just  
 14 picked it up and anyway, it knocked us off the  
 09:19AM 15 air. So in storms bad things happen, and so  
 16 it's very important for us to have a backup  
 17 site, which is what this tower will provide.  
 18 And the reason we're asking for the extra  
 19 49 feet, is you look at the center of page two  
 09:19AM 20 of the letter of request for conditional use  
 21 you will see that we cover about 45,000 more  
 22 people with the extra 49 feet, which is  
 23 another 26 percent of coverage. Now,  
 24 remember, it's a permitted use in C-2 to build  
 09:19AM 25 a 150-foot tower. We're just asking for the  
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1 extra 49 feet.  
 2 I would like to go through the document  
 3 that you were just handed, which is entitled  
 4 WYCT Commercial Communications Tower Project.  
 09:20AM 5 So before we bought this building we did  
 6 consult the Land Development Code because we  
 7 wanted to be sure we could do our business  
 8 there, because in some areas, for instance,  
 9 you can't build towers and we knew we would  
 09:20AM 10 eventually have to build a tower. So  
 11 everything we've done in preparation for today  
 12 complies with the Land Development Code.  
 13 However, we do need your permission to build  
 14 what we've proposed here. So I would just  
 09:20AM 15 like to go through this and make a couple of  
 16 comments.  
 17 Under A, Antennas, it just explains that  
 18 the tower just holds up antennas and you can  
 19 put different antennas on it. All  
 09:20AM 20 transmitting antennas have to be approved by  
 21 the FCC. It's a lengthy process and they do  
 22 pay attention to what Jesse mentioned on the  
 23 emissions, and they have strict regulations on  
 24 that. The exception of that is some  
 09:21AM 25 unlicensed bands, for instance, your wireless  
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1 phone in your home and WiFi. Those are  
 2 unlicensed bands.  
 3 B is collocation. We've proposed  
 4 collocation for five cell towers. We have  
 09:21AM 5 room for others, as well. For instance, if  
 6 the sheriff's department wanted to put an  
 7 antenna there, we would have space for that,  
 8 although it's not currently planned.  
 9 In the second part of collocation I'm  
 09:21AM 10 pointing out that the tower is collocated in  
 11 this case with the radio station, and that's  
 12 really essential because we have all this  
 13 equipment that we have to connect to it with  
 14 sometimes little cables and sometimes cables  
 09:21AM 15 that are almost two inches from the  
 16 transmitters at the base of tower in the  
 17 building.  
 18 C is environmentally sensitive land. This  
 19 is not.  
 09:22AM 20 D is the setback from residential zoning.  
 21 If I may, I would like to offer as evidence  
 22 some maps which have to do with the distances  
 23 to the residential zoning in the area.  
 24 May I do that?  
 09:22AM 25 MR. SMITH: Does staff have any objection  
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1 at this point?  
 2 MR. HOLMER: No objection, but we will be  
 3 covering that in the maps and I'll be  
 4 describing the distances.  
 09:22AM 5 MR. SMITH: So are we going to have these  
 6 same --  
 7 MR. HOLMER: We're going to have the ones  
 8 that the County has created, and I can explain  
 9 the distances off of those.  
 09:22AM 10 MR. SMITH: The Chair would entertain a  
 11 motion as to whether we accept additional maps  
 12 into evidence. No motion, sir.  
 13 MR. HOXENG: So the criteria in the Land  
 14 Development Code is 500 feet. And as you  
 09:23AM 15 know, I think, our building is directly in the  
 16 pocket of Interstate 10, that's ten lanes of  
 17 traffic, and interstate I-110, which is at  
 18 that point I think it's six lanes. Across the  
 19 interstate is the residentially zoned area.  
 09:23AM 20 Within 500 feet there are three pieces of  
 21 property. One is owned by the City of  
 22 Pensacola and they do their gas operations  
 23 there. One is owned by the union that  
 24 represents the people who work for AT&T, and  
 09:23AM 25 there is one very large property which

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1 includes a home on it.  
 2 Interestingly enough, I've learned that  
 3 the residential zoning line starts at the  
 4 midpoint of I-10, even though it's a long way  
 09:24AM 5 from the actual residential property line. So  
 6 the -- this is the radio station. This yellow  
 7 line starts at the tower, goes across the  
 8 interstate to this home, and it's about 750  
 9 feet away. I would argue that even though the  
 09:24AM 10 gas company and the AT&T union are in a  
 11 residential zoned area, they're not  
 12 residential uses.  
 13 And there's another criteria that we have  
 14 to meet which has to do with the height of the  
 09:24AM 15 tower versus the distance to the residential  
 16 zoning line, and with the residential zoning  
 17 line being in the middle of the interstate,  
 18 we're more than the height of the tower to  
 19 that.  
 09:25AM 20 Number E, Criterion E, is lighting from  
 21 the Land Development Code and we don't propose  
 22 any changes in lighting, and with the nearest  
 23 residence being more than 750 feet away it  
 24 probably really wouldn't matter anyway.  
 09:25AM 25 F, is color, and we'll comply with the

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1 Land Development Code with a galvanized  
 2 finish.  
 3 G is failure which says that if the tower  
 4 falls down it can't touch a residential  
 5 property line, or maybe it says the zoning  
 6 line. I'm not sure which. But in any case we  
 7 meet both criteria.  
 8 As far as security is concerned we're  
 9 proposing an eight foot fence which is allowed  
 09:25AM 10 in commercial areas. We'll have a gate which  
 11 will be locked, and we'll have on the ladder  
 12 what's called an anti climbing device, which  
 13 is essentially a big plate of steel which is  
 14 locked so you can't get to the rungs to climb  
 09:25AM 15 the tower should you jump the eight foot  
 16 fence.  
 17 I is screening, and we'll comply with the  
 18 Land Development Code sections that are noted  
 19 there, and as the County has mentioned, this  
 09:26AM 20 project, after you approve it, has to go to  
 21 the Development Review Committee and that's  
 22 where things like this get dealt with in  
 23 detail, but certainly I promise to comply with  
 24 those things.  
 09:26AM 25 Earlier you heard discussion about J,

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1 which is emissions, from Jesse, and aside from  
 2 whatever the federal government says, we have  
 3 a very specific part of our Land Development  
 4 Code says you can't consider emissions or  
 09:26AM 5 complaints about emissions as long as I comply  
 6 with the FCC regulations, which I have to do  
 7 that because I won't get the licensing from  
 8 the FCC if I don't, and then there's a safety  
 9 check at the DRC to be sure that I have that  
 09:26AM 10 paperwork proving that I have complied with  
 11 the FCC regulations.  
 12 Are there any questions about that? I  
 13 think what's important here is to realize the  
 14 radio stations Mary and I run are regulated by  
 09:27AM 15 the federal government and we're very strictly  
 16 regulated. Certainly the reason we're here  
 17 today is because the federal government  
 18 doesn't preempt you to say how big a building  
 19 I can build or something like that, but as far  
 09:27AM 20 as the electronics and safety and stuff like  
 21 that, the federal government is very  
 22 aggressive about enforcing those rules.  
 23 Continuing with the Land Development Code  
 24 K, abandonment doesn't apply.  
 09:27AM 25 L, preexisting towers, doesn't apply.

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**1** Airport zoning. So we are not anywhere  
**2** close to the airport. However, we did get a  
**3** letter from the airport approving our location  
**4** which they made subject to the FAA and we have  
 09:27AM **5** written permission from the FAA to build a  
**6** 199-foot tower at this site. So we have  
**7** passed the wickets as to the height, with the  
**8** airport and with the federal government.  
**9** As far as variances are concerned, staff  
 09:27AM **10** says that we don't need a variance and we are  
**11** not asking for any exceptions to the  
**12** conditional use standards that we're  
**13** discussing today.  
**14** As far as application requirement, which  
 09:28AM **15** is O, we'll be submitting a geotechnical  
**16** report with the DRC, as well as a FCC/NEPA  
**17** checklist. The things that we have to comply  
**18** with at this meeting have to do with  
**19** compliance with various other governmental  
 09:28AM **20** agencies. I mentioned the airport has okayed  
**21** the project. The FAA has approved the height.  
**22** Escambia County Emergency Communications has  
**23** approved the tower location and the height and  
**24** we will fully comply with the FCC regulations.  
 09:28AM **25** You have coverage maps that are in your  
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22

**1** package. And then we discussed the number  
**2** five collocation which is that we have space  
**3** for up to five additional cell phone  
**4** providers.  
 09:28AM **5** A comment about cell phones. Things have  
**6** really changed in the past five year in the  
**7** wireless communication industry, and we seem  
**8** to be talking on our phones less but the data  
**9** needs are skyrocketing. So the need for  
 09:29AM **10** towers, honestly, to provide the connectivity  
**11** we need so when we're at the mall near my  
**12** office or the neighborhoods, is data. It's  
**13** all about data. And so Verizon, AT&T, T  
**14** Mobile, they're all trying to build up their  
 09:29AM **15** infrastructure to provide more data. So  
**16** that's part of why we included the project  
**17** with five collocations. The County requires  
**18** two locations in the Land Development Code.  
**19** So in conclusion, we have complied fully  
 09:29AM **20** with the Land Development Code in every way.  
**21** We do ask your permission to go the extra 49  
**22** feet.  
**23** Are there any questions I can entertain  
**24** from y'all?  
 09:29AM **25** MR. SMITH: Does the Board have any  
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**1** questions of the Applicant?  
**2** MR. BRYAN: I have a question, if I may.  
**3** I'm just curious why only 49 feet? Was this  
**4** based on administrative or was it based on  
 09:30AM **5** cost benefit, that is revenue per foot versus  
**6** costs to build an extra foot of tower? I'm  
**7** just curious.  
**8** MR. HOXENG: It is true that every extra  
**9** foot you build on a tower, it goes up.  
 09:30AM **10** Geometrically, the cost per foot goes up with  
**11** the height, because there's a very large  
**12** foundation on the ground. The reason is  
**13** because the FAA rules change at 200 feet.  
**14** MR. BRYAN: That's what I thought.  
 09:30AM **15** MR. HOXENG: And so by limiting it to 199,  
**16** it makes it simpler to permit with the FAA.  
**17** MR. BRYAN: Thank you.  
**18** MS. RIGBY: Are you adding to the 150-foot  
**19** tower you have or are you tearing that one  
 09:30AM **20** down and putting up a whole new tower?  
**21** MR. HOXENG: No, we don't currently have  
**22** a tower. This will be a new project.  
**23** MS. RIGBY: Okay. Well, you said  
**24** something about 150.  
 09:30AM **25** MR. HOLMER: The code allows, in that  
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**1** zoning district, for a tower up to 250. When  
**2** it goes over 150 it comes to this Board.  
**3** MS. RIGBY: Thought I read somewhere that  
**4** this was a -- this was -- that this was like  
 09:31AM **5** an old tower was being removed.  
**6** MR. HOXENG: Actually, we had permission  
**7** in 2006 from the federal government to build  
**8** this tower, from the FAA and the FCC.  
**9** Actually, it was to build a 283 foot tower,  
 09:31AM **10** but then when we got the price quotes I  
**11** realized that there was absolutely no way I  
**12** could afford that tower, so this is the  
**13** replacement project.  
**14** MS. RIGBY: So currently there is no tower  
 09:31AM **15** there.  
**16** MR. HOXENG: No, ma'am.  
**17** MS. RIGBY: What is the base square  
**18** footage?  
**19** MR. HOXENG: Of the building?  
 09:31AM **20** MS. RIGBY: Of the tower, what will it be?  
**21** MR. HOXENG: Well, the way it's designed  
**22** is you have a lot of concrete under ground and  
**23** then three or four pillars come up that are  
**24** about this big that the tower bolts to. So as  
 09:32AM **25** far as pervious and impervious, it really  
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**1** won't make any difference.

**2** MS. RIGBY: I mean, is the tower, the base

**3** of the tower 100 square feet, 200 square feet?

**4** MR. HOXENG: Oh, I see. Well, it's three

09:32AM **5** or four legs that come down, depending on what

**6** the designer decides.

**7** MS. RIGBY: You're going to build a fence

**8** around this thing, right?

**9** MR. HOXENG: Yes, ma'am.

09:32AM **10** MS. RIGBY: How big is the fence.

**11** MR. HOXENG: It's an eight foot fence.

**12** MS. RIGBY: It's going to go around how

**13** much of an area?

**14** MR. HOXENG: Oh, I see. Our proposal is

09:32AM **15** 30 feet by 30 feet.

**16** MS. RIGBY: 30 by 30, okay.

**17** Was the military contacted?

**18** MR. HOXENG: As part of the process with

**19** the FAA, yes. The FAA sends all requests for

09:32AM **20** towers to the military for review.

**21** MS. RIGBY: So FAA contacted them. You

**22** did not?

**23** MR. HOXENG: No, the FAA does that.

**24** MR. JONES: It will be reviewed by the

09:32AM **25** DRC, so they will be -- they sit as one of our

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**1** reviewing authority in the DRC process, so

**2** that's part of the process.

**3** MS. RIGBY: For the military.

**4** MR. JONES: Yes, it is.

09:33AM **5** MS. RIGBY: Okay.

**6** MR. HOXENG: But basically the federal

**7** government looks at towers that are 200 feet

**8** as being benign to the air space. They don't

**9** want them right next to an airport, of course,

09:33AM **10** which is part of why you have to go through

**11** review, but generally speaking, 199-foot tower

**12** would not even require a -- if I were not a

**13** broadcaster or if it was not a cell tower, if

**14** it was like a receiving tower for TV or

09:33AM **15** something like that, you wouldn't even be

**16** required to get FCC permission, but because

**17** it's a transmitter tower I would have to get

**18** permission anyway, even though it's only 199

**19** feet.

09:33AM **20** MS. RIGBY: That's all.

**21** MR. RIGBY: If I might, I have one

**22** question.

**23** MR. SMITH: Yes, sir.

**24** MR. RIGBY: Mr. Hoxeng, I would like for

09:33AM **25** you to clarify. We offered a spreadsheet that

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**1** shows the various locations for cells. How

**2** was that prepared, or did you prepare it or

**3** have your design team prepare that for you?

**4** MR. HOXENG: I am the design team. Yes, I

09:34AM **5** should have spoken to that for a moment. So

**6** in the process of making our plans for, well,

**7** ultimately how much this is going to cost, you

**8** have to lay out the tower, figure out the size

**9** of the wires that connect things and then it

09:34AM **10** normally goes to tower engineers and they

**11** design how thick the individual steel has to

**12** be at every height, so they have to

**13** reinforce -- well, not reinforce, because it's

**14** a new build. They have to build the steel

**15** thick enough at each particular location as

**16** you go up the tower, to support the actual

**17** antennas you will have on the tower. It has

**18** to do with wind loading as well as downward

**19** loading.

09:34AM **20** So this is the layout that I did earlier

**21** this year and then color coded for you all

**22** yesterday. I prepared it and it's -- I could

**23** answer any questions. It's pretty technical,

**24** but basically it's just the layout. It's like

09:35AM **25** the map for how the tower is going to load.

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**1** The other thing I think I should say is

**2** that all the maps -- well, you didn't take the

**3** maps. Everything that has been presented to

**4** you, I prepared personally.

09:35AM **5** MR. RIGBY: And there is a site plan as

**6** part of the application. It might be a little

**7** difficult to see, but the actual tower

**8** location would be at the northwest corner

**9** right up -- but meeting, of course, the County

09:35AM **10** setback, up as close to Interstate 10,

**11** basically, and that property line as it can

**12** get and meet the setbacks. It's up in the

**13** northwest corner of that property near the

**14** interstate.

09:35AM **15** MR. HOXENG: But to be specific we are

**16** well within the setbacks. We're not right on

**17** the setback.

**18** MR. RIGBY: Thank you.

**19** MR. SMITH: Does staff have any questions?

09:35AM **20** MR. HOLMER: No, not at this time.

**21** MR. SMITH: Thank you, sir.

**22** MR. HOXENG: Thank you.

**23** MR. SMITH: Will staff make your

**24** presentation.

**25** (Presentation by Andrew Holmer, previously

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1 sworn.)

2 MR. HOLMER: Yes, sir. Again this is

3 Conditional Use Case CU-2015-03, 7251

4 Plantation Road. This is a conditional use

09:36AM 5 approval to construct 199-foot commercial

6 communication tower within 500 feet of a

7 residential zoning district.

8 (Presentation of Maps and Photographs.)

9 MR. HOLMER: This is the location map.

09:36AM 10 You will see the parcel outlined in red. The

11 500-foot radius map showing the zoning on site

12 as C-2 and to the north you see residential

13 zoning. Now, from measurement off of the

14 County's GIS, the distance from the

09:36AM 15 approximate tower location to the residential

16 zoning, as we would consider it where the

17 parcel line begins there on the residential,

18 is 445 feet. The distance to the nearest

19 residence is 750 feet. I'm going to get into

09:37AM 20 why that's important, here in a minute.

21 The Future Land Use on site is commercial.

22 The aerial map of the site. The public

23 hearing sign posted on site.

24 This is looking north into the site from

09:37AM 25 Plantation. This is looking north across

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1 Plantation. As you can see there to the left

2 side of the building, which is going to be the

3 western side, that's back there in the back

4 where the tower is going to be going.

09:37AM 5 Here I have an overall site plan. One

6 point I want to point out on here is the

7 amount of parking. This was formerly a

8 restaurant and it had met the parking

9 requirements for a restaurant, which are much

09:37AM 10 more than the current use.

11 And the approximate tower location. Mind

12 you, the foundation of this, the supports are

13 going to be a bit larger than what I've

14 circled there.

09:38AM 15 As to the staff findings, the requested

16 conditional use, because our LDC, the part on

17 communication towers mentions setbacks from

18 residential zoning, and in that it says that

19 all commercial communication towers, which

09:38AM 20 exceed 150 feet in height or in districts

21 where those towers are allowed and/or are

22 located within 500 feet of a residential area,

23 those are considered conditional uses, which

24 is why we're here for both of those items.

09:38AM 25 As to the first criterion, On-Site

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1 Circulation, the property in question has

2 ample parking for the land use and is accessed

3 by driveways connecting to Plantation Road.

4 Criterion (2), Nuisance. Staff does not

5 find any anticipated nuisances associated with

6 the proposed use.

7 Criterion (3), Solid Waste. Solid waste

8 service will not be necessary for this use.

9 Criterion (4) Utilities. Any necessary

09:39AM 10 utilities will be provided by the applicant.

11 Criterion (5) Buffers. The proposed use

12 must meet any buffering requirements imposed

13 during the site plan review process.

14 Criterion (6), which is Signs. Any

09:39AM 15 signage associated with the proposed use must

16 meet the requirements of the Land Development

17 Code.

18 Criterion (7), Environmental Impact. The

19 proposed use must comply with any

09:39AM 20 environmental standards imposed during the

21 site plan review process.

22 Criterion (8) Neighborhood Impact. The

23 proposed use will be compatible with the

24 surrounding heavy commercial zoning.

09:39AM 25 Residential zoning within 500 feet just to the

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1 north across Interstate 10 and impacts on that

2 residential zoned area will be minimized by

3 distance and existing interstate right-of-way.

4 Criterion (9) Other Requirements of the

09:39AM 5 Code. As was mentioned several times

6 previously, Chapter 7 Section 18 of our Land

7 Development Code covers commercial

8 communication towers. The proposed use must

9 meet all the requirements of that section and

09:40AM 10 any other standards imposed in the site plan

11 review process. The applicant has provided

12 compliance with FCC, FAA and County Emergency

13 Management Service requirements. He's

14 provided coverage maps for the towers and

09:40AM 15 collocation information as required for

16 conditional use approval.

17 Recommendation. Staff finds the proposed

18 use can meet all the required criteria and

19 recommends approval of the proposed

09:40AM 20 conditional use with the following condition:

21 The project must meet all conditions imposed

22 through the site plan review process.

23 MR. SMITH: Does the Board have any

24 questions for staff?

09:40AM 25 MR. HOLMER: One more thing from staff's

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1 standpoint. I would like to, second of all, I  
 2 guess, third, the mention of this idea of  
 3 emissions. Our Land Development Code tells  
 4 us, the staff, what we are to address and what  
 09:41AM 5 we're not to address. In this case we're  
 6 addressing the use here, the use of the tower,  
 7 the location from the residential zoning line  
 8 and the height. Our code does not allow us to  
 9 go into anything about emissions as long as it  
 09:41AM 10 meets FCC approval. So I'm sure, in addition  
 11 to the applicant and his agent, staff will be  
 12 objecting to any testimony that falls outside  
 13 what this Board is here to hear today.  
 14 MR. SMITH: Does the applicant have any  
 09:41AM 15 questions of staff? Seeing none, we will now  
 16 begin with our speakers. And again, we'll ask  
 17 you to come forward and be sworn in.  
 18 MR. RIGBY: Mr. Smith, may I ask  
 19 Mr. Hoxeng to come up because there's a  
 09:42AM 20 question a Board member asked about previous  
 21 tower and you've got these coverage maps. I  
 22 think it will help if he goes into a little  
 23 more detail about what this tower is really  
 24 doing in two functions. One is in, I'm going  
 09:42AM 25 to call it the day-to-day transmission and

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1 operation of his station, and then the  
 2 coverage maps, which he'll explain, which I  
 3 believe really are in the emergency backup  
 4 setting. I think that will help the Board  
 09:42AM 5 understand this whole project a little bit  
 6 better.  
 7 MR. HOLMER: And that's a good point I  
 8 would like to address to Ms. Rigby. You had  
 9 asked about the Navy. That's going to be  
 09:42AM 10 under our review. Keep in mind for anyone  
 11 flying in the area, towers that are out there  
 12 and permitted through the FAA and FCC are  
 13 considered obstacles that they're aware of.  
 14 Just so you know, I did some research on my  
 09:43AM 15 own. To the north of this tower, 4,000 feet  
 16 north of this, just north of Olive Road and in  
 17 line is a 300 foot tower, and 1,500 feet to  
 18 the south and once again in line, is a 146  
 19 tower, so there's already obstacles in that  
 09:43AM 20 way.  
 21 MR. BRYAN: If I could point out as a  
 22 former Navy pilot, that the Navy and the other  
 23 armed forces when they fly, are supported by  
 24 the FAA. The FAA is responsible for putting  
 09:43AM 25 out the publications, maps, charts, et cetera,

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1 as well as notices to airmen when they're  
 2 subject to deviations and variations that are  
 3 required. So as stated, it's perfectly  
 4 rational that when FAA grants approval they  
 09:43AM 5 coordinate that and communicate that to  
 6 everybody who flies in the area.  
 7 MR. SMITH: Thank you, sir.  
 8 MR. HOXENG: Dave Hoxeng, again. Yeah, I  
 9 probably wasn't as clear as I could have been.  
 09:43AM 10 So this tower, the three uses that we talked  
 11 about. One is the microwave connections to  
 12 both of our main tall towers, one for News  
 13 Radio 1620 and one for Cat Country 98.7, the  
 14 backup transmitters for both stations for  
 09:44AM 15 emergencies, and then cell tower space.  
 16 MR. HOXENG: Currently our -- Cat Country  
 17 97 is live from 5:00 in the morning until  
 18 midnight and presently all of our online  
 19 personalities have to drive up to the tower in  
 09:44AM 20 Alabama to perform on the radio. We don't  
 21 have a connection between the two buildings.  
 22 This tower will give us the connection so that  
 23 we can actually use the studios we have on  
 24 Plantation Road as they were intended.  
 09:44AM 25 Everything was fine until that interchange

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1 got built, which, not being from here, I  
 2 wasn't aware of and so this tower answers that  
 3 connectivity problem between Plantation Road  
 4 and our tall tower, almost 1,000 foot tower in  
 09:45AM 5 Alabama.  
 6 Any questions? Thank you.  
 7 MR. SMITH: Thank you.  
 8 Speakers, as I call you, please come  
 9 forward and be sworn in, and again, we ask you  
 09:45AM 10 to limit your talking points unless you're  
 11 being questioned, to three minutes, and we  
 12 appreciate that.  
 13 Michael McVay. Good morning.  
 14 (Michael McVay sworn.)  
 09:46AM 15 MR. McVAY: Good morning. My name is  
 16 Michael McVay. I'm an accountant here in  
 17 Pensacola, Florida. I've got several clients  
 18 in the area of the actual proposed tower at  
 19 Plantation Road. I do come up with several  
 09:46AM 20 objections to it and I wish I could voice  
 21 those opinions now.  
 22 MR. RIGBY: Mr. Chairman, I'm going to  
 23 object to this witness testifying about what  
 24 other people might have told him or his  
 09:46AM 25 clients might have had to say. Again, he

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1 needs to testify from personal knowledge, not  
 2 imparting, if you will, a survey of other  
 3 people and I would object to any testimony.  
 4 MR. McVAY: I do have my own research.  
 09:46AM 5 Thank you.  
 6 MR. SMITH: Thank you.  
 7 MR. McVAY: First of all, with several  
 8 clients in the area University Mall has become  
 9 a great place now, you know. It's beautiful.  
 09:47AM 10 The aesthetic part of University Mall is great  
 11 now. I would think that this tower would  
 12 definitely take away from that.  
 13 Along with -- I know we talked about  
 14 transmissions, but if you do your research on  
 09:47AM 15 it, that is not actually 100 percent true is  
 16 what my investigation is. There is still  
 17 controversy out there with the radio  
 18 transmissions.  
 19 MR. HOLMER: Once again, we've got to go  
 09:47AM 20 with the objection, we're not going there.  
 21 The code doesn't allow that.  
 22 MR. McVAY: Well, that's my opinion and  
 23 research, so I just wanted to bring it up to  
 24 you.  
 09:47AM 25 Property values, they have been known to  
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1 drop in the area.  
 2 MR. HOLMER: Objection. Are you a  
 3 property appraiser?  
 4 MR. McVAY: No, I'm not.  
 09:47AM 5 MR. HOLMER: The board can only accept  
 6 opinion testimony from someone who is  
 7 recognized as an expert witness.  
 8 MR. McVAY: Interesting.  
 9 Hurricanes. There have been known towers  
 09:47AM 10 that do topple over during hurricanes,  
 11 depending on the strength. That is a fact.  
 12 I would just ask that the residences of  
 13 the area, the businesses in the area, at least  
 14 have their opinion heard of their objections  
 09:48AM 15 of this 199-foot tower. I would like to  
 16 interject also that the signage on most of my  
 17 clients are restricted to a lot less than  
 18 that. Do we really want 199-foot tower  
 19 sitting at the center of great piece of parcel  
 09:48AM 20 in our community?  
 21 Thank you very much.  
 22 MR. SMITH: Any questions of the speaker  
 23 by the Board?  
 24 Any questions by the staff?  
 09:48AM 25 MR. HOLMER: Just a statement. The public  
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1 is notified per our Land Development Code.  
 2 This is a public meeting and that's why this  
 3 Board exists, and the development review  
 4 process is also an open public meeting.  
 09:48AM 5 MR. JONES: Also, we do want to make it  
 6 clear that in this forum we do allow the  
 7 public to speak as it pertains to matters.  
 8 Your opinion can be heard with the  
 9 understanding that it is just your opinion.  
 09:49AM 10 We don't want you to feel like I came and they  
 11 don't want to hear it. It's a quasi-judicial  
 12 hearing. Your opinion -- everyone has the  
 13 right to be heard, but when it comes to  
 14 matters of law, as Mr. Rigby stated on those  
 09:49AM 15 FAA rules, we're not -- and I believe that the  
 16 Board is aware of that, so that's the only  
 17 thing, but your opinions --  
 18 MR. McVAY: I understand. I was wanting  
 19 to voice my opinion. Thank you.  
 09:49AM 20 MR. SMITH: That's good. Thank you very  
 21 much.  
 22 Kenneth Whalen.  
 23 (Kenneth Whalen sworn.)  
 24 MR. WHALEN: I would like to voice my  
 09:50AM 25 concern as a resident.  
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1 MR. SMITH: State your address, Kenneth.  
 2 MR. WHALEN: 1325 Atwood. As being a  
 3 resident of the area and having a child, I  
 4 have a child and a niece, I have concerns, I  
 09:50AM 5 guess it's an opinion, of the radioactive  
 6 whatever it puts off on the towers.  
 7 MR. HOLMER: Once again, I'm sorry.  
 8 MR. WHALEN: I mean, I understand we can't  
 9 dispute that. I just want to express my  
 09:50AM 10 opinions and the concerns that I have for my  
 11 children and being in that area and other  
 12 residents of the area, we have concern with.  
 13 And also as that being in the area having  
 14 a 200 foot tower sticking in the air, I mean,  
 09:50AM 15 you can't dispute property values or none of  
 16 that. I'm not an expert, so. Just I have  
 17 concerns with it for my children.  
 18 MR. SMITH: Thank you, sir. Board, any  
 19 questions of the speaker?  
 09:50AM 20 Staff, any questions?  
 21 MR. HOLMER: No, sir.  
 22 MR. SMITH: Thank you, sir.  
 23 Charles Noble.  
 24 (Charles Noble sworn.)  
 09:51AM 25 MR. NOBLE: I'm also a resident.  
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**1** MR. JONES: Yes, sir, please get closer to  
**2** the mike so that we can make sure --  
**3** MR. SMITH: And state your address.  
**4** MR. NOBLE: I'm also a resident at 1325  
 09:51AM **5** Atwood. I come up here sharing the same  
**6** concerns as far as the harmful effects that  
**7** could come from the tower. It's mostly just  
**8** my opinion. Just in case a hurricane or  
**9** anything was to come in the area, the danger  
 09:51AM **10** it would pose to the surrounding residents.  
**11** Also the electrical magnetic radiation, the  
**12** ground levels of it, which they say we're not  
**13** really -- I'll just state my opinion.  
**14** Overall, just the overall health of the  
 09:52AM **15** residents in the surrounding area. I just  
**16** wanted to come out and show my public support.  
**17** MR. SMITH: Thank you very much.  
**18** Board, any questions of the speaker?  
**19** Staff, any questions of the speaker?  
 09:52AM **20** Applicant, any questions of the speaker?  
**21** Thank you very much.  
**22** Shontelle Brown.  
**23** (Shontelle Brown sworn.)  
**24** MS. BROWN: Hi. I also live at 1325  
 09:52AM **25** Atwood. I also work at Burlington Coat

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**1** Factory that's in the University Mall area and  
**2** I am -- I have a lot of health problems and I  
**3** know I am often, as well as some of the people  
**4** that work with me, I have looked up some of  
 09:52AM **5** the health and I had lung cancer, as well, and  
**6** I saw there's a one percent, but just like  
**7** there's a one percent that I'm a 27-year-old  
**8** that had lung cancer and cervical cancer and a  
**9** mini stroke, there's that one percent. We  
 09:53AM **10** have kids. We have pregnant women. We have  
**11** mothers that come in and out of the store  
**12** where this tower is going to be built. And I  
**13** know there's just that one percent, but, I  
**14** mean, there are sick people like me that shop  
 09:53AM **15** in this place, that go around there. I'm just  
**16** voicing my concern. There's a lot of, you  
**17** know, neurological, cancer, you know, all  
**18** kinds of different stuff and I just don't see  
**19** the point in -- there's a lot of towers and I  
 09:53AM **20** understand that. And Cat Country, I love Cat  
**21** Country, but it's just an eyesore and all the  
**22** risks, including me, while I'm working there.  
**23** MR. SMITH: Thank you.  
**24** Board, any questions of the speaker?  
 09:53AM **25** Staff, any questions of the speaker.

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**1** MR. HOLMER: No, sir.  
**2** MR. SMITH: Applicant, any questions of  
**3** the speaker?  
**4** Thank you very much.  
 09:53AM **5** Teri Wyatt.  
**6** (Teri Wyatt sworn.)  
**7** MS. WYATT: I also live at 1325 Atwood  
**8** Drive, and like the others, I'm sharing the  
**9** same concerns about my health and my  
 09:54AM **10** grandchildren's health. I'm just worried if  
**11** that tower is built there, also with the  
**12** weather, I'm just -- I'm not in favor of  
**13** having that built.  
**14** MR. SMITH: Thank you, ma'am.  
 09:54AM **15** Board, any questions of the speaker?  
**16** Staff, any questions?  
**17** MR. HOLMER: No, sir.  
**18** MR. SMITH: Applicant, any questions?  
**19** Thank you very much.  
**20** MS. WYATT: Thank you.  
**21** MR. SMITH: Julia Ferris.  
**22** (Julia Ferris sworn.)  
**23** MS. FERRIS: Yes, I'm Julia Ferris. I'm  
**24** the general manager of Main Stay Suites, which  
 09:55AM **25** is located at 7230 Plantation Road. We are

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**1** one business down from Cat Country and we are  
**2** 100 percent in favor of the building of the  
**3** tower.  
**4** MR. SMITH: Any questions from the Board?  
 09:55AM **5** Staff?  
**6** Applicant?  
**7** Thank you very much.  
**8** Jamila Doxy.  
**9** (Jamila Doxy sworn.)  
 09:55AM **10** MS. DOXY: Hi. I'm a resident at 1857  
**11** Atwood Drive and I am from Illinois. I just  
**12** moved here about in March, but Pensacola is so  
**13** beautiful to me. But I think building a tower  
**14** would be a big eyesore. I'm also concerned  
 09:56AM **15** about the health of the children in the area,  
**16** also. So I'm not in favor of the tower.  
**17** MR. SMITH: Thank very much. Any  
**18** questions from the Board?  
**19** From the staff?  
 09:56AM **20** MR. HOLMER: No, sir.  
**21** MR. SMITH: From the applicant?  
**22** Thank you very much.  
**23** Nathan Smith.  
**24** (Nathan Smith sworn.)  
 09:56AM **25** MR. NATHAN SMITH: My address is 905 Kenny

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**1** Drive and I am in support of the conditional  
**2** use of this tower.  
**3** MR. SMITH: Thank you. Any questions from  
**4** the Board?  
 09:57AM **5** Staff?  
**6** Applicant?  
**7** Thank you, Mr. Smith.  
**8** Kerry Schultz, Kerry Anne Schultz.  
**9** MS. RIGBY: She's an attorney.  
 09:57AM **10** MS. SCHULTZ: Good morning, fellow Board  
**11** members, Kerry Anne Schultz, a local attorney.  
**12** I have the pleasure of representing the  
**13** neighbor next door, which is Family Funeral  
**14** and Cremation.  
 09:57AM **15** I'm going to go through some of the  
**16** criteria. There's a reason why I do that.  
**17** There's a reason why the Land Development Code  
**18** only supports 150 feet. There's a reason for  
**19** that, safety concerns and other things. These  
 09:58AM **20** laws are not just put in place gently without  
**21** taking into consideration the effects on the  
**22** neighborhood, the impact to the environment  
**23** and the all criterion that's required for a  
**24** conditional use is taken into consideration  
 09:58AM **25** when the law is implemented and codified.

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**1** The applicant here, today, is seeking to  
**2** increase this by 49 feet. It's completely  
**3** based on financial interests of the applicant,  
**4** which is unnecessary. 150 feet is  
 09:58AM **5** satisfactory. The radio station has been  
**6** there for quite some time and it's obviously  
**7** used their purpose.  
**8** You've heard testimony today from several  
**9** neighbors, both business and residential, that  
 09:58AM **10** are adamantly opposed to this. We are, as  
**11** well as, adamantly opposed.  
**12** I would like to offer into evidence,  
**13** although these individuals could not be here  
**14** today, we do have a petition signed by  
 09:58AM **15** business owners and neighbors within the 500  
**16** feet that have signed a petition saying that  
**17** they're just opposed to it. While I recognize  
**18** the law that they cannot speak before the  
**19** County Commissioners unless they preserve  
 09:58AM **20** that, this is just further evidence to show  
**21** that the neighborhood within the 500 feet is  
**22** adamantly opposed to this increase of 49 feet  
**23** to increase it to 199 feet, of that tower,  
**24** that I would like to offer.  
 09:59AM **25** MR. RIGBY: Mr. Chairman, I would object.

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**1** Again, Ms. Schultz knows this doesn't go to  
**2** the County Commission. There's no question  
**3** about who gets to speak.  
**4** Number two, she knows that Florida law  
 09:59AM **5** does not allow petitions of this to be offered  
**6** in quasi-judicial hearings to be considered.  
**7** And so, again, I think it's just inappropriate  
**8** that she took this approach to provide that  
**9** information to you, and I would object to your  
 09:59AM **10** consideration.  
**11** MR. SMITH: Board, is there any desire --  
**12** having heard the testimony from both parties,  
**13** is there any desire to move to accept these  
**14** petitions into evidence? Seeing none.  
 09:59AM **15** MS. SCHULTZ: We have discussed this with  
**16** 82 people in the area that are adamantly  
**17** opposed to this increase. There is no reason  
**18** for that.  
**19** Let's go on to the criteria. First of  
 10:00AM **20** all, the applicant has to know that all  
**21** criteria is satisfied and even though the  
**22** staff comments have shown that they can meet  
**23** those, we can show you why that that cannot be  
**24** met and we're asking you to vote against this  
**25** today.

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**1** Number one is nuisance. There will be  
**2** potentially noise and harmful effects. While  
**3** I recognize the federal law regarding  
**4** emissions, that statute was stopped and the  
 10:00AM **5** rest of the statute was not read to this  
**6** honorable Board with respect to that. There  
**7** are other neighbors, including my client,  
**8** that's very concerned about any radioactivity  
**9** regarding any towers. It doesn't take a  
 10:00AM **10** rocket scientist -- and I'm not a medical  
**11** professional and I'm also not an engineer or  
**12** scientist before you -- I'm simply a lawyer,  
**13** but there is concern regarding radioactivity.  
**14** We've got 150 feet. Let's keep it at 150  
 10:00AM **15** feet. There's no reason to increase this.  
**16** It's a nuisance.  
**17** In addition to nuisance, 199 feet, let's  
**18** look at the hurricane. The applicant  
**19** continues to press upon this Board that it's  
 10:01AM **20** essential for communications during a  
**21** hurricane. The last large hurricane we had  
**22** was Hurricane Ivan in 2004 and Dennis in 2005.  
**23** Communication was properly fine. There was no  
**24** issue with communication, whatsoever. The  
 10:01AM **25** County did a fabulous job with its management

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1 in that type of situation, and there's no  
 2 issue with respect to that.  
 3 We're more concerned with this 199-foot  
 4 tower topping over the interstate, causing  
 10:01AM 5 debris and steel to be all over the area,  
 6 including surrounding neighbors and affecting  
 7 them. With wind capacity as they are in  
 8 hurricanes, that is troubling to my client.  
 9 We don't have an expert here today to state  
 10:01AM 10 that a 199 feet versus 150 feet toppling over  
 11 tower would cause -- common sense clearly  
 12 dictates that that would a concern. That is a  
 13 nuisance and that is a criteria that we  
 14 believe that the applicant cannot satisfy.  
 10:01AM 15 The other concern is buffers. While I  
 16 recognize that a site plan will be considered,  
 17 if you really look at -- we have photographs.  
 18 If I can go ahead and have you look at the  
 19 photographs that were taken just few days ago  
 10:02AM 20 by my client to show that there is not a  
 21 buffer. Although the applicant -- you've seen  
 22 photographs on there that show that when you  
 23 look at behind the property of where the tower  
 24 is actually proposed to be situated, there is  
 10:02AM 25 not a buffer there. While I do recognize that

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1 the applicant could create a buffer, to the  
 2 extent that this was passed, right now there  
 3 is not proper landscape there to show that  
 4 between the back of the property where the  
 10:02AM 5 proposed -- which would currently meet the  
 6 Land Development Code. So it's our position  
 7 that under the current Land Development Code  
 8 the buffer area that is required, including  
 9 this purported eight foot fence, does not  
 10:02AM 10 exist at this time, and we believe that they  
 11 cannot meet the buffer requirements between  
 12 that.  
 13 Additionally, the environmental impact,  
 14 while there does not appear to wetlands bodies  
 10:02AM 15 of water, storm management may be a concern.  
 16 I have not seen the report that this tower  
 17 being on an asphalt parking lot will create  
 18 any issues to the subterranean with stormwater  
 19 management, but that could be a concern. I  
 10:03AM 20 think that this needs to be further explored,  
 21 so I'm asking you to, on that basis, look at  
 22 that as an issue that may need more testimony  
 23 or more evidence with respect to potential  
 24 effects on stormwater management and other  
 10:03AM 25 issues relating to environmental concerns.

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1 The biggest one is neighborhood impact.  
 2 It's obvious today, you've heard testimony  
 3 from others, we have discussed this with other  
 4 people. My client especially, the neighboring  
 10:03AM 5 property is very, very concerned about the  
 6 neighborhood impact. It's interesting because  
 7 we came before this Honorable Board, which was  
 8 a different Board, of some of you members,  
 9 regarding my client's request in the C-2 area  
 10:03AM 10 for a cinerator that would be housed in an  
 11 accessory building for cremations, which is  
 12 already happening in C-2. It's just my client  
 13 was denied that opportunity, unfortunately.  
 14 That was adamantly opposed by the applicant  
 10:03AM 15 and that applicant, during that testimony,  
 16 determined that this was not a heavy C-2 area.  
 17 Now they're arguing it is heavy C-2 and that  
 18 we should support 49 feet of an increase on a  
 19 tower. It just doesn't make sense. It's not  
 10:04AM 20 logical and it's not rational.  
 21 The neighborhood impact is very serious.  
 22 You've heard from neighbors. It doesn't  
 23 matter. The interstate may divide, but those  
 24 neighbors have concerns. How would you like  
 10:04AM 25 to look out your window and see not only 150

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1 feet, which the law already allows, which the  
 2 applicant has, but another 199 feet. Why is  
 3 it necessary? You've heard from neighbors  
 4 discussing that. You've heard from people at  
 10:04AM 5 the mall that are extremely concerned about  
 6 this. Yes, this area has revitalized itself.  
 7 It's beautiful and the mall has brought a lot  
 8 of business, a lot of restaurants. My  
 9 client's funeral home, which was just a  
 10:04AM 10 delapidated restaurant, to some extent, and a  
 11 restaurant that didn't exist for quite some  
 12 time, is now a beautiful funeral home that  
 13 provides tremendous service to our county.  
 14 Based on those criterion, without having  
 10:05AM 15 to get into emissions and the federal statute  
 16 and all of that, based on common sense and  
 17 based on the client's concerns, as well as  
 18 other neighbors, we're asking this Honorable  
 19 Board to deny this request. The applicant can  
 10:05AM 20 use the 150-foot tower that it currently has  
 21 for communications. 199 feet is just  
 22 unacceptable. It poses a safety risk. It's a  
 23 nuisance and it's not supported by the other  
 24 neighbors. Thank you for your time.  
 10:05AM 25 MR. SMITH: I would ask the Board if they

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**1** have any questions of the speaker.  
**2** MR. STROMQUIST: I have one. You made the  
**3** statement that there were no communication  
**4** problems after Ivan. I was in emergency  
 10:05AM **5** management during Ivan and we had massive  
**6** communication problems, and I know that for a  
**7** fact, so where are you getting your  
**8** information?  
**9** MS. SCHULTZ: Just having -- living in  
 10:05AM **10** this area and having clients that are also in  
**11** the communication industry. Some of them have  
**12** advised me that they really didn't have  
**13** issues. The radio station was able to  
**14** communicate.  
 10:05AM **15** I've been appointed by the governor, I'm  
**16** on Volunteer Florida, that deals with this in  
**17** this area. So I'm the commissioner in this  
**18** area for those emergency management -- i was  
**19** not appointed at the time in 2004. We've  
 10:06AM **20** looked at those studies, and based on those  
**21** studies the County did everything they  
**22** possibly could with the communication they had  
**23** available to help those in need. So while  
**24** communication may not have been full speed,  
 10:06AM **25** there was communication. There's no evidence

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**1** to support that a 199-foot tower is going to  
**2** provide better communication than a 150-foot  
**3** tower. I think the other concerns outweigh  
**4** the benefit of any better use of  
 10:06AM **5** communication. There's other radio  
**6** communication providers in the area that may  
**7** be competitive to the applicant. However, I  
**8** mean, this is just a business decision that  
**9** the applicant has made under the guise that,  
 10:06AM **10** hey, it can help us during a hurricane. Well,  
**11** we don't know what will help us in a  
**12** hurricane. We don't know if the 199-foot  
**13** tower will be existing and standing up and  
**14** operational post hurricane wind driven speed  
 10:07AM **15** winds.  
**16** MR. STROMQUIST: Just for your  
**17** information, none of the County Nextel phones  
**18** worked for a couple of weeks after Ivan. They  
**19** had to come in and put in a new communication  
 10:07AM **20** system.  
**21** MS. SCHULTZ: I don't know if they did  
**22** work or did not work.  
**23** MR. SMITH: Any other questions from the  
**24** Board?  
 10:07AM **25** Any questions from the staff?

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**1** MR. HOLMER: No, sir.  
**2** MR. SMITH: Applicant.  
**3** MR. RIGBY: I have one question of  
**4** Ms. Schultz.  
 10:07AM **5** Ms. Schultz, I want to show you a  
**6** photograph, and your client, is it Family  
**7** Funeral and Cremation?  
**8** MS. SCHULTZ: Yes, that's correct,  
**9** Mr. Rigby.  
 10:07AM **10** MR. RIGBY: And does this photograph  
**11** depict their sign in front of their building?  
**12** MS. SCHULTZ: First of all --  
**13** MR. RIGBY: Does it?  
**14** MS. SCHULTZ: I would like to object to  
 10:07AM **15** this photograph. Can you tell me who took the  
**16** photograph? Let's go ahead and do the --  
**17** let's go ahead and verify the authenticity of  
**18** the photograph.  
**19** MR. RIGBY: You've been out there. You  
 10:07AM **20** can verify it yourself, and if you don't know,  
**21** then tell us you don't know if that's your  
**22** client's sign.  
**23** MS. SCHULTZ: This sign, right here?  
**24** MR. RIGBY: Yes.  
 10:07AM **25** MS. SCHULTZ: My client has a larger sign

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**1** on the property.  
**2** MR. RIGBY: Well, again, if you don't  
**3** know, just tell us you don't know, and I'll  
**4** ask somebody else.  
 10:08AM **5** MS. SCHULTZ: I don't know if I've  
**6** actually seen this sign.  
**7** MR. RIGBY: Very well. Thank you.  
**8** MR. JONES: I want to say something to  
 10:08AM **9** address the Board as far as the wind rating  
**10** system. Every structure like that definitely  
**11** -- the building code has a wind rating system  
**12** that they've got to meet. All of those  
**13** standards, wind load, those things will be  
**14** addressed, the building code, the wind  
 10:08AM **15** velocity, wind speed before they even begin  
**16** construction. There is a system for as far as  
**17** the wind rating of those structures of that  
**18** magnitude.  
**19** MR. SMITH: Kevin Watts.  
**20** (Kevin Watts sworn.)  
**21** MR. WATTS: Good morning, Board. My name  
**22** is Kevin Watts. I am the funeral director and  
**23** manager at Family Funeral and Cremation. I  
**24** just want to go on the record saying I am  
 10:09AM **25** opposed to the tower. And the following

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**1** points that I want to bring up are my opinion:  
**2** The aesthetics. Unlike a radio station  
**3** our business relies on the public using our  
**4** building and foot traffic coming into our  
 10:09AM **5** building for services provided on a daily  
**6** basis.  
**7** In my opinion, property values -- the  
**8** tower is going to provide an eyesore that will  
**9** detract from the appearance and value of our  
 10:09AM **10** property located next door at 7253 Plantation  
**11** Road.  
**12** In any opinion, health factors. Years of  
**13** documented facts relating to health factors,  
**14** radio frequency radiation, leukemia, uterine  
 10:09AM **15** cancer, breast cancer, as well as cardiac,  
**16** reproductive and neurological health issues.  
**17** In my personal opinion, all this talk of  
**18** towers falling in strong winds in hurricane  
**19** conditions, that scares me in regards to  
 10:10AM **20** falling on our building, our professional  
**21** vehicles parked next door or onto the vehicles  
**22** traveling down the interstate causing a chain  
**23** reaction accident disaster.  
**24** Thank you for your time.  
**25** MR. SMITH: Thank you, sir. Any questions

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**1** from the Board?  
**2** MR. BRYAN: I have one. I'm just curious,  
**3** sir, with respect to the aesthetics, your  
**4** customers or clients coming to your  
 10:10AM **5** establishment, it's your feeling, and I'm only  
**6** speaking for your customers, that they would  
**7** be able to discern and negatively view a  
**8** 199-foot tower versus a 150-foot tower, which  
**9** would be authorized under the building code?  
 10:10AM **10** MR. WATTS: Yes, sir.  
**11** MR. BRYAN: That extra 49 feet would be  
**12** detrimental to your business?  
**13** MR. WATTS: Any feet is going to be  
**14** detrimental to our business. The extra 49  
 10:10AM **15** will be more detrimental.  
**16** MR. BRYAN: Thank you.  
**17** MR. SMITH: Any questions by staff?  
**18** MR. HOLMER: No, sir.  
**19** MR. SMITH: Applicant.  
 10:11AM **20** Mark McMillen.  
**21** (Mark McMillen sworn.)  
**22** MR. McMillin: Good morning. My name is  
**23** Mark McMillen. I live at 10917 Bridge Creek  
**24** Drive, and I would like to state that I'm  
 10:11AM **25** opposed to this tower. In hearing the

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**1** testimony here, I want everybody to know  
**2** there's not a tower there. It seems like  
**3** there's some discussions about whether there's  
**4** a tower there. There's not a tower there.  
 10:11AM **5** I know that we don't want to talk about  
**6** the frequencies and stuff. There are many  
**7** studies that can be looked up and talk about  
**8** those type of things. My major concern is  
**9** with the aesthetics and possibility of it  
 10:11AM **10** falling on us or the interstate.  
**11** We talked about Hurricane Ivan and the  
**12** issues with being able to communicate. What  
**13** about the massive traffic and everything.  
**14** Remember all the traffic issues during  
 10:12AM **15** Hurricane Ivan. If that thing fell on the  
**16** interstate and onto a federal highway with all  
**17** the problems we have with Interstate 10 and  
**18** the bridge there, we could have some real  
**19** issues.  
 10:12AM **20** That's just basically what I have. Like I  
**21** said, there's not a tower there and it's very  
**22** close to the next door building and  
**23** interstate. I think the gentleman spoke about  
**24** when he put -- the building was there and the  
 10:12AM **25** interchange hadn't been built yet and now it

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**1** is and it's very close to the back of their  
**2** building, so I'm not really even sure where  
**3** they can put it back there. But to me, that  
**4** would be a major concern. That's about all I  
 10:12AM **5** have.  
**6** MR. SMITH: Thank you, sir. Questions  
**7** from the Board?  
**8** From the staff?  
**9** MR. HOLMER: No, sir.  
 10:12AM **10** MR. SMITH: From the applicant?  
**11** MR. RIGBY: No, sir.  
**12** MR. SMITH: Thank you, sir.  
**13** Chris Jensen.  
**14** (Chris Jensen sworn.)  
 10:13AM **15** MR. JENSEN: Good morning, Board. My name  
**16** is Chris Jensen. I own the property at 7253  
**17** Plantation Road, which is directly adjacent to  
**18** where they want to erect this tower.  
**19** The first thing I would like to ask the  
 10:13AM **20** Board is since I'm so closely affected by  
**21** that, could I please have a few extra minutes  
**22** to go through my suggestions here?  
**23** MR. SMITH: Sure.  
**24** MR. JENSEN: First off, I would like to  
 10:13AM **25** say, you know, as far as the emissions,

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1 everybody keeps objecting, but no one has read  
 2 the actual act. I was on the phone yesterday  
 3 with the FCC. The FCC Act says the Board  
 4 cannot solely base their denial upon  
 10:14AM 5 emissions. It doesn't mean it can't be part  
 6 of it.  
 7 Also, you know, it seems that y'all have  
 8 been extremely misled by staff and the  
 9 applicant, I mean extremely misled. If I  
 10 looked through this stuff -- you know, the  
 11 applicant made the comment that they're  
 12 governed by the FCC and so forth and, you  
 13 know, they've got all these approvals. The  
 14 FCC has nothing on file with them, absolutely  
 10:14AM 15 nothing. You can go to the FCC website. I  
 16 put every name in there under the sun and  
 17 talked to them yesterday. They don't even  
 18 have an application at this time. There is  
 19 nothing with the FCC. If there was something  
 10:14AM 20 approved back in '06, maybe there was, maybe  
 21 there wasn't, who knows. But if he didn't  
 22 need your approval, then they wouldn't be  
 23 here. The FCC says that you can do the  
 24 approval based on your local authorities only  
 10:14AM 25 if the local authorities give their blessing.

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1 Okay?  
 2 Mr. Hoxeng himself mentioned several times  
 3 about the hurricanes. You know, keep in mind  
 4 about the hurricanes. I mean that's a  
 10:15AM 5 legitimate concern with something 199 feet in  
 6 the air. You know, everybody talks about well  
 7 150 feet is already approved. I understand  
 8 that. When they apply for that permit I can  
 9 assure you I will vigorously be after that  
 10:15AM 10 when they apply for that permit, if they do,  
 11 for 150 feet.  
 12 Let's talk about some of these things on  
 13 the criteria. In one part of it, you know,  
 14 it's going to hold cellular towers, radio  
 10:15AM 15 heads and things of that nature. If you read  
 16 up on that stuff, I mean, that's really just a  
 17 money making thing for Mr. Hoxeng. You know,  
 18 he's going to rent space on this tower to all  
 19 sorts of different places. I mean, there's a  
 10:15AM 20 reason why his tower now is over in Alabama.  
 21 Towers are meant to be out away from  
 22 everything. I mean, this thing is a public  
 23 danger. It is a nuisance.  
 24 Other harmful effects. You know they say  
 10:16AM 25 it can't solely be. It doesn't have to be

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1 solely be based on that, but it certainly is  
 2 worth talking about. It is a real concern.  
 3 I've got studies here signed by 50, 60, 70  
 4 doctors.  
 10:16AM 5 You know, another thing that staff said is  
 6 they don't find any anticipated nuisances. I  
 7 mean -- I mean that's a visual nuisance if  
 8 I've ever seen one. I mean, that's an  
 9 absolute visual nuisance. You know, to  
 10:16AM 10 everybody, not only us, everybody in the area,  
 11 everybody coming to our town, when they come  
 12 down I-10 or I-110 or something, I mean, that  
 13 is a visual nuisance.  
 14 Also, you know, I would think that the EPA  
 10:16AM 15 would have something to do with this. You  
 16 know, the EPA would -- I don't see anything  
 17 mentioned in here, but you think that you  
 18 would need an air permit from the EPA to do  
 19 something like this. If this is going to go  
 10:16AM 20 forward, I mean, I think we need a complete  
 21 study of exactly what the effects are by  
 22 somebody that knows a whole lot more than I do  
 23 or any of us probably in this room. To my  
 24 knowledge, we don't have any doctors of  
 10:17AM 25 environmental, engineering or anything in here

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1 today. If we did, I think they would tell you  
 2 a whole different thing.  
 3 The harmful effects, you know, under  
 4 nuisance, it is known that these things  
 10:17AM 5 interfere with telephones, computers and so  
 6 forth. I mean, business nowadays is driven by  
 7 that stuff. You know, we don't need that next  
 8 door.  
 9 Also, I don't know if this applies, staff  
 10:17AM 10 would have to let me know, but I would think  
 11 that you've got to spend a certain amount on  
 12 ADA requirements if you're going to improve  
 13 the facility. It says right here the tower is  
 14 an upgrade. Well, if the tower is an upgrade,  
 10:17AM 15 the code clearly says that if you're going to  
 16 upgrade your facility you've to spend a  
 17 certain percentage on ADA requirements. I  
 18 don't see that mentioned anywhere. I would  
 19 certainly like that to get addressed.  
 10:17AM 20 The picture, number five there, buffers,  
 21 it says the property is fully landscaped.  
 22 I've got pictures that were taken just  
 23 yesterday. There's absolutely no landscaping  
 24 anywhere in between my property, his property.  
 10:18AM 25 In between the back where this tower is

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1 supposedly going to go and the interstate,  
 2 there is a chain link fence. That's it.  
 3 Also, staff themselves have testified  
 4 before this Board, themselves, saying this  
 10:18AM 5 isn't an industrial area, this is nothing to  
 6 do with an industrial area. Now they're  
 7 calling it, not only industrial, but heavy  
 8 industrial. I mean, the applicant has said  
 9 the same thing. Mr. Rigby has been up here  
 10:18AM 10 himself saying it's not an industrial area.  
 11 Now it's a heavy industrial area. I mean,  
 12 come on. You can stand there and the picture  
 13 shows, you stand right at the front of this  
 14 place, right across the street there's a  
 10:18AM 15 restaurant. There's a new bar right there.  
 16 There's hotels right over the thing -- across  
 17 the street that way. You know, they talked  
 18 about, well, the interstate is a buffer. I  
 19 mean that's flat. I don't know what kind of  
 10:19AM 20 buffer that is. You know, this thing is 199  
 21 feet in the air. I don't see how the  
 22 interstate can be a buffer.  
 23 These houses and these people that live  
 24 right here are within 500 feet. The code  
 10:19AM 25 clearly says within 500 feet you've got a have  
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1 a conditional use. I think you should  
 2 absolutely consider that.  
 3 Some of these other things here that I was  
 4 looking at, you know, the environment,  
 10:19AM 5 environmental impact. I have studies here.  
 6 Again, the code does say your decision can't  
 7 solely be based on radiation, but it says  
 8 nothing to the effect that that can't be part  
 9 of it.  
 10:19AM 10 So you're not getting the whole story.  
 11 You're absolutely not getting the whole story  
 12 from staff or from the applicant and I think  
 13 you should really look at it really hard.  
 14 The sign limits in the area are 50 feet.  
 10:19AM 15 Fifty feet is the sign limits in the area.  
 16 You know, why would we want something 199 feet  
 17 there. If you look at the hotels and the  
 18 restaurants in the area, there's probably  
 19 1,000 people that spend over eight, nine hours  
 10:20AM 20 a day in this general area. They say, well,  
 21 nobody is living there. How long do you  
 22 really stay at your house? I mean, what are  
 23 you there, ten, twelve hours a day maybe?  
 24 There's well over 1,000 people that spend that  
 10:20AM 25 much time there.  
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1 Most of these radio towers, I do believe,  
 2 should be out in the middle of nowhere. I  
 3 mean, that's just a given fact. If a  
 4 hurricane blows one of these things down,  
 10:20AM 5 you're going to have a major problem in your  
 6 hands if that thing goes across the interstate  
 7 and the traffic is backed up and everybody is  
 8 trying to get out of town. I think there  
 9 could seriously be serious consequences to the  
 10:20AM 10 County, if something like that were going to  
 11 happen. You know, your whole thing is based  
 12 on what ifs. I get it. Yeah, there's  
 13 safeguards to protect that thing from falling  
 14 down. I get it. I understand that, but that  
 10:20AM 15 doesn't mean it couldn't happen.  
 16 And as far as the ill effects and so forth  
 17 from the environment or from the radio waves,  
 18 I think if there's any chance you're putting  
 19 not even one citizen in any piece of danger  
 10:21AM 20 whatsoever it is your job to protect the  
 21 citizens.  
 22 One last thing, I am not a real estate  
 23 agent, I'll tell you right off the bat, but I  
 24 have plenty of studies right here that are  
 10:21AM 25 done by professional real estate agents and  
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1 doctors. 94 percent of people polled would  
 2 not want this thing next door to them and if  
 3 they went to buy something next door to them  
 4 it would seriously affect what they're willing  
 10:21AM 5 to pay for it. Will it affect real estate  
 6 values? Absolutely it will. Ask yourself  
 7 that question.  
 8 MR. HOLMER: Unless you're an appraiser,  
 9 they can't take that.  
 10:21AM 10 MR. JENSEN: I've got a study right here,  
 11 if you would like to see it.  
 12 MR. HOLMER: It's the Board's pleasure.  
 13 MR. JENSEN: Again, I think the Board has  
 14 been extremely misled by staff and also by the  
 10:22AM 15 applicant, so I encourage you to do your own  
 16 research, look at it and, I mean, a lot of  
 17 these things here today are opinions, but  
 18 that's what you're here for. I mean,  
 19 otherwise we wouldn't be before the Board. If  
 10:22AM 20 they didn't need your approval, they wouldn't  
 21 be here. They definitely need your approval.  
 22 There's no buffers, there's no anything here.  
 23 This thing doesn't belong here. I think you  
 24 should absolutely keep that in mind and ask  
 10:22AM 25 yourself the question. Would you want to be  
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1 next door to it?

2 MR. SMITH: Board members, any questions

3 of the speaker.

4 MR. STROMQUIST: I have one question. You

10:22AM 5 keep bringing up we're being misled by staff.

6 We depend on our staff, and I don't see where

7 they were misleading us at all, and they're

8 the experts in this. They do this all the

9 time. You know, they give us the facts. We

10:23AM 10 have to go by the facts that they give us.

11 There is no facts that they're putting out

12 that are untrue. You know, they don't give us

13 bad information. They just give us the facts

14 that they can give us according to the Land

10:23AM 15 Development Code and what they're allowed to

16 tell us.

17 They don't go on a campaign for anybody

18 that comes in with an application. They're

19 strictly here to support the Board of

10:23AM 20 Adjustment and to give us their

21 Findings-of-Fact.

22 MR. JENSEN: Yes, sir.

23 MR. JONES: Mr. Stromquist, thank you for

24 that. If Mr. Jensen has any, any concerns

10:23AM 25 that he may see where staff is not giving

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1 adequate information, as the director I will

2 be glad to talk to him, as he knows before.

3 We have had many discussions with Mr. Jensen

4 on other issues, so he's aware of my open door

10:24AM 5 policy to sit down and discuss these matters.

6 If he can present us with the information, we

7 would be glad to review it. But as

8 Mr. Stromquist stated, we are here to provide

9 you with the facts. Everybody may not like

10:24AM 10 the facts that we present, but it is the facts

11 and we do that respectfully and carefully.

12 MS. HUAL: I just wanted to interject for

13 the Board's benefit. I'm sure you've all

14 reviewed Article 7, Section 7.18.00 relating

10:24AM 15 to commercial communication towers which is

16 referenced in the criterion. The provision

17 that is being discussed is sub J, relating to

18 emissions and it states: No location for

19 placement, construction or modification of a

10:24AM 20 commercial communication tower or

21 communication antenna shall be regulated on

22 the basis of the environmental effects of

23 radio frequency emissions to the extent that

24 commercial communication towers and antenna

10:25AM 25 comply with the FCC regulation concerning such

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1 emissions. And that was a "shall".

2 MR. JENSEN: If I may respond to those

3 things, I mean, I listened, but if you go a

4 step further it says: Comply with the FCC.

10:25AM 5 If you look on the FCC's website, the Act is

6 right on there and it says solely. You cannot

7 base it solely upon that.

8 Another thing here, you know, yes, sir, I

9 appreciate what you say that staff does their

10:25AM 10 work and staff generally does a pretty good

11 job, but in the beginning of this it was asked

12 has anybody been out there? No. No one has

13 been out there. No one really knows what's

14 going on here.

10:25AM 15 And I can easily point to something that

16 absolutely can be proven extremely easy.

17 Criterion Number (8), Findings-of-Fact from

18 the staff: The proposed use will be

19 compatible within the surrounding heavy

10:25AM 20 industrial zoning.

21 That's what the staff told you. Staff has

22 testified under oath right here in this very

23 room that that is not heavy industrial zoning.

24 MR. JONES: Mr. Jensen, could you give us

10:26AM 25 an opportunity to respond?

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1 MR. JENSEN: I mean, it says it right here

2 in black and white.

3 MR. JONES: Could you give us an

4 opportunity to respond.

5 MR. JENSEN: It says it right here in

6 black and white, guys. You've got it right in

7 front of you, Number (8). Please look at it.

8 MR. JONES: Respectfully.

9 MR. STROMQUIST: I don't see industrial in

10:26AM 10 there anywhere.

11 THE WITNESS: Heavy commercial zoning.

12 MR. SMITH: Point of order.

13 MR. HOLMER: Staff hasn't had a chance --

14 I have a statement and a question of the

10:26AM 15 witness.

16 MR. SMITH: All right.

17 MR. HOLMER: First, my statement. You can

18 see there in black and white, as you said,

19 that staff, in fact, referred to this as

10:26AM 20 commercial zoning, not industrial in any way,

21 shape or form. Although the zoning does allow

22 for light industrial we were referring to the

23 commercial nature of it.

24 Now, there's been a question of

10:26AM 25 development standards. Once again, this

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1 project does have to go through development  
 2 review. These things will get addressed at  
 3 that time.  
 4 You mentioned several times -- here comes  
 10:27AM 5 the question. You mentioned several times  
 6 that the tower, any tower, is going to be a  
 7 nuisance there, it's going to be a visual  
 8 nuisance, something that nobody wants near  
 9 them and it's going to be some new hazard,  
 10:27AM 10 correct? Do I have the gist of that?  
 11 MR. JENSEN: What's that? I'm sorry.  
 12 MR. HOLMER: I'm sorry. You mentioned  
 13 that it's a nuisance having a tower there?  
 14 MR. JENSEN: Yes.  
 10:27AM 15 MR. HOLMER: And this is some new thing in  
 16 the area that's going to cause a problem?  
 17 MR. JENSEN: Correct.  
 18 MR. HOLMER: Up on the screen, if you  
 19 would, that's the photograph I took of our  
 10:27AM 20 public hearing sign. And just for  
 21 clarification, I'm going to pull it up because  
 22 that's in the PowerPoint and you can't see as  
 23 well. With this you can zoom in a little bit.  
 24 So just to get my reference, that's your sign  
 10:27AM 25 there, correct?  
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1 MR. JENSEN: I don't have my glasses. I  
 2 can't really see that. It appears to be, yes.  
 3 MR. HOLMER: Can you tell me what this  
 4 metal lattice work structure 260 feet to the  
 10:28AM 5 southwest of your front door is?  
 6 MR. JENSEN: I mean, I'm no engineer. I  
 7 can't even speculate what that is, but I think  
 8 it's a power line.  
 9 MR. HOLMER: Yes, sir, it is.  
 10:28AM 10 MR. JENSEN: I think. And also that's  
 11 where the homeless slept across from the hotel  
 12 there.  
 13 MR. HOLMER: But the structure, I don't  
 14 think anybody would disagree, I mean, I could  
 10:28AM 15 pull up the street view show you, it is a Gulf  
 16 Power high tension line tower connecting to a  
 17 number of other ones where the power lines run  
 18 along that side of the interstate.  
 19 Was that there before this incident? I  
 10:28AM 20 mean, has it been there?  
 21 MR. JENSEN: I don't know. I would assume  
 22 so.  
 23 MR. HOLMER: Okay. That's all.  
 24 MR. JENSEN: I mean, it's -- yeah, it's  
 10:28AM 25 Gulf Power. I know anything new that's gone  
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1 in the area has absolutely gone underground,  
 2 even Mr. Hoxeng refers to that.  
 3 But I do think you folks should absolutely  
 4 look at everything here. You know, some of  
 10:29AM 5 the numbers that are given to you and some of  
 6 the things that are happening here, it seems  
 7 to me that you've been misled a little. I  
 8 think you ought to look into it just a little  
 9 bit, because it is not heavy zoning.  
 10:29AM 10 I also have pictures here that I would  
 11 like to show you. The only thing heavy  
 12 commercial zoning it looks like in that area  
 13 is the applicant's property. I mean, I do  
 14 have the pictures.  
 10:29AM 15 MR. JONES: And, Mr. Jensen, you've been  
 16 stating as you've been speaking -- C-2 zoning  
 17 it does allow for industrial type uses.  
 18 However, this particular area, it does not  
 19 have industrial type uses. So the zoning  
 10:29AM 20 itself, it does allow for that, so that is --  
 21 now, if you want me to explain it to you I  
 22 will be glad to explain it to you. We'll go  
 23 through the code completely, but the zoning  
 24 and the conditional use criteria, that's the  
 10:30AM 25 issue at hand. Whether or not you may feel  
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1 like that is not zoned correctly, that's this  
 2 Board's decision. That's for another case.  
 3 Staff has done and is doing what the Land  
 4 Development Code requires for the zoning, and  
 10:30AM 5 presenting to them the Findings-of-Fact based  
 6 upon the zoning. All the other issues I will  
 7 be glad to sit down with you and your attorney  
 8 and our attorney and we will discuss these  
 9 matters.  
 10:30AM 10 MR. SMITH: Any other questions from the  
 11 Board for the speaker?  
 12 Any other questions from staff?  
 13 MR. HOLMER: No, sir.  
 14 MR. SMITH: Questions from the applicant?  
 10:30AM 15 MR. HOXENG: No, sir.  
 16 MR. SMITH: Thank you, Mr. Jensen.  
 17 Does the Board have any questions?  
 18 MR. JENSEN: My pictures, no? Does  
 19 anybody want to see those?  
 10:31AM 20 MR. HOLMER: Yeah, that's at the Board's  
 21 pleasure.  
 22 MR. JENSEN: I would like to show you what  
 23 the area looks like, since everybody says they  
 24 haven't seen it.  
 10:31AM 25 MR. SMITH: At this point the Chair would  
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1 entertain any motion to accept the film into  
 2 evidence.  
 3 MR. BRYAN: I'll move to accept those,  
 4 please.  
 10:31AM 5 MR. SMITH: We have a motion to accept the  
 6 film into evidence. Is there a second? The  
 7 motion dies for lack of a second.  
 8 MR. JENSEN: Thank you.  
 9 MR. SMITH: Does the Board have any  
 10:31AM 10 questions of the applicant?  
 11 MR. BRYAN: I do have some. I must have  
 12 lost it a little bit. There's been a lot of  
 13 conversation. Would you refresh why the  
 14 additional 49 feet is necessary for you to go  
 10:32AM 15 through this application process for  
 16 conditional use, that otherwise could have  
 17 been met by simply compiling with the code at  
 18 150 feet?  
 19 MR. HOXENG: Yes, sir. Again, I'm Dave  
 10:32AM 20 Hoxeng. Mary and I own the radio stations.  
 21 If you go to the package that the staff  
 22 prepared, there's a map. There's actually two  
 23 maps in there. Do y'all have those?  
 24 MR. BRYAN: I do now.  
 10:32AM 25 MR. HOXENG: Again, this is a multi use

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1 communication tower and the very top of the  
 2 tower will have a microwave, which goes to the  
 3 two regular tall towers. Our everyday program  
 4 will be fed on those.  
 10:32AM 5 MR. BRYAN: I just need a simple answer,  
 6 sir. What does this extra 49 feet buy you,  
 7 provide for you, accommodate, that otherwise  
 8 would not have been met by 150 feet?  
 9 MR. HOXENG: So if you look at the two  
 10:32AM 10 coverage maps -- do you have both of them  
 11 there?  
 12 MR. BRYAN: I don't really want to look at  
 13 them. I would just like to hear a statement  
 14 from you that answers my question.  
 10:33AM 15 MR. HOXENG: So the coverage of 150-foot  
 16 tower would be 173,701 people, and with the  
 17 extra 49 feet it goes up almost 45,000 people  
 18 to 218,493, so it gives better coverage during  
 19 times of emergency.  
 10:33AM 20 MR. BRYAN: Okay. But there is a code  
 21 that says 150 that would provide you with a  
 22 certain degree of coverage and, therefore,  
 23 revenue, I presume. This allows you for  
 24 additional revenue because of more coverage,  
 10:33AM 25 more advertising dollars it could pull in

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1 because of people reached, I presume?  
 2 MR. HOXENG: No, sir. Our every day  
 3 configuration is we broadcast off a 940-foot  
 4 tower in Alabama. It's on a 40-acre property.  
 10:33AM 5 It's a huge tower. Towers like that can fall  
 6 down in hurricanes because of tornadoes,  
 7 because they twist them and they fall down.  
 8 It's a guy tower. So this is the backup tower  
 9 for that tower and also the backup tower for  
 10:34AM 10 the tower that's down on Palafox, which was  
 11 put out of commission by Hurricane Ivan when  
 12 that huge chunk of concrete landed next to us.  
 13 So this is back up. It has nothing to do with  
 14 revenue.  
 10:34AM 15 This tower would only be used for  
 16 broadcast after we lost one of our main  
 17 towers, for any reason. It could fall down.  
 18 We could lose the communications. We could  
 19 lose the power.  
 10:34AM 20 MR. BRYAN: I understand. I want to ask  
 21 again. I guess, I'm still unclear what the 49  
 22 feet buys you. So as a backup, in particular,  
 23 150-foot backup tower is adequate.  
 24 MR. HOXENG: It buys us 26 percent. We  
 10:34AM 25 can reach 26 percent more citizens with the

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1 extra 49 feet.  
 2 MR. BRYAN: Okay. That's good enough for  
 3 me.  
 4 MR. HOLMER: And one extra thing I know  
 10:34AM 5 has come up several times. Keep in mind this  
 6 conditional use is not a variance. A variance  
 7 is based on a need as opposed to a want. A  
 8 conditional use you can approach it as a want.  
 9 MR. BRYAN: That's a good point. Thank  
 10:35AM 10 you.  
 11 MR. RIGBY: Mr. Chairman, I would -- and  
 12 again, most times I would simply sit down  
 13 here, and staff has addressed the accusations  
 14 made against staff for misleading this Board.  
 10:35AM 15 Those accusations have also been aimed at me,  
 16 and my reputation in this business is based  
 17 upon what I do and say in front of boards like  
 18 you.  
 19 And I want to address one issue. Ms. Hual  
 10:35AM 20 addressed the County code provision. There's  
 21 no reference in there to solely or any of  
 22 those comments. I have for you the federal  
 23 statute. It's very short. I can read it and  
 24 I can pass it out to you. And what this  
 10:35AM 25 statute says is: No state or local government

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1 or instrumentality thereof, may regulate the  
 2 placement, construction and modification of  
 3 personal wireless service facilities on the  
 4 basis of the environmental effects of radio  
 10:36AM 5 frequency emissions to the extent that such  
 6 facilities comply with the commissions'  
 7 regulations concerning such emissions.  
 8 If that had said not solely, I would have  
 9 told you that. That's the statute, and I have  
 10:36AM 10 copies here for every member of the Board, if  
 11 you want to see it. And so I wanted to  
 12 address that fact that implied that I had in  
 13 some fashion led you to believe something that  
 14 was not true.  
 10:36AM 15 In rebuttal, I would like Mr. Hoxeng to  
 16 identify the photograph I showed Ms. Schultz.  
 17 Frankly, you've seen the base of that tower,  
 18 but Mr. Hoxeng can identify this and offer one  
 19 other bit of testimony as to what he sought to  
 10:36AM 20 do in prior years to avoid having to put up a  
 21 tower so that he can also transmit to those  
 22 other towers, if I might do so.  
 23 MR. SMITH: And if we will, we'll let this  
 24 be the closing statement.  
 10:37AM 25 MR. RIGBY: That will be fine.

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1 Mr. Hoxeng, I'm going to show you this  
 2 photograph. Did you take it?  
 3 MR. HOXENG: Yes, I took it yesterday.  
 4 MR. RIGBY: Just describe what it depicts.  
 10:37AM 5 MR. HOXENG: It's a photograph taken from  
 6 my parking lot. Looking across my neighbor's  
 7 parking lot you can see the Family Funeral and  
 8 Cremation sign, and it shows the large high  
 9 tension power tower directly -- in the parking  
 10:37AM 10 lot directly across from the Family Funeral  
 11 and Cremation facility.  
 12 MR. HOLMER: If I may, staff doesn't  
 13 object or dispute showing these photographs,  
 14 but that wasn't accepted into evidence. Are  
 10:37AM 15 you presenting it?  
 16 MR. RIGBY: He's identified what it is and  
 17 where he's taken it. I would like to offer it  
 18 into evidence. He's then going to offer one  
 19 bit of testimony concerning an effort to talk  
 10:38AM 20 to Gulf Power concerning potential use of that  
 21 structure for his microwave.  
 22 MR. SMITH: Board, we have photos that  
 23 have been offered into evidence. We would  
 24 need to accept or not accept that, keeping in  
 10:38AM 25 mind that we did not accept the last effort to

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1 enter photos into evidence. But the Chair is  
 2 open to a motion to this item that's been  
 3 introduced. Seeing none, the motion fails.  
 4 MR. RIGBY: Mr. Hoxeng, with respect to  
 10:38AM 5 that tower, is there a tower directly across  
 6 the street from Family Cremation?  
 7 MR. HOXENG: Yes, sir, it's a Gulf Power  
 8 high tension line tower.  
 9 MR. RIGBY: Did you, in the past, make any  
 10:38AM 10 effort to see if you could locate a microwave  
 11 station on the top of that tower to avoid a  
 12 tower at your location?  
 13 MR. HOXENG: Yeah. The project that I'm  
 14 asking you guys to approve today is hundreds  
 10:39AM 15 of thousand of dollars, and I did ask. I met  
 16 with Gulf Power a couple of years ago to see  
 17 if we could put a microwave system on that  
 18 tower to shoot over the highway, and their  
 19 engineers just essentially vetoed it as  
 10:39AM 20 dangerous, so we weren't able to do that. But  
 21 the neighborhood already has these high  
 22 tension line towers and I guess that's part of  
 23 my point.  
 24 MR. RIGBY: Do you know the height of that  
 10:39AM 25 tower?

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1 MR. HOXENG: I don't.  
 2 MR. RIGBY: Thank you. No other  
 3 questions.  
 4 MR. SMITH: Thank you, sir. Board, any  
 10:39AM 5 questions of the applicant?  
 6 Staff, would you like to make a closing  
 7 statement?  
 8 MR. HOLMER: No, sir.  
 9 MR. SMITH: All right. The Chair will now  
 10:39AM 10 entertain a motion regarding this item. In  
 11 your opinion --  
 12 MR. JONES: I'm sorry. First I  
 13 would again -- normally, I don't do this, but  
 14 do -- I would like to defend Mr. Andrew Holmer  
 10:39AM 15 and everyone on my staff. He is a man of  
 16 integrity, for the record. He does his job  
 17 very, very well. In all of these cases he  
 18 tries to be content neutral, remaining fair to  
 19 everyone. So any accusation that he or myself  
 10:40AM 20 or any person in my staff is trying to mislead  
 21 you today, respectfully, I take offense to  
 22 that for that remark. I want to make that for  
 23 the record, that we try our best to be a team  
 24 that is professional and operates with a  
 25 standard of ethnics and integrity. I just

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1 want to make that for the record. Thank you.  
 2 MR. SMITH: I see someone in the audience,  
 3 but did you fill out one of these?  
 4 THE WITNESS: Yes, sir, I did. Brittni  
 10:40AM 5 Forsell. I filled one out.  
 6 MR. SMITH: We missed you?  
 7 MS. FORSELL: Yes.  
 8 MR. SMITH: Oh, I'm terribly sorry.  
 9 Please come forward and be sworn in.  
 10 (Brittni Forsell sworn.)  
 11 MS. FORSELL: I would just like to express  
 12 my opinion. I've seen a few places around  
 13 here, including a couple of the two-story  
 14 condos over there off Plantation Road right  
 10:41AM 15 around the corner from Main Stay Hotel, and  
 16 I've also seen a few homes right there off of  
 17 Whitmire Road. You know, I've done research  
 18 myself and my opinion also is it's an eyesore.  
 19 Not only that, with the hurricane, who's to  
 20 say with the hurricane and the winds are  
 10:43AM 21 blowing and the weather, who's to say where  
 22 that thing is going to blow. No one knows  
 23 which direction it's going to go. It could go  
 24 all the way across the interstate and into the  
 10:41AM 25 apartments. That's the residents here.

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1 And I just, you know, and all of the  
 2 cancer, the leukemia. There's doctors'  
 3 offices literally right across the street from  
 4 Cat Country, not even a half of a football  
 10:41AM 5 yard across the street and, I mean, I'm very  
 6 concerned for the pregnant women and for the  
 7 children. There's a child care there, as well  
 8 and around the corner there's another set of  
 9 doctors' offices. They couldn't be here today  
 10:42AM 10 because they have to work, and I'm here to  
 11 actually speak for them, you know. They're  
 12 very concerned, as well Wendy's. Even Wendy's  
 13 has a right to health.  
 14 I just have one thing. I want to know  
 10:42AM 15 why, how come the backup tower they want to  
 16 put here in the residential area rather than  
 17 put the backup tower somewhere like far out.  
 18 I mean, I don't understand why you would put a  
 19 backup tower nearby a residential area or even  
 10:42AM 20 by a mall, for that matter. Why would you put  
 21 the backup near the residents? I just don't  
 22 understand that. I didn't understand that  
 23 when they were talking about it.  
 24 MR. SMITH: Thank you.  
 25 MS. FORSELL: Thank you.

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1 MR. SMITH: Thank you very much.  
 2 Any questions from the Board for the  
 3 speaker?  
 4 Staff, any questions?  
 10:42AM 5 MR. HOLMER: No, sir.  
 6 MR. SMITH: Applicant, any questions.  
 7 MR. HOXENG: No, sir.  
 8 MR. SMITH: Thank you, ma'am.  
 9 The Chair will now entertain a motion  
 10:43AM 10 regarding this item.  
 11 MR. BRYAN: Mr. Chairman, could I ask a  
 12 direct question to the staff prior to any  
 13 motion?  
 14 MR. SMITH: Sure.  
 15 MR. BRYAN: Thank you, sir.  
 16 Drew, do we know why the 150-foot limit  
 17 exists, what the preconditions and the  
 18 rationale that the existing code stands at 150  
 19 feet for which we're here today to  
 10:43AM 20 conditionally modify?  
 21 MR. HOLMER: That predates my time with  
 22 the County. I'm not sure why that was taken,  
 23 that height. There are a number of  
 24 measurements that we have that they do vary by  
 10:43AM 25 jurisdiction and I'm not -- I wasn't here when

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1 they imposed some of these distances.  
 2 MR. BRYAN: I ask because I don't even  
 3 know what the reasons are, but it is a code,  
 4 it's an established and existing code. A  
 10:43AM 5 homeowner who lives within a 500-foot radius  
 6 as delineated in that code, should be, it  
 7 seems to me, to expect the provisions of the  
 8 code to be upheld. When is a homeowner, one  
 9 buys in that area, perhaps sells that real  
 10:44AM 10 estate to another buyer, with the expectation  
 11 that code is going to be maintained and  
 12 preserved unless there's other good reasons  
 13 that things have changed, there's requirements  
 14 that were modified or called for some reason  
 10:44AM 15 to again change the code. I haven't heard  
 16 anything today that's been offered why that  
 17 150-foot limit, for whatever reason it was  
 18 imposed, should be challenged. It is  
 19 conditional, as you correctly cited. It would  
 10:44AM 20 be expedient perhaps, helpful, but there are  
 21 those who live within the bounds of the  
 22 existing code that would be affected and they  
 23 would not benefit by that conditional  
 24 modification.  
 10:45AM 25 So I just ask if we could be enlightened

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1 -- and I didn't really expect that you would  
 2 have the details of that particular aspect of  
 3 the code at your fingertips -- but if you see  
 4 my point, if we see the point here, that we're  
 10:45AM 5 asked to modify something, the grounds by  
 6 which we really don't know the basis for that  
 7 150 foot having been imposed in the first  
 8 place.  
 9 MR. STROMQUIST: I would be more inclined  
 10:45AM 10 to look at the difference, the 200-foot  
 11 difference, that where the criteria changes  
 12 was set up by, I would assume, the FCC. You  
 13 know, do they take the precedence? Did  
 14 Escambia County come in and say we're just  
 10:45AM 15 going to do three-quarters?  
 16 MR. BRYAN: It's all supposition.  
 17 MR. STROMQUIST: You know, we don't even  
 18 know what the reason was that they picked 150  
 19 feet. And I know the difference when you get  
 10:46AM 20 over 200 feet it's a whole new ball game, so I  
 21 don't necessarily have a problem with anything  
 22 that's under 200 feet. I have a question like  
 23 you do as why did the County get to 150 feet  
 24 instead of 200.  
 10:46AM 25 MR. HOLMER: Once again, that predates me.

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1 Like I said, there's a number of these  
 2 measurements. In some places, alcohol near a  
 3 school could be 300 feet. Well, in Escambia  
 4 County it's 1,000. These are varied by  
 10:46AM 5 localities and it's based on what the elected  
 6 officials deem appropriate.  
 7 This is a perfect example of why we have  
 8 the Board of Adjustment, why the Board of  
 9 Zoning Adjustment, which you will often hear  
 10:46AM 10 it referred to, why it's exists. You know,  
 11 with staff everything is black and white. And  
 12 as Mr. Jones said we play it right down the  
 13 middle. We do offer our opinion. That's  
 14 something that's sought by the Boards, that  
 10:47AM 15 you want to know what we think due to our  
 16 experience and expertise in the area. But at  
 17 the end of the day we're black white, and this  
 18 is a one of those things there is some gray to  
 19 it and that's why you're here. Lucky you.  
 10:47AM 20 It's a lot easier on us to go with the black  
 21 and white.  
 22 MR. BRYAN: You make a good point, if I  
 23 may finish the thought. When code is  
 24 established it is established by a Board  
 10:47AM 25 that's generally appointed or elected,

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1 and it represents, as in representative  
 2 government, the wishes of the people  
 3 presumably. It's codified. It exists. And  
 4 in my view as a citizen, it should stand for  
 10:47AM 5 something. If it's going to be challenged it  
 6 should be challenged on fact changing  
 7 circumstances, et cetera, particularly, if it  
 8 were to affect me, as a homeowner or citizen,  
 9 in some other capacity and it seems to me that  
 10:48AM 10 we're asked -- and I understand the gray area  
 11 and I perfectly understand the nature of the  
 12 existence of a board such as this to  
 13 subjectively apply code with some temperament,  
 14 with some consideration of the realities and  
 10:48AM 15 the exigencies of life as they exist.  
 16 Nonetheless, I think it's incumbent on us,  
 17 before we modify existing code that's in  
 18 place, to understand the basis for which we  
 19 are saying, you know what, that code was  
 10:48AM 20 probably okay, but in this case it doesn't and  
 21 shouldn't apply.  
 22 MR. HOLMER: You're not modifying the  
 23 code.  
 24 MR. BRYAN: No, no. We're making a  
 10:48AM 25 modification.

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1 MR. HOLMER: An exception to a code.  
 2 MR. BRYAN: But you see the gist of my  
 3 point here. That's all. And I hope my fellow  
 4 Board members -- the only reason I'm taking  
 10:48AM 5 the time here in a very lengthy morning  
 6 already, and I think a good morning, is to get  
 7 that point across.  
 8 MR. HOLMER: Codes are designed that way.  
 9 You know, there are certain things in there  
 10:49AM 10 that there is no exception to.  
 11 MR. BRYAN: Right.  
 12 MR. HOLMER: Other ones that there is an  
 13 exception to come before you guys.  
 14 MR. BRYAN: Fair enough. Fair enough.  
 10:49AM 15 Thank you.  
 16 MR. STROMQUIST: I'll make a motion.  
 17 MR. SMITH: Does the Board have any other  
 18 questions? Those comments are highly  
 19 relevant. Thank you.  
 10:49AM 20 The Chair will now entertain a motion.  
 21 (Motion by Mr. Stromquist.)  
 22 MR. STROMQUIST: I will make a motion to  
 23 accept staff's Findings-of-Fact and approve  
 24 the conditional use with the following  
 10:49AM 25 condition that the project must meet all

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1 conditions imposed through the site plan  
 2 review process.  
 3 MR. SMITH: We have a motion. Do we have  
 4 a second?  
 10:49AM 5 MR. ADAMS: Second.  
 6 MR. SMITH: We have a second. Any further  
 7 discussion?  
 8 MS. GUND: Mr. Chairman, before we vote, I  
 9 just wanted to make a disclosure that Dave  
 10 Hoxeng and I served on several boards  
 11 together, Leadership Pensacola, and Mary  
 12 Hoxeng and I have served on the Impact One  
 13 Hundred Board and that Kerry Anne Schultz and  
 14 I have had some common clients. I just to  
 10:50AM 15 make that disclosure. There's no financial  
 16 interest with any of the three of those  
 17 people.  
 18 MR. SMITH: I see no reason to recuse  
 19 yourself.  
 10:50AM 20 All right. We have a motion. We have a  
 21 second. Any discussion? Those in favor  
 22 signify by raising your right hand.  
 23 (Ms. Gund, Mr. Adams and Mr. Stromquist in  
 24 favor.)  
 10:50AM 25 MR. SMITH: Those opposed?

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1 (Mr. Bryan, Mr. Smith and Ms. Rigby  
 2 opposed.)  
 3 MR. SMITH: Three three.  
 4 MR. HOLMER: It fails at that point. It's  
 10:51AM 5 a denial. If there's not a positive vote,  
 6 it's a denial.  
 7 MR. RIGBY: If I can, just so there's no  
 8 surprises here later, the federal law also  
 9 requires that you make your findings in  
 10:51AM 10 writing. If you object to siting of the tower  
 11 you're required to make those findings in  
 12 writing and essentially, immediately. There's  
 13 a recent case, but basically it said waiting  
 14 until the next meeting to do so is not good  
 15 enough.  
 16 MR. BRYAN: Are you sure, sir?  
 17 Personally, I'm not objecting to the  
 18 construction of a tower.  
 19 MS. HUAL: And again, that provision  
 10:51AM 20 relates strictly to personal wireless service  
 21 facilities.  
 22 MR. RIGBY: Which this tower does include.  
 23 MS. HUAL: It will.  
 24 MR. RIGBY: You never have a tower  
 10:51AM 25 existing before you get approval for it, so it

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1 will have those. Again, I simply bring  
 2 that -- I don't want this to be a surprise 30  
 3 days later to somebody.  
 4 MR. BRYAN: We need clarification because  
 10:52AM 5 again my point was I'm not objecting to a  
 6 tower. I'm objecting to a tower that's over  
 7 150 feet in height.  
 8 MR. RIGBY: I understand that, but that  
 9 still requires --  
 10:52AM 10 MR. BRYAN: We need counsel to advise us  
 11 on that.  
 12 MR. RIGBY: Okay. And again, so however  
 13 you want to deal with that, but I brought  
 14 those statutes to Ms. Hual's attention. It's  
 10:52AM 15 in the same 47 U.S. Code, Section 332 that  
 16 requires those written findings by the Board  
 17 that makes the decision.  
 18 MR. BRYAN: If that's it, that's it.  
 19 MR. SMITH: Thank you, sir.  
 10:52AM 20 I have one item of business, but as far as  
 21 this part of the session, everyone is welcome  
 22 to leave or you're certainly welcome to stay.  
 23 We now have a full board and we need to elect  
 24 a vice chairman. So the Chair would seek a  
 10:52AM 25 motion to nominate a vice chair.

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1 MS. RIGBY: I'll nominate Mr. Stromquist.  
 2 UNIDENTIFIED BOARD MEMBER: Second.  
 3 MR. SMITH: We have a motion. We have a  
 4 second. Any discussion? Those in favor,  
 5 raise your right hand.  
 6 (Board members vote.)  
 7 MR. SMITH: It passes unanimously.  
 8 Congratulations.  
 9 The meeting is adjourned.  
 10:53AM 10 (The proceedings concluded at 10:53 a.m.).  
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**1** CERTIFICATE OF REPORTER

**2**

**3** STATE OF FLORIDA

**4** COUNTY OF ESCAMBIA

**5**

**6** I, LINDA V. CROWE, Court Reporter and  
**7** Notary Public at Large in and for the State of  
**8** Florida, hereby certify that the foregoing Pages 2  
**9** through 96 both inclusive, comprise a full, true, and  
**10** correct transcript of the proceeding taken on  
**11** Wednesday, February 18, 2015; that said proceeding  
**12** was taken by me stenographically, and transcribed by  
**13** me as it now appears; that I am not a relative or  
**14** employee or attorney or counsel of the parties, or  
**15** relative or employee of such attorney or counsel, nor  
**16** am I interested in this proceeding or its outcome.

**17** IN WITNESS WHEREOF, I have hereunto set my  
**18** hand and affixed my official seal on 3rd day of March  
**19** 2015.

**20**

**21**

**22** \_\_\_\_\_  
LINDA V. CROWE, COURT REPORTER  
Notary Public - State of Florida  
My Commission No.: EE 860695  
**23** My Commission Expires: 02-05-2017

**24**

**25**

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2  
3 CERTIFICATE OF REPORTER

4 STATE OF FLORIDA

5 COUNTY OF ESCAMBIA

6 I, LINDA V. CROWE, Court Reporter and  
7 Notary Public at Large in and for the State of  
8 Florida, hereby certify that the foregoing Pages 2  
9 through 39 both inclusive, comprise a full, true, and  
10 correct transcript of the proceeding taken on  
11 Wednesday, March 11, 2015; that said proceeding was  
12 taken by me stenographically, and transcribed by me  
13 as it now appears; that I am not a relative or  
14 employee or attorney or counsel of the parties, or  
15 relative or employee of such attorney or counsel, nor  
16 am I interested in this proceeding or its outcome.

17 IN WITNESS WHEREOF, I have hereunto set my  
18 hand and affixed my official seal on 12th day of  
19 March 2015.

20  
21 

22 LINDA V. CROWE, COURT REPORTER  
23 Notary Public - State of Florida  
24 My Commission No.: EE 860695  
25 My Commission Expires: 02-05-2017

Linda V. Crowe  
Notary Public, State of Florida  
Commission No. EE 860695  
Exp. February 5, 2017

IN AND FOR ESCAMBIA COUNTY, FLORIDA  
ESCAMBIA COUNTY PLANNING BOARD

Quasi-judicial proceedings held before the Escambia County Board of Adjustment, on Monday, March 11, 2015, at the Escambia County Central Office Complex, 3363 West Park Place, First Floor, Pensacola, Florida, commencing at 8:30 a.m.

CU-2015-03  
7251 Plantation Road

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BOARD OF ADJUSTMENT:

AUBY SMITH, CHAIRMAN  
TIMOTHY BRYAN  
JUDY GUND  
FREDERICK J. GANT (Not present)  
BLAISE ADAMS  
BILL STROMQUIST  
JENNIFER RIGBY  
KRISTIN HUAL, ASSISTANT COUNTY ATTORNEY

COUNTY STAFF:

HORACE JONES, DIRECTOR  
ANDREW HOLMER, SENIOR PLANNER  
DEBBIE LOCKHART, SENIOR OFFICE SUPPORT ASSISTANT

ALSO PRESENT:

JESSE W. RIGBY, ESQUIRE  
Clark, Partington, Hart, Larry, Bond & Stackhouse  
125 West Romana Street  
Pensacola, Florida 32502

SCOTT BRIGFORD, ESQUIRE  
Fountain Schultz & Associates  
2045 Fountain Professional Court, Suite A  
Navarre, Florida 32566

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P R O C E E D I N G S

MR. SMITH: The meeting of the Escambia County Board of Adjustment for March 11, 2015, is hereby called to order. With six members present, we have a quorum.

Would the Clerk please swear in the staff.

(Andrew Holmer and Horace Jones sworn.)

MR. SMITH: Members of the Board, a copy of the resume' of staff has previously been provided and remains on file for reference. The Board has previously recognized staff as expert witnesses. Does anyone have any questions regarding the qualifications of staff to offer expert testimony? Seeing none.

We would like to accept the Board of Adjustment meeting package for March 11, 2015 with the Development Services Staff Findings-of-Fact into evidence. The Board of Adjustment meeting package for March 11, 2015 with Development Services Findings-of-Fact has been provided to the Board members.

The Chair will now entertain a motion to accept the Board of Adjustment meeting package. Do we have a motion?

MR. STROMQUIST: Motion to accept.

1 MR. SMITH: Do we have a second?

2 MR. ADAMS: Second.

3 (Board members vote.)

4 MR. SMITH: Any opposed?

5 (None.)

6 MR. SMITH: It's unanimously accepted.

7 (Motion passes unanimously.)

8 MR. SMITH: Do we have proof of  
9 publication?

10 MS. LOCKHART: Yes, sir, we did.

11 MR. SMITH: Did the publication meet all  
12 legal requirements?

13 MS. LOCKHART: Yes, sir.

14 MR. SMITH: The Chair will now entertain a  
15 motion to waive the reading of the legal  
16 advertisement. Do we have a motion?

17 MR. STROMQUIST: Motion to waive.

18 MR. SMITH: Do we have a second?

19 MR. ADAMS: Second.

20 MR. SMITH: All those in favor signify by  
21 raising your right hand.

22 (Board members vote.)

23 MR. SMITH: Any opposed, like sign.

24 (None.)

25 (The motion passed unanimously.)



1           MR. SMITH: Approval of the resume' of the  
2 previous meeting. If you have reviewed  
3 resume' and transcript of board meeting held  
4 on February 18, 2015, under your review of the  
5 resume' and transcript, are there any  
6 additions, deletions or corrections?

7           The Chair will now entertain a motion  
8 regarding that hearing resume' for the Board  
9 of Adjustment held on February 18, 2015. Do  
10 we have a motion?

11          MR. STROMQUIST: Motion to approve.

12          MR. SMITH: We have a motion. Do we have  
13 a second?

14          MR. ADAMS: Second.

15          MR. SMITH: All those in favor signify by  
16 raising your right hand.

17          (Board members vote.)

18          MR. SMITH: It passes unanimously.

19          (Motion passes unanimously.)

20          MR. SMITH: If there is no objection, the  
21 Chair will waive the reading of the purpose of  
22 the Board of Adjustment as this is sort of a  
23 follow-up hearing on the February 18th  
24 meeting.

25          Are there any objections?

1 All written or oral communication outside  
2 of this hearing with members of the Board of  
3 Adjustment regarding matters under review  
4 today are considered ex parte communications.  
5 Ex parte communications are presumed  
6 prejudicial under Florida law and must be  
7 disclosed as provided in Board of Commission  
8 Resolution 96-13. Before a decision of this  
9 Board on any administrative appeal, variance  
10 or conditional use request, the Chair will ask  
11 each Board member if there has been any  
12 ex parte communication regarding the  
13 respective issues and they would identify  
14 themselves at that time.

15 This is a little different than usual, but  
16 I will say now that I'm going to call on staff  
17 to make a comment in just a second, but if  
18 there is anyone in the audience who has not  
19 signed a request to speak form, it's the blue  
20 form on the back table, we would ask you to do  
21 so at this time.

22 I would like to call on staff to give us a  
23 synopsis.

24 MR. HOLMER: Yes, sir. The reason we're  
25 here today, at the conclusion of last month's

1 meeting there was a three three tie. A motion  
2 had been made by Mr. Stromquist, seconded by  
3 Mr. Adams, to accept staff's Findings-of-Fact  
4 and approve the conditional use request. That  
5 motion was -- it failed on a three three vote.  
6 There were no findings from this Board. It  
7 was simply nothing happened because there was  
8 no vote in the affirmative.

9 At this point what we need from you Board  
10 members is clarification so we can find out  
11 where everyone stands. Now there's actually  
12 two issues here. There is the issue of the  
13 tower being over 150 feet in height. That's  
14 one issue. The second is the locating of a  
15 tower within 500 feet of a residential zoning  
16 district. We need to know from the Board, one  
17 way or another, where you stand on those so  
18 that we can clarify this and make written  
19 findings.

20 I know that, Mr. Bryan, you had mentioned  
21 in the transcript that you objected to -- the  
22 additional height was yours, but that was the  
23 only thing I got. So essentially what I need  
24 for y'all to do is clarify this. Is the  
25 objection from those that objected the height

1 or the location? And those that voted  
2 affirmatively, were you voting yes to both? I  
3 mean, I'm assuming, but I can't say for  
4 certain. We need some way of clarifying this.  
5 Do we want to go each person and say what did  
6 you -- did you have a problem with this or  
7 that, or do y'all want to make a new motion  
8 and clarify?

9 MR. JONES: I have a question for Kristen.  
10 Since those issues were not directly addressed  
11 at the previous meeting and now we have more  
12 clarification, do you think that two motions  
13 need to be made to address each one  
14 specifically so it will be clear for the  
15 record, on the height as well as the location  
16 to the residence -- the proximity to the  
17 residential districts, so it will be clearly  
18 definable and codified?

19 MS. HUAL: I don't think that's required.  
20 I think that's up to the Board. And I think  
21 there are three options that I see. The Board  
22 can decide to make findings based on the prior  
23 action to substantiate the decision with what  
24 the motion (inaudible) essentially it did  
25 not.

1 MR. RIGBY: I'm sorry. I can't hear.

2 MS. HUAL: I apologize. So that's one  
3 option, to make finding based on the prior  
4 action.

5 Otherwise, I think it would be reasonable  
6 to vote to rehear the case as a new case,  
7 where new evidence may be admitted and a new  
8 motion may be made with new findings.

9 Or the third option could be to bring a  
10 renewed motion, and that motion, potentially,  
11 be amended, the motion that was brought at the  
12 prior meeting, and there would be a new vote  
13 on that motion.

14 Those are the options that I see possible  
15 to act on today.

16 MR. SMITH: I'm kind of addressing the  
17 Board. I believe the way the vote was, since  
18 the initial motion was to approve and that was  
19 really denied, and in denying it it seems to  
20 me that we have prohibited both the 150 feet  
21 height in excess of that, and also the 500  
22 feet of residential area.

23 And you know I think you could address it  
24 from Criterion (2), because of the number of  
25 speakers that we had addressing those issues

1 and certainly there was mental anguish.

2 We didn't address, though it is addressed  
3 in Criterion (5), what are the buffer  
4 requirements, and that's not something we  
5 necessarily get into, but it's going to be  
6 hard to buffer a 199-foot tower.

7 And also I wonder about Criterion (6), and  
8 I wonder if that height of a tower wouldn't  
9 require flashing red lights, which would be  
10 visible across the road.

11 And also I wonder about environmental  
12 impact as far as tree removal and that sort of  
13 thing.

14 Those are just some questions. That's  
15 just discussion. That's not a motion or  
16 anything, but that would be something I think  
17 we, as a Board, need to take into  
18 consideration.

19 But let me ask the Board members has there  
20 been any ex parte communication regarding that  
21 case -- this case?

22 Seeing none. Does anyone have knowledge  
23 or information obtained from a site visit or  
24 other sources?

25 Seeing none. Does any Board member intend

1 to refrain from voting due to a voting  
2 conflict of interest?

3 Would the Board like to consider one of  
4 the three options that Counselor has asked us  
5 at this time or would you like to have a new  
6 hearing?

7 MR. BRYAN: May I speak?

8 MR. SMITH: Yes.

9 MR. BRYAN: I think because of the number  
10 of witnesses that we had at the last meeting  
11 when we initially heard this, and those  
12 witnesses are not here today for whatever  
13 reason --

14 MS. HUAL: Just to clarify, we couldn't  
15 rehear the case now. It would have to be at a  
16 subsequent meeting.

17 MR. BRYAN: Good. Because my objection  
18 would be those people came in good faith to  
19 offer argument and information. For us to  
20 proceed anew, if you will, without the ability  
21 for them to input, I think would be a  
22 disservice. So I would not be in favor of  
23 that, but apparently that's not an option  
24 today, as it turns out.

25 I would be in favor of explaining my vote

1 in the negative, and I think that's probably  
2 the easier solution today for us, to stay with  
3 the original vote, which was properly  
4 conducted, and if it's just a matter of  
5 explanation and clarification, et cetera, then  
6 that seems to me to be a not inappropriate way  
7 for us to proceed.

8 MR. SMITH: I believe at this stage it  
9 would be necessary to make a motion to not  
10 accept staff's Findings-of-Fact, and to deny  
11 this request, and cite those criterion that  
12 address that.

13 MR. HOLMER: I'm not sure if we can  
14 actually do that because there was a motion  
15 made and that one failed for lack of --  
16 because of the tie, so you would either amend  
17 that motion or -- you would either amend it or  
18 rescind it and kind of go from there.

19 MR. SMITH: Would the maker of the motion  
20 be interested in rescinding?

21 MR. STROMQUIST: No.

22 MR. ADAMS: That motion being?

23 MR. SMITH: Do you recall?

24 MR. STROMQUIST: I made the motion to  
25 accept staff's Findings-of-Fact with their



1 conditional use.

2 MR. HOLMER: Here it is. I've got it for  
3 you right here.

4 I'll make a motion to accept staff's  
5 Findings-of-Fact and approve the conditional  
6 use with the following condition that the  
7 project must meet all conditions imposed  
8 through the site plan review process.

9 MR. SMITH: And that failed.

10 MR. HOLMER: Once again, we're back to the  
11 point of needing clarification. Really from  
12 the three who voted against it, were you  
13 voting against the initial height or were you  
14 voting against the tower that close to the  
15 residential zoning district? And I think if  
16 we can get clarification on that and we know  
17 why the vote went the way it did, we're  
18 finished at this point.

19 MS. HUAL: Perhaps we can start with a  
20 renewed motion, the motion that stood.

21 MR. HOLMER: Yes. If you would renew the  
22 motion and we can have each person say their  
23 thought on each side of it, or amend the  
24 motion and say, you know --

25 MR. BRYAN: You're not proposing we undo

1 the vote by this motion, are you?

2 MR. HOLMER: No. The vote stands.

3 MR. BRYAN: You confused me with the  
4 readdressing or readvancing of the original  
5 motion.

6 MS. HUAL: I believe if the motion is  
7 renewed it could be voted on as that motion or  
8 amended and voted on.

9 MR. JONES: Right.

10 MR. STROMQUIST: So clarify this again for  
11 me. You want me to amend the motion to do  
12 what, to get input from everybody on how they  
13 voted? How do we state this? I'm asking the  
14 lawyer.

15 MS. HUAL: If the motion is renewed, it  
16 may, as staff has advised, be helpful to  
17 clarify --

18 MR. STROMQUIST: Can you speak into the  
19 mike? I can barely hear you.

20 MS. HUAL: Staff has advised it will be  
21 helpful to clarify as part of the motion, what  
22 is being approved.

23 MR. STROMQUIST: So if I amended the  
24 motion to clarify what's been approved --

25 MS. HUAL: To, I suppose, accept staff's

1 findings and approve the conditional use.

2 MR. HOLMER: For the additional height and  
3 for the location within 500 feet of a  
4 residential district.

5 MR. SMITH: I have a question of staff,  
6 maybe Mr. Jones. In this same area we spent  
7 about a year on when it involved the funeral  
8 home, and it came back or was remanded to us  
9 by the circuit judge and we declined it with  
10 the understanding that there was some  
11 codification in the works that would allow a  
12 cinerator for that funeral home in that  
13 particular zoning, and to the best of my  
14 recollection, that was never permitted, that  
15 cinerator. Why was that?

16 MR. JONES: Basically we -- they did  
17 direct staff. One of the options -- and  
18 Mr. Rigby and as well as Mr. Jensen, they can  
19 help us out if I'm missing some points. If my  
20 memory serves me correctly, one of the options  
21 was, that the circuit court judge had made was  
22 to provide staff, direct staff to gather some  
23 language and to make a new ordinance. Staff  
24 did do that. However, that ordinance was  
25 upheld again. So staff did draft an ordinance

1 and it went before the Planning Board and it  
2 was approved. Now, there's some issues with  
3 the ordinance, but the ordinance was approved  
4 by the BCC, as well as the Planning Board.

5 Now, Mr. Jensen, he decided to pursue  
6 another option, which is going through the  
7 Vested Rights Committee, because of some  
8 issues that he felt that were not addressed.  
9 So the ordinance is still standing. It's  
10 still the rule of law. Mr. Jensen has decided  
11 to pursue another option through the Vested  
12 Rights Committee, but we do have an ordinance  
13 in place at this time for cinerators and other  
14 things that came on back of the ordinance.

15 MR. SMITH: Thank you. It would seem to  
16 me, Counselor, that -- I don't see how this  
17 motion, based on what I'm hearing, that has  
18 been made, I don't see how it can be amended  
19 to address the point where we are today. I'm  
20 wondering if the most expeditious manner might  
21 not be to have a rehearing.

22 MS. HUAL: That is one of the options. I  
23 will say if the motion is renewed and there is  
24 a vote, then I would just ask that anyone who  
25 declines to vote in favor of the motion that

1 was made before, that they provide  
2 Findings-of-Fact that are supported by  
3 competent and substantial evidence that was in  
4 the record as presented at the last hearing.  
5 That's what's required.

6 MR. SMITH: Let me ask the Board members  
7 then if anyone would like to comment as to  
8 whether you feel a rehearing would be better  
9 than addressing the motion again? Does anyone  
10 have any comments on that?

11 MR. ADAMS: We don't need another hearing.

12 MR. SMITH: Pardon?

13 MR. ADAMS: I don't think we need another  
14 hearing.

15 MR. SMITH: Okay.

16 MR. BRYAN: Agreed. I don't feel we need  
17 another hearing.

18 MR. SMITH: Then I believe it would be in  
19 order for you to restate your motion.

20 MR. STROMQUIST: As a rezoning statement?

21 MR. SMITH: Well, it's in the transcript  
22 if you get confused.

23 MS. HUAL: And anyone can amend, can  
24 propose an amendment to the motion.

25 MR. JONES: Right. And I think that's all

1 we need. I really believe since the two  
2 options were taken off the table, another  
3 hearing, the Board stated that by a straw vote  
4 that you don't want another hearing, so it  
5 appears that you can make an amendment to that  
6 motion with clarification to address, as she  
7 stated, why you are denying based on  
8 substantial and competent evidence. We have  
9 to provide some type of evidence as to why, on  
10 each fact, that you do not and are still in  
11 favor of. That was not done at the last  
12 meeting and that is what's needed at this  
13 time.

14 MR. SMITH: Okay. Does everyone  
15 understand the motion? Do we have a second?

16 MR. ADAMS: Second.

17 MR. SMITH: We have a motion. We have a  
18 second. Those in favor, raise your right  
19 hand.

20 (Mr. Bryan, Ms. Gund and Mr. Adams vote in  
21 favor.)

22 MR. BRYAN: Wait. I'm voting, I believe,  
23 to proceed with information gleaned, yes? We  
24 will offer up our reasons for the vote last  
25 time? I think that's what I'm voting for.

1 MR. JONES: To amend the previous motion.

2 MS. HUAL: I thought we were voting on the  
3 prior motion.

4 MR. HOLMER: We are. Y'all are voting on  
5 the prior motion.

6 MS. HUAL: The motion to accept staff's  
7 findings.

8 MR. BRYAN: To accept staff's findings?

9 MR. HOLMER: Yes.

10 MR. BRYAN: Well, I asked that previously,  
11 if we are going to undo the vote of the last  
12 time, and I was assured we cannot do that, it  
13 would require a new hearing.

14 MR. HOLMER: You're not.

15 MS. HUAL: No. There can be a renewed  
16 motion. That motion can be amended. There  
17 can be a vote on the amended motion. You  
18 just -- you can't accept any additional  
19 evidence. So whatever was presented at the  
20 last hearing, that's what you would be basing  
21 your decision upon. That's not to say that  
22 you can't renew the motion, amend the motion,  
23 have additional discussion.

24 MR. SMITH: It was three three vote last  
25 time.

1 MR. BRYAN: Correct.

2 MR. SMITH: And if the three votes against  
3 that motion, the only difference is this time  
4 those three votes will express their rationale  
5 and point to one or two or --

6 MS. HUAL: But they may vote otherwise,  
7 they may vote on a different motion. So the  
8 limitation is that you can't hear additional  
9 evidence.

10 MR. SMITH: Right. So right now we're  
11 voting on that original motion --

12 MR. BRYAN: Thank you.

13 MR. SMITH: -- to approve and accept the  
14 conditional use request.

15 MR. BRYAN: That's much clearer.

16 MR. SMITH: Yes, sir?

17 MR. BRIDGFORD: Scott Bridgford. Just for  
18 the record, I wanted to note that we represent  
19 Mr. Jensen, whose name has already come up.  
20 Kerry Anne Schultz was here for Mr. Jensen the  
21 last time, and we just wanted to state, for  
22 the record, that our objection is to any  
23 revote, because I've not heard any procedural  
24 flaw in the way the vote was taken the last  
25 time. We certainly understand clarification,



1 but we object to any revote because again, I  
2 don't know of any procedural flaw in the way  
3 it was done last time.

4 MR. SMITH: I think staff, we could do  
5 that and have those three votes that put it  
6 defeated, to explain why.

7 MR. HOLMER: Yes, we can simply get  
8 clarification.

9 MR. SMITH: Yes, we'll do clarification.

10 MR. HOLMER: Point A or Point B.

11 MR. JONES: Right, clarification.

12 MR. HOLMER: We can do that.

13 MR. SMITH: I'll begin that if that's okay  
14 because -- do we need to take that motion off  
15 the table? No. No. It's the same motion.

16 MR. JONES: It's the same motion.

17 MR. SMITH: I voted no for those reasons  
18 that I stated earlier, that on Criterion (2)  
19 I'm voting no on the height and the proximity  
20 to the residential area. I believe there were  
21 enough speakers to address that issue as to  
22 noise, glare, smoke, odor on Criterion (2).  
23 There was certainly some mental anguish there.

24 I also think -- I believe that the tower  
25 will have to have lights because of the

1 height. And I think Criterion (6) is a  
2 problem.

3 So that I'll just use those two criterion  
4 and as I said earlier, even (8) and (7).  
5 There was a reason the code was written this  
6 way, and that's what we're here to either  
7 sanctify or deny.

8 Now, I believe you, sir.

9 MR. BRYAN: All right. I voted in the  
10 negative for reasons of the 150 foot  
11 limitations.

12 I'm sorry. My fault. We haven't needed  
13 to use these to this point.

14 I voted in the negative for reasons of the  
15 150-foot limitation. Nothing was offered that  
16 I heard, to explain why an exception to the  
17 150 feet should have been approved by the  
18 Board, nor was there any information that went  
19 in to explain where the 150-foot limitation  
20 came from originally. Without that kind of  
21 information I felt inadequate to waive the  
22 150-foot limitation. As well, as was offered  
23 through testimony and information before the  
24 Board, clearly the higher the antenna the  
25 greater the reach line of sight physics being

1           involved, so it could go on theoretically as  
2           high as one could possibly get to reach the  
3           maximum number of people, but then there was a  
4           199-foot limitation, as I recall, by virtue of  
5           certain new requirements and constraints that  
6           would be imposed by FAA, et al.

7           So, to me, I didn't see any compelling  
8           reason to go beyond 150. There are arguments  
9           to go beyond 199, et cetera, and so I felt  
10          that what needed to be done is a backup  
11          antenna for the purposes of the radio station  
12          could be served by staying within the  
13          constraints of the 150-foot limitations.

14          I will grant you that there were also the  
15          500-foot residences within the area, but to  
16          me, while that was true, it was a minimal  
17          impact given the location of I-10 and I-110  
18          between them and the proposed antenna.

19          So for me, it was the matter of the  
20          150-foot limitation.

21          MS. HUAL: And just to clarify it, but  
22          for, because the way that the performance  
23          standards read they would need a conditional  
24          use for the tower because of the height and/or  
25          because of the fact that's it located in a

1 residential area. Were it not to exceed the  
2 150 feet --

3 MR. BRYAN: I would have been inclined to  
4 support that.

5 MR. SMITH: And the other negative vote.

6 MS. RIGBY: I voted in the negative for  
7 many reasons. I, too, do not find that the  
8 150 feet was substantial for the use intended.  
9 It is a permitted use at 150 feet. I felt  
10 like there was nothing gained by the 49  
11 additional feet, and I believe that the  
12 applicant went to that 49 feet for a reason  
13 not to have to deal with the FCC and FAA  
14 paperwork and so forth. There's no reason to  
15 do that. They can do what they can do with  
16 150 feet. Nothing precludes them from  
17 continuing their radio station at 150 feet.

18 I also believe that -- well, that involved  
19 Criterion (9).

20 Criterion (8), I believe that the  
21 forefather's of this LDC put it at 150 feet  
22 for a reason. I believe that the neighborhood  
23 relies on that documentation. If, in the  
24 future, we find a reason to change that, then  
25 there are procedures to have the LDC modified.

1 I believe that the neighborhood, the  
2 public safety, the nuisance of the additional  
3 49 feet far outweigh the desire of the  
4 applicant to have the additional 49 feet.

5 I also believe Criterion (6) as far as the  
6 lights, and I believe that's it.

7 MR. BRYAN: Mr. Chairman, in light of this  
8 conversation, I wonder, and to staff, as well,  
9 with your permission, if we might, and counsel  
10 as well, would it be inappropriate to propose  
11 a motion for a vote on a 150-foot tower, not  
12 to exceed that?

13 MR. SMITH: Not unless we have a  
14 rehearing.

15 MS. HUAL: I think you can amend the  
16 motion.

17 MR. HOLMER: Yes. The motion can be  
18 amended, but...

19 MS. HUAL: To approve with that  
20 limitation. I believe that would be  
21 acceptable.

22 MR. BRYAN: To 150 feet?

23 MS. HUAL: Yes.

24 MR. HOLMER: For the location within 500  
25 feet of residential.

1           MR. BRYAN: The location as is, but  
2           limited to 150 feet could be an acceptable  
3           motion -- amendment.

4           MS. HUAL: Yes.

5           MR. HOLMER: Yes, we could do that.

6           MS. HUAL: The motion has been renewed and  
7           there's been additional discussion based on  
8           the evidence presented at the prior hearing,  
9           then the motion, I believe, could be amended.

10          MR. BRYAN: It seems like a possible  
11          solution to all parties, to me, and from what  
12          I'm hearing, maybe there's some movement, with  
13          clarification there's potential change and  
14          opportunity to move forward.

15          MR. HOLMER: So are you officially  
16          amending it?

17          MR. BRYAN: I'm bantering at the moment,  
18          but I'm moving towards a motion towards an  
19          amendment that would permit a vote of the  
20          staff's findings, but limited further to the  
21          location and 150 feet maximum.

22          MR. HOLMER: That would be findings, so we  
23          could have written findings based off that.

24          MR. BRYAN: I will then, at this point,  
25          unless otherwise objected to by counsel...

1 MS. HUAL: I also wanted to just add, this  
2 is a public hearing and I think you mentioned  
3 having speakers that signed up or no.

4 MR. STROMQUIST: We do.

5 MR. SMITH: Yes.

6 MS. HUAL: I just wanted to remind you.

7 MR. BRYAN: Well, would you like to hold  
8 that in abeyance then until such time as we've  
9 heard from them?

10 MR. SMITH: If we're going in that  
11 direction we need to permit the speakers to  
12 speak.

13 MR. BRYAN: No objection here.

14 MR. SMITH: Mr. Rigby.

15 (Public Comments.)

16 MR. RIGBY: Thank you, Mr. Chairman and  
17 Board. I'm Jesse Rigby, 125 West Romana  
18 Street. And just to put this in perspective,  
19 I'm not going to talk about the evidence. I  
20 think that's inappropriate.

21 We ask that you reconvene. You may recall  
22 at the end of the last session I raised the  
23 issue, under federal law that you needed to  
24 explain your findings. So I appreciate your  
25 effort to do that and to clarify that, and we

1           agree with the County, since we have a very  
2           short time frame, if it could be held by today  
3           we would waive, and if you enter findings,  
4           then we will not raise that issue if we take  
5           the matter to court. In other words, we'll  
6           accept, even though it's late in the 30 day  
7           process, we can live with today. So that's  
8           the background.

9           We can agree to disagree whether or not a  
10          150-foot tower is absolutely permitted or not.  
11          Now is not the time to address that.

12          There is one other issue I do want to  
13          address and that is on the state law, not the  
14          federal law side. The Florida Supreme Court  
15          back in the mid-eighties in the case of  
16          Irvine v. Duval County Planning Commission set  
17          forth the standards for what's viewed the  
18          terms under Florida law, special exceptions  
19          and conditional uses, and that was a special  
20          exception, but Florida law treats both  
21          conditional uses and special exceptions as the  
22          same. It depends on what a local jurisdiction  
23          calls it. And in that case, it set forth the  
24          burden -- and I apologize to you for not  
25          really bringing this to the Board's attention,



1 especially the new board members the last time  
2 -- it's not something that you would know and  
3 it's not a legal standard that's set forth in  
4 the County code.

5 What the County code does is set forth  
6 your criteria that you have to review. And  
7 what the Irvine case said and the Florida  
8 Supreme Court, is that the applicant, my  
9 client, must first show that those statutory  
10 criteria are met, those seven or eight. We  
11 may or may not, depending on your findings.  
12 But once that is done -- and, of course, the  
13 County agrees, through their staff report and  
14 their evidence, that we met all eight  
15 criteria. That's the evidence.

16 So once you reach and go past those first  
17 elements, then what Irvine said is the burden  
18 shifts to the opposition and the opposition  
19 must show how approval of the conditional use  
20 would be adverse to the public interest.  
21 Adverse to the public interest is fairly  
22 standard, and I would ask that you clarify  
23 again how is this adverse to the public  
24 interest.

25 We don't want to flail around if my client

1 decides to appeal. I mean, the judge has a  
2 right to know what that is. And so if you  
3 determine that it is adverse to the public  
4 interest, I would ask that you amend your  
5 clarifications to include that.

6 I think you clearly addressed the federal  
7 law written standards in your comments up to  
8 this point. You've explained your reasoning.

9 So those would be my only comments. In  
10 other words, basically my client does not have  
11 to show how it is in the public interest.  
12 That's what the Irvine case said. The  
13 opposition, whether it's the County or the  
14 public, has to demonstrate how it will be  
15 adverse to the public interest, in this case,  
16 at 199 feet.

17 If you have questions on that point, or  
18 Ms. Hual may also have issues or questions on  
19 that case.

20 MS. HUAL: I'm familiar with the Irvine  
21 case.

22 MS. RIGBY: Thank you.

23 MR. SMITH: Thank you, sir. Scott  
24 Bridgford. I believe you're an attorney and  
25 you won't have to be sworn in.

1           MR. BRIDGFORD: Yes, I am. I appreciate  
2           the Board allowing me to comment. I'll be  
3           very brief. Our objection is simply to the  
4           revote. We have no objection to clarification  
5           on reasons because again, for the record,  
6           there's been no procedural flaw, whatsoever,  
7           with the way the previous vote was taken or  
8           presented.

9           Mr. Rigby's comments, I believe, that is a  
10          standard that the Court would review. I don't  
11          believe it's a standard that necessarily  
12          applies to the Board or what they have to do.  
13          If they appeal, certainly the Supreme Court  
14          decision is going to be considered as far as  
15          judicial review is concerned.

16          Our primary objection to a revote, I  
17          understand that's not going to happen, we're  
18          just talking about clarification, is that  
19          there was no procedural flaw before, that as  
20          has been noted by Mr. Bryan, there were  
21          substantial other attendees last time that  
22          aren't here. Certainly their presence or lack  
23          thereof has an influence, even if they're not  
24          speaking.

25                 So we don't believe there's been any

1           flaws. I believe that in terms of public  
2           interest, the three no votes have already  
3           provided clarification on that just since  
4           we've been sitting here today.

5           So our only presence here today is just to  
6           object to any kind of revote and allow the  
7           vote to stand as is, and I believe the  
8           explanation has already been given  
9           sufficiently, so that we're not rehashing the  
10          same thing over again. I appreciate your  
11          time.

12          MR. SMITH: Thank you, sir.

13          MS. RIGBY: Can I ask him a question? You  
14          said you object to a revote. Do you object to  
15          an amended vote, an amendment to the vote?

16          MR. BRIDGFORD: If it requires  
17          reconsideration, yes, again for the same  
18          reason that we've already heard from one of  
19          the no votes that the presence of the other  
20          attendees had a substantial impact. Again, if  
21          there was no procedural flaw last time and  
22          that impacted the decision, then, to me, any  
23          kind of revote without their presence flies in  
24          the face of the previous vote that had no  
25          procedural flaw.

1 MS. RIGBY: Thank you.

2 MR. BRIDGFORD: Thank you.

3 MR. SMITH: Thank you, sir.

4 MR. RIGBY: Again, I think, staff, you've  
5 got the list there. I believe you will see  
6 that the notice went to every person that got  
7 noticed the first time, including all the  
8 people who appeared and spoke, if I read what  
9 was presented in your package to you. So  
10 they've all had notice of this hearing.

11 MS. HUAL: Again, I firmly believe that  
12 the limitation is considering any new evidence  
13 that was not presented at the prior hearing.  
14 I do think that it is procedurally correct and  
15 acceptable to renew a motion at a publicly  
16 noticed subsequent meeting and to perhaps even  
17 consider an amended motion based on the  
18 evidence that was presented at the prior  
19 hearing.

20 MR. SMITH: Thank you.

21 Julia Ferris.

22 THE WITNESS: Never mind.

23 MR. SMITH: Thank you, Julia. That was  
24 quick.

25 Chris Jensen.

1 MR. JENSEN: Good morning.

2 MR. SMITH: Be sworn in, Chris.

3 (Chris Jensen sworn.)

4 MR. JENSEN: Good morning, Board. A  
5 couple of things here. One of the reasons --  
6 yes, everybody was notified apparently, but  
7 one of the reasons other people are not here  
8 is because we were explicitly told by Drew, by  
9 Alison Rogers, by several other people, there  
10 was no changing anything, that there was  
11 nothing else going to be reconsidered. I  
12 mean, these people work. They really took a  
13 lot of time out to come here last time. I  
14 think you really should consider that on  
15 anything. You voted. It's done. I think  
16 it's a waste of time and taxpayer money to get  
17 y'all over here to try and ask you exactly why  
18 you voted the way you are. I don't see  
19 anything that says you have to.

20 It says that FCC clearly states that this  
21 is supposed to be resolved by the courts. I  
22 can give you the thing on it. I think the  
23 Chairman here absolutely said several -- you  
24 know, he apparently has issues with several of  
25 the points, you know, and things that need to

1 be clarified. There's a lot more to this.

2 You know, even going back to 150 foot, you  
3 know, that's a whole other issue. No one has  
4 had a chance to even look at that, or the  
5 people haven't had a chance to even come here  
6 and talk about that. You know, the thing that  
7 was before the Board was yes or no on a  
8 199-foot tower. Period. I don't know where  
9 all this extra stuff is coming in. I mean,  
10 it's kind of like well, let's keep going back  
11 to the Board of Adjustment until we get the  
12 answer we want, and I don't think it's fair to  
13 you, it's not fair to me, and it's not fair to  
14 the citizens who spend their time and effort  
15 to come out here and let you know how they  
16 feel. Thank you.

17 MR. SMITH: Thank you, sir.

18 MR. HOLMER: For clarification, that is  
19 correct that no new evidence is being  
20 presented. I did not, however, talk to any of  
21 the speakers. The only person I spoke to in  
22 this time was Ms. Gund who called me about a  
23 question about this hearing.

24 MR. JENSEN: I have an email if you would  
25 like to see it.

1 MR. SMITH: No, that's okay.

2 MR. JENSEN: Okay.

3 MR. SMITH: Counselor, I see doing  
4 anything different than what we have done as  
5 creating more problems. You have expressed  
6 your opinion, which is highly valued, so I'll  
7 leave it up to the Board.

8 As it is, we have completed what this  
9 meeting was called for, and that was for the  
10 no votes to state their reasons and that has  
11 been done. I think doing anything else at  
12 this time -- and I'm sure the applicant will  
13 appeal and that's their privilege, but I think  
14 if we do anything other than what we've done  
15 here, is compounding the problem.

16 Do any other Board members have anything?

17 MR. ADAMS: There's been a motion made.

18 MR. BRYAN: No, I actually didn't make it.  
19 I held off making the motion to amend it for  
20 the 150 foot. Is that what you're referring  
21 to?

22 MR. ADAMS: Yes.

23 MR. BYRAN: I actually didn't -- if I did,  
24 I misspoke, and wished to listen and hear what  
25 we've since heard.



1           MR. JONES: You didn't make a motion. You  
2 were asking questions and direction.

3           MR. BRYAN: I didn't think I had.

4           MS. RIGBY: Can I ask the staff a  
5 question?

6           MR. SMITH: Sure.

7           MS. RIGBY: I'm a little confused as to  
8 the ability of the applicant to build a  
9 150-foot tower. My understanding is that was  
10 a permitted use. The way 7.18.D reads, no  
11 commercial communication tower shall be  
12 located closer than the height of the tower to  
13 a residential zoning district line.

14           My understanding is that the residential  
15 district line was more than 150 feet, but less  
16 than 500. Let's not talk about 199 for a  
17 minute.

18           If he came to you and said, I want to  
19 build a 150-foot tower, that would have  
20 approved without coming here, correct?

21           MR. HOLMER: We're still hung up in that  
22 section where it says and/or -- the "or" is  
23 what gets us -- located within 500 feet of a  
24 residential area. It's still a conditional  
25 use.

1 MS. RIGBY: It says, in addition, all  
2 communication towers which exceed 150 feet in  
3 height and/or are located within 500 feet.

4 MR. HOLMER: The "or" is...

5 MS. RIGBY: Because it's located within  
6 500 feet, if it was a 150-foot tower it would  
7 still have to come here, correct?

8 MR. HOLMER: That's why there's two  
9 issues.

10 MS. RIGBY: Okay. Thank you.

11 MR. HOLMER: Staff doesn't like that  
12 language anymore than anybody.

13 MR. SMITH: Here, again, without  
14 objection, I think the Board has accomplished  
15 what this meeting was called for.

16 MR. BRYAN: I move that.

17 MR. SMITH: Without objection, we'll  
18 conclude this hearing.

19 MR. HOLMER: So staff has the three votes,  
20 the three negative votes. One person was  
21 against the location and the height and the  
22 other two were just against the height. I can  
23 make findings off of that.

24 MR. RIGBY: I would ask that you -- again,  
25 there can be a transcript very quickly -- but

1           that you get specific with what was said and  
2           not just a generalized statement. That  
3           doesn't help a great deal.

4           MR. HOLMER: I've got their statements.

5           MR. STROMQUIST: Motion to adjourn.

6           MS. HUAL: Unless the Board has anything  
7           else.

8           MR. BRYAN: Second.

9           MR. SMITH: We have a motion and second.  
10          Those in favor, hold your right hand up.

11          (Board members vote.)

12          MR. SMITH: It passes unanimously.

13          (Motion passes unanimously.)

14          (The proceedings concluded at 9:19 a.m.)

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## 1 CERTIFICATE OF REPORTER

2  
3 STATE OF FLORIDA

4 COUNTY OF ESCAMBIA

5  
6 I, LINDA V. CROWE, Court Reporter and  
7 Notary Public at Large in and for the State of  
8 Florida, hereby certify that the foregoing Pages 2  
9 through 39 both inclusive, comprise a full, true, and  
10 correct transcript of the proceeding taken on  
11 Wednesday, March 11, 2015; that said proceeding was  
12 taken by me stenographically, and transcribed by me  
13 as it now appears; that I am not a relative or  
14 employee or attorney or counsel of the parties, or  
15 relative or employee of such attorney or counsel, nor  
16 am I interested in this proceeding or its outcome.

17 IN WITNESS WHEREOF, I have hereunto set my  
18 hand and affixed my official seal on 12th day of  
19 March 2015.

20  
21  
22 LINDA V. CROWE, COURT REPORTER  
23 Notary Public - State of Florida  
24 My Commission No.: EE 860695  
25 My Commission Expires: 02-05-2017

IN AND FOR ESCAMBIA COUNTY, FLORIDA  
ESCAMBIA COUNTY PLANNING BOARD

Quasi-judicial proceedings held before the Escambia County Board of Adjustment, on Monday, March 11, 2015, at the Escambia County Central Office Complex, 3363 West Park Place, First Floor, Pensacola, Florida, commencing at 8:30 a.m.

CU-2015-03  
7251 Plantation Road

BOARD OF ADJUSTMENT:

AUBY SMITH, CHAIRMAN  
TIMOTHY BRYAN  
JUDY GUND  
FREDERICK J. GANT (Not present)  
BLAISE ADAMS  
BILL STROMQUIST  
JENNIFER RIGBY  
KRISTIN HUAL, ASSISTANT COUNTY ATTORNEY

COUNTY STAFF:

HORACE JONES, DIRECTOR  
ANDREW HOLMER, SENIOR PLANNER  
DEBBIE LOCKHART, SENIOR OFFICE SUPPORT ASSISTANT

ALSO PRESENT:

JESSE W. RIGBY, ESQUIRE  
Clark, Partington, Hart, Larry, Bond & Stackhouse  
125 West Romana Street  
Pensacola, Florida 32502

SCOTT BRIGFORD, ESQUIRE  
Fountain Schultz & Associates  
2045 Fountain Professional Court, Suite A  
Navarre, Florida 32566

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1 PROCEEDINGS  
2 MR. SMITH: The meeting of the Escambia  
3 County Board of Adjustment for March 11, 2015,  
4 is hereby called to order. With six members  
08:30 5 present, we have a quorum.  
6 Would the Clerk please swear in the staff.  
7 (Andrew Holmer and Horace Jones sworn.)  
8 MR. SMITH: Members of the Board, a copy  
9 of the resume' of staff has previously been  
08:30 10 provided and remains on file for reference.  
11 The Board has previously recognized staff as  
12 expert witnesses. Does anyone have any  
13 questions regarding the qualifications of  
14 staff to offer expert testimony? Seeing none.  
08:30 15 We would like to accept the Board of  
16 Adjustment meeting package for March 11, 2015  
17 with the Development Services Staff  
18 Findings-of-Fact into evidence. The Board of  
19 Adjustment meeting package for March 11, 2015  
08:31 20 with Development Services Findings-of-Fact has  
21 been provided to the Board members.  
22 The Chair will now entertain a motion to  
23 accept the Board of Adjustment meeting  
24 package. Do we have a motion?  
08:31 25 MR. STROMQUIST: Motion to accept.

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11	Kristen Hual	8
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1 MR. SMITH: Do we have a second?  
2 MR. ADAMS: Second.  
3 (Board members vote.)  
4 MR. SMITH: Any opposed?  
08:31 5 (None.)  
6 MR. SMITH: It's unanimously accepted.  
7 (Motion passes unanimously.)  
8 MR. SMITH: Do we have proof of  
9 publication?  
08:31 10 MS. LOCKHART: Yes, sir, we did.  
11 MR. SMITH: Did the publication meet all  
12 legal requirements?  
13 MS. LOCKHART: Yes, sir.  
14 MR. SMITH: The Chair will now entertain a  
08:31 15 motion to waive the reading of the legal  
16 advertisement. Do we have a motion?  
17 MR. STROMQUIST: Motion to waive.  
18 MR. SMITH: Do we have a second?  
19 MR. ADAMS: Second.  
08:31 20 MR. SMITH: All those in favor signify by  
21 raising your right hand.  
22 (Board members vote.)  
23 MR. SMITH: Any opposed, like sign.  
24 (None.)  
08:32 25 (The motion passed unanimously.)

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1 MR. SMITH: Approval of the resume' of the  
 2 previous meeting. If you have reviewed  
 3 resume' and transcript of board meeting held  
 4 on February 18, 2015, under your review of the  
 08:32 5 resume' and transcript, are there any  
 6 additions, deletions or corrections?  
 7 The Chair will now entertain a motion  
 8 regarding that hearing resume' for the Board  
 9 of Adjustment held on February 18, 2015. Do  
 08:32 10 we have a motion?  
 11 MR. STROMQUIST: Motion to approve.  
 12 MR. SMITH: We have a motion. Do we have  
 13 a second?  
 14 MR. ADAMS: Second.  
 08:32 15 MR. SMITH: All those in favor signify by  
 16 raising your right hand.  
 17 (Board members vote.)  
 18 MR. SMITH: It passes unanimously.  
 19 (Motion passes unanimously.)  
 08:32 20 MR. SMITH: If there is no objection, the  
 21 Chair will waive the reading of the purpose of  
 22 the Board of Adjustment as this is sort of a  
 23 follow-up hearing on the February 18th  
 24 meeting.  
 08:33 25 Are there any objections?

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1 All written or oral communication outside  
 2 of this hearing with members of the Board of  
 3 Adjustment regarding matters under review  
 4 today are considered ex parte communications.  
 08:33 5 Ex parte communications are presumed  
 6 prejudicial under Florida law and must be  
 7 disclosed as provided in Board of Commission  
 8 Resolution 96-13. Before a decision of this  
 9 Board on any administrative appeal, variance  
 08:33 10 or conditional use request, the Chair will ask  
 11 each Board member if there has been any  
 12 ex parte communication regarding the  
 13 respective issues and they would identify  
 14 themselves at that time.  
 08:33 15 This is a little different than usual, but  
 16 I will say now that I'm going to call on staff  
 17 to make a comment in just a second, but if  
 18 there is anyone in the audience who has not  
 19 signed a request to speak form, it's the blue  
 08:34 20 form on the back table, we would ask you to do  
 21 so at this time.  
 22 I would like to call on staff to give us a  
 23 synopsis.  
 24 MR. HOLMER: Yes, sir. The reason we're  
 08:34 25 here today, at the conclusion of last month's

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1 meeting there was a three three tie. A motion  
 2 had been made by Mr. Stromquist, seconded by  
 3 Mr. Adams, to accept staff's Findings-of-Fact  
 4 and approve the conditional use request. That  
 08:34 5 motion was -- it failed on a three three vote.  
 6 There were no findings from this Board. It  
 7 was simply nothing happened because there was  
 8 no vote in the affirmative.  
 9 At this point what we need from you Board  
 08:35 10 members is clarification so we can find out  
 11 where everyone stands. Now there's actually  
 12 two issues here. There is the issue of the  
 13 tower being over 150 feet in height. That's  
 14 one issue. The second is the locating of a  
 08:35 15 tower within 500 feet of a residential zoning  
 16 district. We need to know from the Board, one  
 17 way or another, where you stand on those so  
 18 that we can clarify this and make written  
 19 findings.  
 08:35 20 I know that, Mr. Bryan, you had mentioned  
 21 in the transcript that you objected to -- the  
 22 additional height was yours, but that was the  
 23 only thing I got. So essentially what I need  
 24 for y'all to do is clarify this. Is the  
 08:36 25 objection from those that objected the height

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1 or the location? And those that voted  
 2 affirmatively, were you voting yes to both? I  
 3 mean, I'm assuming, but I can't say for  
 4 certain. We need some way of clarifying this.  
 08:36 5 Do we want to go each person and say what did  
 6 you -- did you have a problem with this or  
 7 that, or do y'all want to make a new motion  
 8 and clarify?  
 9 MR. JONES: I have a question for Kristen.  
 08:36 10 Since those issues were not directly addressed  
 11 at the previous meeting and now we have more  
 12 clarification, do you think that two motions  
 13 need to be made to address each one  
 14 specifically so it will be clear for the  
 08:36 15 record, on the height as well as the location  
 16 to the residence -- the proximity to the  
 17 residential districts, so it will be clearly  
 18 definable and codified?  
 19 MS. HUAL: I don't think that's required.  
 08:37 20 I think that's up to the Board. And I think  
 21 there are three options that I see. The Board  
 22 can decide to make findings based on the prior  
 23 action to substantiate the decision with what  
 24 the motion (inaudible) essentially it did  
 08:37 25 not.

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1 MR. RIGBY: I'm sorry. I can't hear.  
 2 MS. HUAL: I apologize. So that's one  
 3 option, to make finding based on the prior  
 4 action.  
 08:37 5 Otherwise, I think it would be reasonable  
 6 to vote to rehear the case as a new case,  
 7 where new evidence may be admitted and a new  
 8 motion may be made with new findings.  
 9 Or the third option could be to bring a  
 08:38 10 renewed motion, and that motion, potentially,  
 11 be amended, the motion that was brought at the  
 12 prior meeting, and there would be a new vote  
 13 on that motion.  
 14 Those are the options that I see possible  
 08:38 15 to act on today.  
 16 MR. SMITH: I'm kind of addressing the  
 17 Board. I believe the way the vote was, since  
 18 the initial motion was to approve and that was  
 19 really denied, and in denying it it seems to  
 08:38 20 me that we have prohibited both the 150 feet  
 21 height in excess of that, and also the 500  
 22 feet of residential area.  
 23 And you know I think you could address it  
 24 from Criterion (2), because of the number of  
 08:39 25 speakers that we had addressing those issues

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1 and certainly there was mental anguish.  
 2 We didn't address, though it is addressed  
 3 in Criterion (5), what are the buffer  
 4 requirements, and that's not something we  
 08:39 5 necessarily get into, but it's going to be  
 6 hard to buffer a 199-foot tower.  
 7 And also I wonder about Criterion (6), and  
 8 I wonder if that height of a tower wouldn't  
 9 require flashing red lights, which would be  
 08:39 10 visible across the road.  
 11 And also I wonder about environmental  
 12 impact as far as tree removal and that sort of  
 13 thing.  
 14 Those are just some questions. That's  
 08:40 15 just discussion. That's not a motion or  
 16 anything, but that would be something I think  
 17 we, as a Board, need to take into  
 18 consideration.  
 19 But let me ask the Board members has there  
 08:40 20 been any ex parte communication regarding that  
 21 case -- this case?  
 22 Seeing none. Does anyone have knowledge  
 23 or information obtained from a site visit or  
 24 other sources?  
 08:40 25 Seeing none. Does any Board member intend

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1 to refrain from voting due to a voting  
 2 conflict of interest?  
 3 Would the Board like to consider one of  
 4 the three options that Counselor has asked us  
 08:41 5 at this time or would you like to have a new  
 6 hearing?  
 7 MR. BRYAN: May I speak?  
 8 MR. SMITH: Yes.  
 9 MR. BRYAN: I think because of the number  
 08:41 10 of witnesses that we had at the last meeting  
 11 when we initially heard this, and those  
 12 witnesses are not here today for whatever  
 13 reason --  
 14 MS. HUAL: Just to clarify, we couldn't  
 08:41 15 rehear the case now. It would have to be at a  
 16 subsequent meeting.  
 17 MR. BRYAN: Good. Because my objection  
 18 would be those people came in good faith to  
 19 offer argument and information. For us to  
 08:41 20 proceed anew, if you will, without the ability  
 21 for them to input, I think would be a  
 22 disservice. So I would not be in favor of  
 23 that, but apparently that's not an option  
 24 today, as it turns out.  
 08:41 25 I would be in favor of explaining my vote

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1 in the negative, and I think that's probably  
 2 the easier solution today for us, to stay with  
 3 the original vote, which was properly  
 4 conducted, and if it's just a matter of  
 08:42 5 explanation and clarification, et cetera, then  
 6 that seems to me to be a not inappropriate way  
 7 for us to proceed.  
 8 MR. SMITH: I believe at this stage it  
 9 would be necessary to make a motion to not  
 08:42 10 accept staff's Findings-of-Fact, and to deny  
 11 this request, and cite those criterion that  
 12 address that.  
 13 MR. HOLMER: I'm not sure if we can  
 14 actually do that because there was a motion  
 08:42 15 made and that one failed for lack of --  
 16 because of the tie, so you would either amend  
 17 that motion or -- you would either amend it or  
 18 rescind it and kind of go from there.  
 19 MR. SMITH: Would the maker of the motion  
 08:43 20 be interested in rescinding?  
 21 MR. STROMQUIST: No.  
 22 MR. ADAMS: That motion being?  
 23 MR. SMITH: Do you recall?  
 24 MR. STROMQUIST: I made the motion to  
 08:43 25 accept staff's Findings-of-Fact with their

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1 conditional use.  
 2 MR. HOLMER: Here it is. I've got it for  
 3 you right here.  
 4 **I'll make a motion to accept staff's**  
 08:43 5 **Findings-of-Fact and approve the conditional**  
 6 **use with the following condition that the**  
 7 **project must meet all conditions imposed**  
 8 **through the site plan review process.**  
 9 MR. SMITH: And that failed.  
 08:43 10 MR. HOLMER: Once again, we're back to the  
 11 point of needing clarification. Really from  
 12 the three who voted against it, were you  
 13 voting against the initial height or were you  
 14 voting against the tower that close to the  
 08:44 15 residential zoning district? And I think if  
 16 we can get clarification on that and we know  
 17 why the vote went the way it did, we're  
 18 finished at this point.  
 19 MS. HUAL: Perhaps we can start with a  
 08:44 20 renewed motion, the motion that stood.  
 21 MR. HOLMER: Yes. If you would renew the  
 22 motion and we can have each person say their  
 23 thought on each side of it, or amend the  
 24 motion and say, you know --  
 08:44 25 MR. BRYAN: You're not proposing we undo

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1 the vote by this motion, are you?  
 2 MR. HOLMER: No. The vote stands.  
 3 MR. BRYAN: You confused me with the  
 4 readdressing or readvancing of the original  
 08:44 5 motion.  
 6 MS. HUAL: I believe if the motion is  
 7 renewed it could be voted on as that motion or  
 8 amended and voted on.  
 9 MR. JONES: Right.  
 08:45 10 MR. STROMQUIST: So clarify this again for  
 11 me. You want me to amend the motion to do  
 12 what, to get input from everybody on how they  
 13 voted? How do we state this? I'm asking the  
 14 lawyer.  
 08:45 15 MS. HUAL: If the motion is renewed, it  
 16 may, as staff has advised, be helpful to  
 17 clarify --  
 18 MR. STROMQUIST: Can you speak into the  
 19 mike? I can barely hear you.  
 08:45 20 MS. HUAL: Staff has advised it will be  
 21 helpful to clarify as part of the motion, what  
 22 is being approved.  
 23 MR. STROMQUIST: So if I amended the  
 24 motion to clarify what's been approved --  
 08:45 25 MS. HUAL: To, I suppose, accept staff's

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1 findings and approve the conditional use.  
 2 MR. HOLMER: For the additional height and  
 3 for the location within 500 feet of a  
 4 residential district.  
 08:46 5 MR. SMITH: I have a question of staff,  
 6 maybe Mr. Jones. In this same area we spent  
 7 about a year on when it involved the funeral  
 8 home, and it came back or was remanded to us  
 9 by the circuit judge and we declined it with  
 08:46 10 the understanding that there was some  
 11 codification in the works that would allow a  
 12 cinerator for that funeral home in that  
 13 particular zoning, and to the best of my  
 14 recollection, that was never permitted, that  
 08:46 15 cinerator. Why was that?  
 16 MR. JONES: Basically we -- they did  
 17 direct staff. One of the options -- and  
 18 Mr. Rigby and as well as Mr. Jensen, they can  
 19 help us out if I'm missing some points. If my  
 08:47 20 memory serves me correctly, one of the options  
 21 was, that the circuit court judge had made was  
 22 to provide staff, direct staff to gather some  
 23 language and to make a new ordinance. Staff  
 24 did do that. However, that ordinance was  
 08:47 25 upheld again. So staff did draft an ordinance

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1 and it went before the Planning Board and it  
 2 was approved. Now, there's some issues with  
 3 the ordinance, but the ordinance was approved  
 4 by the BCC, as well as the Planning Board.  
 08:47 5 Now, Mr. Jensen, he decided to pursue  
 6 another option, which is going through the  
 7 Vested Rights Committee, because of some  
 8 issues that he felt that were not addressed.  
 9 So the ordinance is still standing. It's  
 08:48 10 still the rule of law. Mr. Jensen has decided  
 11 to pursue another option through the Vested  
 12 Rights Committee, but we do have an ordinance  
 13 in place at this time for cinerators and other  
 14 things that came on back of the ordinance.  
 08:48 15 MR. SMITH: Thank you. It would seem to  
 16 me, Counselor, that -- I don't see how this  
 17 motion, based on what I'm hearing, that has  
 18 been made, I don't see how it can be amended  
 19 to address the point where we are today. I'm  
 08:48 20 wondering if the most expeditious manner might  
 21 not be to have a rehearing.  
 22 MS. HUAL: That is one of the options. I  
 23 will say if the motion is renewed and there is  
 24 a vote, then I would just ask that anyone who  
 08:49 25 declines to vote in favor of the motion that

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1 was made before, that they provide  
 2 Findings-of-Fact that are supported by  
 3 competent and substantial evidence that was in  
 4 the record as presented at the last hearing.  
 08:49 5 That's what's required.  
 6 MR. SMITH: Let me ask the Board members  
 7 then if anyone would like to comment as to  
 8 whether you feel a rehearing would be better  
 9 than addressing the motion again? Does anyone  
 08:49 10 have any comments on that?  
 11 MR. ADAMS: We don't need another hearing.  
 12 MR. SMITH: Pardon?  
 13 MR. ADAMS: I don't think we need another  
 14 hearing.  
 08:49 15 MR. SMITH: Okay.  
 16 MR. BRYAN: Agreed. I don't feel we need  
 17 another hearing.  
 18 MR. SMITH: Then I believe it would be in  
 19 order for you to restate your motion.  
 08:50 20 MR. STROMQUIST: As a rezoning statement?  
 21 MR. SMITH: Well, it's in the transcript  
 22 if you get confused.  
 23 MS. HUAL: And anyone can amend, can  
 24 propose an amendment to the motion.  
 08:50 25 MR. JONES: Right. And I think that's all

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1 we need. I really believe since the two  
 2 options were taken off the table, another  
 3 hearing, the Board stated that by a straw vote  
 4 that you don't want another hearing, so it  
 08:50 5 appears that you can make an amendment to that  
 6 motion with clarification to address, as she  
 7 stated, why you are denying based on  
 8 substantial and competent evidence. We have  
 9 to provide some type of evidence as to why, on  
 08:50 10 each fact, that you do not and are still in  
 11 favor of. That was not done at the last  
 12 meeting and that is what's needed at this  
 13 time.  
 14 MR. SMITH: Okay. Does everyone  
 08:51 15 understand the motion? Do we have a second?  
 16 MR. ADAMS: Second.  
 17 MR. SMITH: We have a motion. We have a  
 18 second. Those in favor, raise your right  
 19 hand.  
 08:51 20 (Mr. Bryan, Ms. Gund and Mr. Adams vote in  
 21 favor.)  
 22 MR. BRYAN: Wait. I'm voting, I believe,  
 23 to proceed with information gleaned, yes? We  
 24 will offer up our reasons for the vote last  
 08:51 25 time? I think that's what I'm voting for.

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1 MR. JONES: To amend the previous motion.  
 2 MS. HUAL: I thought we were voting on the  
 3 prior motion.  
 4 MR. HOLMER: We are. Y'all are voting on  
 08:51 5 the prior motion.  
 6 MS. HUAL: The motion to accept staff's  
 7 findings.  
 8 MR. BRYAN: To accept staff's findings?  
 9 MR. HOLMER: Yes.  
 08:51 10 MR. BRYAN: Well, I asked that previously,  
 11 if we are going to undo the vote of the last  
 12 time, and I was assured we cannot do that, it  
 13 would require a new hearing.  
 14 MR. HOLMER: You're not.  
 08:51 15 MS. HUAL: No. There can be a renewed  
 16 motion. That motion can be amended. There  
 17 can be a vote on the amended motion. You  
 18 just -- you can't accept any additional  
 19 evidence. So whatever was presented at the  
 08:52 20 last hearing, that's what you would be basing  
 21 your decision upon. That's not to say that  
 22 you can't renew the motion, amend the motion,  
 23 have additional discussion.  
 24 MR. SMITH: It was three three vote last  
 08:52 25 time.

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1 MR. BRYAN: Correct.  
 2 MR. SMITH: And if the three votes against  
 3 that motion, the only difference is this time  
 4 those three votes will express their rationale  
 08:52 5 and point to one or two or --  
 6 MS. HUAL: But they may vote otherwise,  
 7 they may vote on a different motion. So the  
 8 limitation is that you can't hear additional  
 9 evidence.  
 08:53 10 MR. SMITH: Right. So right now we're  
 11 voting on that original motion --  
 12 MR. BRYAN: Thank you.  
 13 MR. SMITH: -- to approve and accept the  
 14 conditional use request.  
 08:53 15 MR. BRYAN: That's much clearer.  
 16 MR. SMITH: Yes, sir?  
 17 MR. BRIDGFORD: Scott Bridgford. Just for  
 18 the record, I wanted to note that we represent  
 19 Mr. Jensen, whose name has already come up.  
 08:53 20 Kerry Anne Schultz was here for Mr. Jensen the  
 21 last time, and we just wanted to state, for  
 22 the record, that our objection is to any  
 23 revote, because I've not heard any procedural  
 24 flaw in the way the vote was taken the last  
 08:53 25 time. We certainly understand clarification,

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1 but we object to any revote because again, I  
 2 don't know of any procedural flaw in the way  
 3 it was done last time.  
 4 MR. SMITH: I think staff, we could do  
 08:53 5 that and have those three votes that put it  
 6 defeated, to explain why.  
 7 MR. HOLMER: Yes, we can simply get  
 8 clarification.  
 9 MR. SMITH: Yes, we'll do clarification.  
 08:54 10 MR. HOLMER: Point A or Point B.  
 11 MR. JONES: Right, clarification.  
 12 MR. HOLMER: We can do that.  
 13 MR. SMITH: I'll begin that if that's okay  
 14 because -- do we need to take that motion off  
 08:54 15 the table? No. No. It's the same motion.  
 16 MR. JONES: It's the same motion.  
 17 MR. SMITH: I voted no for those reasons  
 18 that I stated earlier, that on Criterion (2)  
 19 I'm voting no on the height and the proximity  
 08:54 20 to the residential area. I believe there were  
 21 enough speakers to address that issue as to  
 22 noise, glare, smoke, odor on Criterion (2).  
 23 There was certainly some mental anguish there.  
 24 I also think -- I believe that the tower  
 08:54 25 will have to have lights because of the

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1 height. And I think Criterion (6) is a  
 2 problem.  
 3 So that I'll just use those two criterion  
 4 and as I said earlier, even (8) and (7).  
 08:55 5 There was a reason the code was written this  
 6 way, and that's what we're here to either  
 7 sanctify or deny.  
 8 Now, I believe you, sir.  
 9 MR. BRYAN: All right. I voted in the  
 08:55 10 negative for reasons of the 150 foot  
 11 limitations.  
 12 I'm sorry. My fault. We haven't needed  
 13 to use these to this point.  
 14 I voted in the negative for reasons of the  
 08:55 15 150-foot limitation. Nothing was offered that  
 16 I heard, to explain why an exception to the  
 17 150 feet should have been approved by the  
 18 Board, nor was there any information that went  
 19 in to explain where the 150-foot limitation  
 08:56 20 came from originally. Without that kind of  
 21 information I felt inadequate to waive the  
 22 150-foot limitation. As well, as was offered  
 23 through testimony and information before the  
 24 Board, clearly the higher the antenna the  
 08:56 25 greater the reach line of sight physics being

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1 involved, so it could go on theoretically as  
 2 high as one could possibly get to reach the  
 3 maximum number of people, but then there was a  
 4 199-foot limitation, as I recall, by virtue of  
 08:56 5 certain new requirements and constraints that  
 6 would be imposed by FAA, et al.  
 7 So, to me, I didn't see any compelling  
 8 reason to go beyond 150. There are arguments  
 9 to go beyond 199, et cetera, and so I felt  
 08:57 10 that what needed to be done is a backup  
 11 antenna for the purposes of the radio station  
 12 could be served by staying within the  
 13 constraints of the 150-foot limitations.  
 14 I will grant you that there were also the  
 08:57 15 500-foot residences within the area, but to  
 16 me, while that was true, it was a minimal  
 17 impact given the location of I-10 and I-110  
 18 between them and the proposed antenna.  
 19 So for me, it was the matter of the  
 08:57 20 150-foot limitation.  
 21 MS. HUAL: And just to clarify it, but  
 22 for, because the way that the performance  
 23 standards read they would need a conditional  
 24 use for the tower because of the height and/or  
 08:57 25 because of the fact that's it located in a

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1 residential area. Were it not to exceed the  
 2 150 feet --  
 3 MR. BRYAN: I would have been inclined to  
 4 support that.  
 08:58 5 MR. SMITH: And the other negative vote.  
 6 MS. RIGBY: I voted in the negative for  
 7 many reasons. I, too, do not find that the  
 8 150 feet was substantial for the use intended.  
 9 It is a permitted use at 150 feet. I felt  
 08:58 10 like there was nothing gained by the 49  
 11 additional feet, and I believe that the  
 12 applicant went to that 49 feet for a reason  
 13 not to have to deal with the FCC and FAA  
 14 paperwork and so forth. There's no reason to  
 08:58 15 do that. They can do what they can do with  
 16 150 feet. Nothing precludes them from  
 17 continuing their radio station at 150 feet.  
 18 I also believe that -- well, that involved  
 19 Criterion (9).  
 08:59 20 Criterion (8), I believe that the  
 21 forefather's of this LDC put it at 150 feet  
 22 for a reason. I believe that the neighborhood  
 23 relies on that documentation. If, in the  
 24 future, we find a reason to change that, then  
 08:59 25 there are procedures to have the LDC modified.

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1 I believe that the neighborhood, the  
 2 public safety, the nuisance of the additional  
 3 49 feet far outweigh the desire of the  
 4 applicant to have the additional 49 feet.  
 08:59 5 I also believe Criterion (6) as far as the  
 6 lights, and I believe that's it.  
 7 MR. BRYAN: Mr. Chairman, in light of this  
 8 conversation, I wonder, and to staff, as well,  
 9 with your permission, if we might, and counsel  
 09:00 10 as well, would it be inappropriate to propose  
 11 a motion for a vote on a 150-foot tower, not  
 12 to exceed that?  
 13 MR. SMITH: Not unless we have a  
 14 rehearing.  
 09:00 15 MS. HUAL: I think you can amend the  
 16 motion.  
 17 MR. HOLMER: Yes. The motion can be  
 18 amended, but...  
 19 MS. HUAL: To approve with that  
 09:00 20 limitation. I believe that would be  
 21 acceptable.  
 22 MR. BRYAN: To 150 feet?  
 23 MS. HUAL: Yes.  
 24 MR. HOLMER: For the location within 500  
 09:00 25 feet of residential.

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1 MR. BRYAN: The location as is, but  
 2 limited to 150 feet could be an acceptable  
 3 motion -- amendment.  
 4 MS. HUAL: Yes.  
 09:00 5 MR. HOLMER: Yes, we could do that.  
 6 MS. HUAL: The motion has been renewed and  
 7 there's been additional discussion based on  
 8 the evidence presented at the prior hearing,  
 9 then the motion, I believe, could be amended.  
 09:00 10 MR. BRYAN: It seems like a possible  
 11 solution to all parties, to me, and from what  
 12 I'm hearing, maybe there's some movement, with  
 13 clarification there's potential change and  
 14 opportunity to move forward.  
 09:01 15 MR. HOLMER: So are you officially  
 16 amending it?  
 17 MR. BRYAN: I'm bantering at the moment,  
 18 but I'm moving towards a motion towards an  
 19 amendment that would permit a vote of the  
 09:01 20 staff's findings, but limited further to the  
 21 location and 150 feet maximum.  
 22 MR. HOLMER: That would be findings, so we  
 23 could have written findings based off that.  
 24 MR. BRYAN: I will then, at this point,  
 09:01 25 unless otherwise objected to by counsel...

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1 MS. HUAL: I also wanted to just add, this  
 2 is a public hearing and I think you mentioned  
 3 having speakers that signed up or no.  
 4 MR. STROMQUIST: We do.  
 09:01 5 MR. SMITH: Yes.  
 6 MS. HUAL: I just wanted to remind you.  
 7 MR. BRYAN: Well, would you like to hold  
 8 that in abeyance then until such time as we've  
 9 heard from them?  
 09:01 10 MR. SMITH: If we're going in that  
 11 direction we need to permit the speakers to  
 12 speak.  
 13 MR. BRYAN: No objection here.  
 14 MR. SMITH: Mr. Rigby.  
 09:02 15 (Public Comments.)  
 16 MR. RIGBY: Thank you, Mr. Chairman and  
 17 Board. I'm Jesse Rigby, 125 West Romana  
 18 Street. And just to put this in perspective,  
 19 I'm not going to talk about the evidence. I  
 09:02 20 think that's inappropriate.  
 21 We ask that you reconvene. You may recall  
 22 at the end of the last session I raised the  
 23 issue, under federal law that you needed to  
 24 explain your findings. So I appreciate your  
 09:02 25 effort to do that and to clarify that, and we

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1 agree with the County, since we have a very  
 2 short time frame, if it could be held by today  
 3 we would waive, and if you enter findings,  
 4 then we will not raise that issue if we take  
 09:02 5 the matter to court. In other words, we'll  
 6 accept, even though it's late in the 30 day  
 7 process, we can live with today. So that's  
 8 the background.  
 9 We can agree to disagree whether or not a  
 09:03 10 150-foot tower is absolutely permitted or not.  
 11 Now is not the time to address that.  
 12 There is one other issue I do want to  
 13 address and that is on the state law, not the  
 14 federal law side. The Florida Supreme Court  
 09:03 15 back in the mid-eighties in the case of  
 16 Irvine v. Duval County Planning Commission set  
 17 forth the standards for what's viewed the  
 18 terms under Florida law, special exceptions  
 19 and conditional uses, and that was a special  
 09:03 20 exception, but Florida law treats both  
 21 conditional uses and special exceptions as the  
 22 same. It depends on what a local jurisdiction  
 23 calls it. And in that case, it set forth the  
 24 burden -- and I apologize to you for not  
 09:03 25 really bringing this to the Board's attention,

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1 especially the new board members the last time  
 2 -- it's not something that you would know and  
 3 it's not a legal standard that's set forth in  
 4 the County code.  
 09:04 5 What the County code does is set forth  
 6 your criteria that you have to review. And  
 7 what the Irvine case said and the Florida  
 8 Supreme Court, is that the applicant, my  
 9 client, must first show that those statutory  
 09:04 10 criteria are met, those seven or eight. We  
 11 may or may not, depending on your findings.  
 12 But once that is done -- and, of course, the  
 13 County agrees, through their staff report and  
 14 their evidence, that we met all eight  
 09:04 15 criteria. That's the evidence.  
 16 So once you reach and go past those first  
 17 elements, then what Irvine said is the burden  
 18 shifts to the opposition and the opposition  
 19 must show how approval of the conditional use  
 09:04 20 would be adverse to the public interest.  
 21 Adverse to the public interest is fairly  
 22 standard, and I would ask that you clarify  
 23 again how is this adverse to the public  
 24 interest.  
 09:05 25 We don't want to flail around if my client

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1 decides to appeal. I mean, the judge has a  
 2 right to know what that is. And so if you  
 3 determine that it is adverse to the public  
 4 interest, I would ask that you amend your  
 09:05 5 clarifications to include that.  
 6 I think you clearly addressed the federal  
 7 law written standards in your comments up to  
 8 this point. You've explained your reasoning.  
 9 So those would be my only comments. In  
 09:05 10 other words, basically my client does not have  
 11 to show how it is in the public interest.  
 12 That's what the Irvine case said. The  
 13 opposition, whether it's the County or the  
 14 public, has to demonstrate how it will be  
 09:05 15 adverse to the public interest, in this case,  
 16 at 199 feet.  
 17 If you have questions on that point, or  
 18 Ms. Hual may also have issues or questions on  
 19 that case.  
 09:06 20 MS. HUAL: I'm familiar with the Irvine  
 21 case.  
 22 MS. RIGBY: Thank you.  
 23 MR. SMITH: Thank you, sir. Scott  
 24 Bridgford. I believe you're an attorney and  
 09:06 25 you won't have to be sworn in.

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1 MR. BRIDGFORD: Yes, I am. I appreciate  
 2 the Board allowing me to comment. I'll be  
 3 very brief. Our objection is simply to the  
 4 revote. We have no objection to clarification  
 09:06 5 on reasons because again, for the record,  
 6 there's been no procedural flaw, whatsoever,  
 7 with the way the previous vote was taken or  
 8 presented.  
 9 Mr. Rigby's comments, I believe, that is a  
 09:06 10 standard that the Court would review. I don't  
 11 believe it's a standard that necessarily  
 12 applies to the Board or what they have to do.  
 13 If they appeal, certainly the Supreme Court  
 14 decision is going to be considered as far as  
 09:06 15 judicial review is concerned.  
 16 Our primary objection to a revote, I  
 17 understand that's not going to happen, we're  
 18 just talking about clarification, is that  
 19 there was no procedural flaw before, that as  
 09:07 20 has been noted by Mr. Bryan, there were  
 21 substantial other attendees last time that  
 22 aren't here. Certainly their presence or lack  
 23 thereof has an influence, even if they're not  
 24 speaking.  
 09:07 25 So we don't believe there's been any

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1 flaws. I believe that in terms of public  
 2 interest, the three no votes have already  
 3 provided clarification on that just since  
 4 we've been sitting here today.  
 09:07 5 So our only presence here today is just to  
 6 object to any kind of revote and allow the  
 7 vote to stand as is, and I believe the  
 8 explanation has already been given  
 9 sufficiently, so that we're not rehashing the  
 09:07 10 same thing over again. I appreciate your  
 11 time.  
 12 MR. SMITH: Thank you, sir.  
 13 MS. RIGBY: Can I ask him a question? You  
 14 said you object to a revote. Do you object to  
 09:07 15 an amended vote, an amendment to the vote?  
 16 MR. BRIDGFORD: If it requires  
 17 reconsideration, yes, again for the same  
 18 reason that we've already heard from one of  
 19 the no votes that the presence of the other  
 09:07 20 attendees had a substantial impact. Again, if  
 21 there was no procedural flaw last time and  
 22 that impacted the decision, then, to me, any  
 23 kind of revote without their presence flies in  
 24 the face of the previous vote that had no  
 09:08 25 procedural flaw.

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1 MS. RIGBY: Thank you.  
 2 MR. BRIDGFORD: Thank you.  
 3 MR. SMITH: Thank you, sir.  
 4 MR. RIGBY: Again, I think, staff, you've  
 09:08 5 got the list there. I believe you will see  
 6 that the notice went to every person that got  
 7 noticed the first time, including all the  
 8 people who appeared and spoke, if I read what  
 9 was presented in your package to you. So  
 09:08 10 they've all had notice of this hearing.  
 11 MS. HUAL: Again, I firmly believe that  
 12 the limitation is considering any new evidence  
 13 that was not presented at the prior hearing.  
 14 I do think that it is procedurally correct and  
 09:08 15 acceptable to renew a motion at a publicly  
 16 noticed subsequent meeting and to perhaps even  
 17 consider an amended motion based on the  
 18 evidence that was presented at the prior  
 19 hearing.  
 09:08 20 MR. SMITH: Thank you.  
 21 Julia Ferris.  
 22 THE WITNESS: Never mind.  
 23 MR. SMITH: Thank you, Julia. That was  
 24 quick.  
 09:09 25 Chris Jensen.

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1 MR. JENSEN: Good morning.  
 2 MR. SMITH: Be sworn in, Chris.  
 3 (Chris Jensen sworn.)  
 4 MR. JENSEN: Good morning, Board. A  
 09:09 5 couple of things here. One of the reasons --  
 6 yes, everybody was notified apparently, but  
 7 one of the reasons other people are not here  
 8 is because we were explicitly told by Drew, by  
 9 Alison Rogers, by several other people, there  
 09:10 10 was no changing anything, that there was  
 11 nothing else going to be reconsidered. I  
 12 mean, these people work. They really took a  
 13 lot of time out to come here last time. I  
 14 think you really should consider that on  
 09:10 15 anything. You voted. It's done. I think  
 16 it's a waste of time and taxpayer money to get  
 17 y'all over here to try and ask you exactly why  
 18 you voted the way you are. I don't see  
 19 anything that says you have to.  
 09:10 20 It says that FCC clearly states that this  
 21 is supposed to be resolved by the courts. I  
 22 can give you the thing on it. I think the  
 23 Chairman here absolutely said several -- you  
 24 know, he apparently has issues with several of  
 09:10 25 the points, you know, and things that need to

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1 be clarified. There's a lot more to this.  
 2 You know, even going back to 150 foot, you  
 3 know, that's a whole other issue. No one has  
 4 had a chance to even look at that, or the  
 09:11 5 people haven't had a chance to even come here  
 6 and talk about that. You know, the thing that  
 7 was before the Board was yes or no on a  
 8 199-foot tower. Period. I don't know where  
 9 all this extra stuff is coming in. I mean,  
 09:11 10 it's kind of like well, let's keep going back  
 11 to the Board of Adjustment until we get the  
 12 answer we want, and I don't think it's fair to  
 13 you, it's not fair to me, and it's not fair to  
 14 the citizens who spend their time and effort  
 09:11 15 to come out here and let you know how they  
 16 feel. Thank you.  
 17 MR. SMITH: Thank you, sir.  
 18 MR. HOLMER: For clarification, that is  
 19 correct that no new evidence is being  
 09:11 20 presented. I did not, however, talk to any of  
 21 the speakers. The only person I spoke to in  
 22 this time was Ms. Gund who called me about a  
 23 question about this hearing.  
 24 MR. JENSEN: I have an email if you would  
 09:11 25 like to see it.

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1 MR. SMITH: No, that's okay.  
 2 MR. JENSEN: Okay.  
 3 MR. SMITH: Counselor, I see doing  
 4 anything different than what we have done as  
 09:12 5 creating more problems. You have expressed  
 6 your opinion, which is highly valued, so I'll  
 7 leave it up to the Board.  
 8 As it is, we have completed what this  
 9 meeting was called for, and that was for the  
 09:12 10 no votes to state their reasons and that has  
 11 been done. I think doing anything else at  
 12 this time -- and I'm sure the applicant will  
 13 appeal and that's their privilege, but I think  
 14 if we do anything other than what we've done  
 09:12 15 here, is compounding the problem.  
 16 Do any other Board members have anything?  
 17 MR. ADAMS: There's been a motion made.  
 18 MR. BRYAN: No, I actually didn't make it.  
 19 I held off making the motion to amend it for  
 09:13 20 the 150 foot. Is that what you're referring  
 21 to?  
 22 MR. ADAMS: Yes.  
 23 MR. BYRAN: I actually didn't -- if I did,  
 24 I misspoke, and wished to listen and hear what  
 09:13 25 we've since heard.

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1 MR. JONES: You didn't make a motion. You  
 2 were asking questions and direction.  
 3 MR. BRYAN: I didn't think I had.  
 4 MS. RIGBY: Can I ask the staff a  
 09:13 5 question?  
 6 MR. SMITH: Sure.  
 7 MS. RIGBY: I'm a little confused as to  
 8 the ability of the applicant to build a  
 9 150-foot tower. My understanding is that was  
 09:13 10 a permitted use. The way 7.18.D reads, no  
 11 commercial communication tower shall be  
 12 located closer than the height of the tower to  
 13 a residential zoning district line.  
 14 My understanding is that the residential  
 09:13 15 district line was more than 150 feet, but less  
 16 than 500. Let's not talk about 199 for a  
 17 minute.  
 18 If he came to you and said, I want to  
 19 build a 150-foot tower, that would have  
 09:14 20 approved without coming here, correct?  
 21 MR. HOLMER: We're still hung up in that  
 22 section where it says and/or -- the "or" is  
 23 what gets us -- located within 500 feet of a  
 24 residential area. It's still a conditional  
 09:14 25 use.

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1 MS. RIGBY: It says, in addition, all  
 2 communication towers which exceed 150 feet in  
 3 height and/or are located within 500 feet.  
 4 MR. HOLMER: The "or" is...  
 09:14 5 MS. RIGBY: Because it's located within  
 6 500 feet, if it was a 150-foot tower it would  
 7 still have to come here, correct?  
 8 MR. HOLMER: That's why there's two  
 9 issues.  
 09:14 10 MS. RIGBY: Okay. Thank you.  
 11 MR. HOLMER: Staff doesn't like that  
 12 language anymore than anybody.  
 13 MR. SMITH: Here, again, without  
 14 objection, I think the Board has accomplished  
 09:15 15 what this meeting was called for.  
 16 MR. BRYAN: I move that.  
 17 MR. SMITH: Without objection, we'll  
 18 conclude this hearing.  
 19 MR. HOLMER: So staff has the three votes,  
 09:15 20 the three negative votes. One person was  
 21 against the location and the height and the  
 22 other two were just against the height. I can  
 23 make findings off of that.  
 24 MR. RIGBY: I would ask that you -- again,  
 09:15 25 there can be a transcript very quickly -- but

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1 that you get specific with what was said and  
 2 not just a generalized statement. That  
 3 doesn't help a great deal.  
 4 MR. HOLMER: I've got their statements.  
 09:15 5 MR. STROMQUIST: Motion to adjourn.  
 6 MS. HUAL: Unless the Board has anything  
 7 else.  
 8 MR. BRYAN: Second.  
 9 MR. SMITH: We have a motion and second.  
 09:15 10 Those in favor, hold your right hand up.  
 11 (Board members vote.)  
 12 MR. SMITH: It passes unanimously.  
 13 (Motion passes unanimously.)  
 14 (The proceedings concluded at 9:19 a.m.)  
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 11 Wednesday, March 11, 2015; that said proceeding was  
 12 taken by me stenographically, and transcribed by me  
 13 as it now appears; that I am not a relative or  
 14 employee or attorney or counsel of the parties, or  
 15 relative or employee of such attorney or counsel, nor  
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Board of County Commissioners • Escambia County, Florida

Horace L. Jones, Department Director  
Development Services

March 12, 2015

Dave Hoxeng, Agent for ADX Communications  
7251 Plantation Rd.  
Pensacola, FL 32504

RE: Notification of Board of Adjustment (BOA) Action on March 11, 2015 for Conditional Use Case #CU-2015-03, 7251 Plantation Rd.

Dear Applicant:

This letter is to inform you of the Board's action to your request for a Conditional Use to Construct a 199 foot Commercial Communication Tower within 500 feet of a Residential Zoning District:

**A motion was made to approve the request but the vote was a tie. The motion died, functioning as a denial. The members in opposition to the request stated their issues as follows:**

**Mr. Smith-opposed to the additional height above the permitted 150' and the location in relation to residential zoning. He found that the request did not meet criteria 2, 6, 7 and 8.**

**Mr. Bryan-opposed to the additional height above the permitted 150'.**

**Mrs. Rigby-opposed to the additional height above the permitted 150'. She found that the request did not meet criteria 6, 8 and 9.**

Should you have any questions or comments, please contact our office.

Sincerely,

A handwritten signature in blue ink that reads "AD Holmer".

Andrew D Holmer  
Sr. Urban Planner

cc: Kristin Hual, Assistant County Attorney  
Front Counter

**Board of Adjustment**

**6. 1.**

**Meeting Date:** 03/11/2015  
**CASE:** CU-2015-03  
**APPLICANT:** Dave Hoxeng, Agent for ADX Communications of Escambia, LLC  
**ADDRESS:** 7251 Plantation Rd.  
**PROPERTY REFERENCE NO.:** 30-1S-30-4101-006-002  
**ZONING DISTRICT:** C-2, General Commercial and Light Manufacturing District  
**FUTURE LAND USE:** C, Commercial  
**OVERLAY DISTRICT:** N/A

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**SUBMISSION DATA:**

**REQUESTED CONDITIONAL USE:**

The Applicant is seeking Conditional Use approval to construct a 199 foot commercial communication tower within 500 feet of a residential zoning district.

**RELEVANT AUTHORITY:**

**Land Development Code of Escambia County, Florida (Ordinance 96-3 as amended), Section:7.18.D**

*D. Setback from residential zoning.* No commercial communication tower shall be located closer than the height of the tower to a residential zoning district line. In addition, **all commercial communication towers which exceed 150 feet in height (in districts where commercial communications towers are allowed), and/or are located within 500 feet of a residential area, are considered conditional uses** and shall be reviewed by the board of adjustment pursuant to sections 2.05.03 and 7.18.00.

**CRITERIA:**

**Land Development Code of Escambia County, Florida (Ordinance 96-3 as amended), Section 2.05.03**

**CRITERION (1)**

***On-site circulation.*** Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, on-site parking and loading, and access in case of fire or catastrophe.

#### **FINDINGS-OF-FACT**

The property in question has ample parking for the land use and is accessed by driveways connecting to Plantation Rd.

#### **CRITERION (2)**

***Nuisance.*** Adverse impact such as noise, glare, smoke, odor or other harmful effects (electrical interference, hazardous materials, etc.) of the conditional use on adjoining properties and properties generally in the District.

#### **FINDINGS-OF-FACT**

Staff does not find any anticipated nuisances associated with the proposed use.

#### **CRITERION (3)**

***Solid Waste.*** Refuse and service areas with particular reference to concurrency requirements and items (1) and (2) above.

#### **FINDINGS-OF-FACT**

Solid waste service will not be necessary for this use.

#### **CRITERION (4)**

***Utilities.*** Utilities with reference to concurrency requirements, location, availability and compatibility with surrounding land uses.

#### **FINDINGS-OF-FACT**

Any necessary utilities will be provided by the Applicant.

#### **CRITERION (5)**

***Buffers.*** The buffer may be a landscaped natural barrier, a natural barrier or a landscaped or natural barrier supplemented with fencing or other man-made barriers, so long as the function of the buffer and the intent of Policy FLU 1.1.9 of the Comprehensive Plan and the provisions of Section 7.01.06 of the Land Development Code are fulfilled.

#### **FINDINGS-OF-FACT**

The proposed use must meet any buffering requirements imposed during the site plan review process.

#### **CRITERION (6)**

***Signs.*** Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the District.

#### **FINDINGS-OF-FACT**

Any signage associated with the proposed use must meet the requirements of the Land Development Code.

#### **CRITERION (7)**

**Environment impact.** Impacts to protected trees, wetlands, water bodies, stormwater management or other natural features of the subject parcel.

#### **FINDINGS-OF-FACT**

The proposed use must comply with any environmental standards imposed during the site plan review process.

#### **CRITERION (8)**

**Neighborhood impact.** General compatibility with adjacent properties and other property in the immediate area.

#### **FINDINGS-OF-FACT**

The proposed use will be compatible with the surrounding heavy commercial zoning. The residential zoning within 500 feet is to the north across Interstate 10. Any impacts on that residential zoned area will be minimized by distance and the existing Interstate right-of-way.

#### **CRITERION (9)**

***Other requirements of Code.*** The proposed Conditional Use is consistent with all other relevant provisions of this Code.

#### **FINDINGS-OF-FACT**

The proposed use must meet all of the requirements of LDC 7.18.00 and any other standards imposed through the site plan review process. The Applicant has provided compliance with FCC, FAA, and County Emergency Management Service requirements, coverage maps for this tower and collocation information,

as required for Conditional Use approval.

**STAFF RECOMMENDATION**

Staff finds that the proposed use can meet all of the required criteria and recommends approval of the Conditional Use with the following condition:

The project must meet all conditions imposed through the site plan review process.

**BOARD OF ADJUSTMENT FINDINGS:**

**A motion was made to approve the request but the vote was a tie. The motion died, functioning as a denial. The members in opposition to the request stated their issues as follows:**

**Mr. Smith-opposed to the additional height above the permitted 150' and the location in relation to residential zoning. He found that the request did not meet criteria 2, 6, 7 and 8.**

**Mr. Bryan-opposed to the additional height above the permitted 150'.**

**Mrs. Rigby-opposed to the additional height above the permitted 150'. She found that the request did not meet criteria 6, 8 and 9.**

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**Attachments**

Working Case File CU-2015-03

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IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA

**ADX COMMUNICATIONS OF  
ESCAMBIA, L.L.C., a Florida  
limited liability company,**

**Petitioner,**

v.

**CASE NO.: 15-CA-000489**

**ESCAMBIA COUNTY, acting by  
and through its BOARD OF  
ADJUSTMENT**

**Respondent,**  
\_\_\_\_\_ /

**FINAL ORDER**

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

**BACKGROUND**

Petitioner applied to build a new communications tower on Plantation Road in Escambia County, Florida. The tower Petitioner proposed to build was 199 feet high which exceeded the 150-foot restriction contained in the Land Development Code of Escambia County. A tower exceeding 150 feet is permitted by the Land Development Code as a conditional use if approved by the Board of Adjustment. Petitioner filed a conditional use application requesting that the Board of Adjustment approve the construction of a tower which would be forty-nine (49) feet higher than the Land Development Code restriction. Despite the recommendation for approval by the county planning staff, the conditional use application was denied as a result of a 3-3 tie vote among the members of the Board of Adjustment. Review of that decision is sought by the Petitioner.

2015 DEC -9 P 3:12

FILED & RECORDED

## ANALYSIS

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

The Court first finds that Petitioner made a prima facie showing of entitlement to the conditional use. The County staff reviewed the application and made a recommendation of approval. Additionally, it is undisputed that the Board of Adjustment recognized the county staff as experts and admitted the staff opinion into evidence at the meeting. Further, the Court finds that the Petitioner presented competent substantial evidence that all criteria had been met for the purposes of constructing a tower in excess of 150 feet.

Because the Petitioner met its burden, this Court must now review the facts to determine whether there exists in the record, competent substantial evidence to support the denial of the conditional use application. When the conditional use application was initially denied at the February 18, 2015 hearing, the Board of Adjustment made no specific findings to support its decision. This matter was brought back before the Board of Adjustment in March of 2015 so that the board members who voted to deny the conditional use application could state on the record what criteria had not been met by the Petitioner. Two Board Members specifically named the criterion they believed had not been met. The other Board Member who voted to deny the conditional use application did not specifically state which criterion had not been met.

The Court finds there was no competent substantial evidence to support the Board's denial of the Petitioner's Land Use Application. The testimony of the witnesses who spoke against the conditional use application was speculative and not supported by any evidence.

Many of the objections were simply conjecture. There was no evidence to support that a communications tower that was forty-nine (49) feet higher than the code permitted would create any nuisance. (Criterion #2). Moreover, there was no competent evidence that the communications tower failed to meet signage requirements (Criterion #6) and that it would have any adverse impact on traffic or businesses. Further, there was no evidence that any lighting which might come from the tower was not acceptable under the Land Development Code. There was no evidence to support a finding that a 199-foot communications tower would have any adverse environmental impacts (Criterion #7). While there was some testimony that a communications tower higher than 150 feet would have an adverse impact on the neighborhood, such testimony should not have been considered because the witnesses who spoke out against the tower were not expert witnesses and were simply speculating on what impacts the tower might have on the neighborhood. (Criterion #8). Finally, there was no evidence to support the finding that the proposed communications tower was not consistent with other code requirements (Criterion #9).

The Court further finds that the Board of Adjustment did not comply with the essential requirements of law because it permitted several witnesses to speak about radio emissions and the health hazards they allegedly cause. It is clear that this testimony is prohibited by Land Development Code Section 7.18.00.J.<sup>1</sup> Such testimony should not have been admitted and considered by the Board. After a review of the record, the Court believes the continuous references to potential health hazards was overly prejudicial to the Petitioner and cannot be discounted as harmless error.

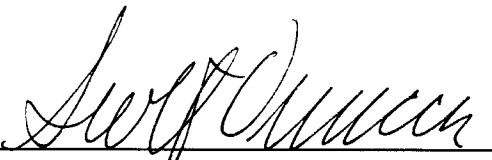
Therefore it is **ORDERED** that the Petitioner's Petition is **GRANTED**, and that the decision of the Escambia County Board of Adjustment rejecting the conditional use application

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<sup>1</sup> Because the Court has found emissions testimony cannot be considered pursuant to LDC Section 7.18.00.J, it need not decide whether the admission of this testimony is also prohibited by the federal Telecommunications Act of 1996.

is hereby **QUASHED**. This cause is remanded to the Board for further proceedings consistent herewith.

**DONE AND ORDERED** at Pensacola, Escambia County, Florida this 8<sup>th</sup> day of December, 2015

  
\_\_\_\_\_  
**J. SCOTT DUNCAN**  
**CIRCUIT JUDGE**

*Executed  
12/10/15*

cc: Jesse W. Rigby  
Kristin D. Haul



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



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

**ADX COMMUNICATIONS OF  
7251 PLANTATION RD  
PENSACOLA, FL 32504**

**EDGE JUDY J & JENNINGS EUGENE R TRUSTEES  
FOR JENNI  
1505 ATWOOD DR  
PENSACOLA, FL 32514**

In accordance with the Americans with Disabilities Act, persons needing special accommodation or an interpreter to participate in the public hearing should contact County Administrator's Office at 595-4947 at least seven days prior to the date of the hearing. If you have any questions, please contact the Development Services Department at 595-3475.

In accordance with the Americans with Disabilities Act, persons needing special accommodation or an interpreter to participate in the public hearing should contact County Administrator's Office at 595-4947 at least seven days prior to the date of the hearing. If you have any questions, please contact the Development Services Department at 595-3475.



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



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

**COMMUNICATION WORKERS OF AMERICA  
1621 ATWOOD DR  
PENSACOLA, FL 32514**

**SAI RAM KRUPA LLC  
4031 STEPHANI RD  
CANTONMENT, FL 32533**

In accordance with the Americans with Disabilities Act, persons needing special accommodation or an interpreter to participate in the public hearing should contact County Administrator's Office at 595-4947 at least seven days prior to the date of the hearing. If you have any questions, please contact the Development Services Department at 595-3475.

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

**PENSACOLA CITY OF  
PO BOX 12910  
PENSACOLA, FL 32521**

In accordance with the Americans with Disabilities Act, persons needing special accommodation or an interpreter to participate in the public hearing should contact County Administrator's Office at 595-4947 at least seven days prior to the date of the hearing. If you have any questions, please contact the Development Services Department at 595-3475.



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

**AMMONS WILLIAM S & TATUM  
C/O LINDA AMMONS  
1507 E STRONG ST  
PENSACOLA, FL 32501**

In accordance with the Americans with Disabilities Act, persons needing special accommodation or an interpreter to participate in the public hearing should contact County Administrator's Office at 595-4947 at least seven days prior to the date of the hearing. If you have any questions, please contact the Development Services Department at 595-3475.



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

**CEJ SOUTH INC  
PO BOX 11986  
PENSACOLA, FL 32524**

In accordance with the Americans with Disabilities Act, persons needing special accommodation or an interpreter to participate in the public hearing should contact County Administrator's Office at 595-4947 at least seven days prior to the date of the hearing. If you have any questions, please contact the Development Services Department at 595-3475.



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

**COWABUNGA LLC  
2342 TALL OAK DR  
CANTONMENT, FL 32533**

In accordance with the Americans with Disabilities Act, persons needing special accommodation or an interpreter to participate in the public hearing should contact County Administrator's Office at 595-4947 at least seven days prior to the date of the hearing. If you have any questions, please contact the Development Services Department at 595-3475.



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

**RELAX HOSPITALITY LLC  
7230 PLANTATION RD  
PENSACOLA, FL 32504**

In accordance with the Americans with Disabilities Act, persons needing special accommodation or an interpreter to participate in the public hearing should contact County Administrator's Office at 595-4947 at least seven days prior to the date of the hearing. If you have any questions, please contact the Development Services Department at 595-3475.



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

**RREF RB SBL FL PSS LLC  
151 W. MAIN ST., SUITE 200  
PENSACOLA, FL 32502**

In accordance with the Americans with Disabilities Act, persons needing special accommodation or an interpreter to participate in the public hearing should contact County Administrator's Office at 595-4947 at least seven days prior to the date of the hearing. If you have any questions, please contact the Development Services Department at 595-3475.



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

**OM HANUMAN HOSPITALITY INC  
7226 PLANTATION RD  
PENSACOLA, FL 32504**

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

**UNIVERSITY OFFICE LIMITED CO  
600 UNIVERSITY OFFICE BLVD STE 1C  
PENSACOLA, FL 32504**

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



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

**AWW PENN LLC  
45 BROADWAY STE 3010  
NEW YORK, NY 10006**

**UNIVERSITY TOWN PLAZA LLC  
PO BOX 7019  
ATTN PROPERTY TAX DEP  
INDIANAPOLIS, IN 46207**

In accordance with the Americans with Disabilities Act, persons needing special accommodation or an interpreter to participate in the public hearing should contact County Administrator's Office at 595-4947 at least seven days prior to the date of the hearing. If you have any questions, please contact the Development Services Department at 595-3475.

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



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

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**Board of Adjustment**

**6. 2.**

**Meeting Date:** 01/20/2016  
**CASE:** V-2015-14  
**APPLICANT:** Nader Ghobrial, Agent for Fadi Mubarak, Owner  
**ADDRESS:** 4615 Mobile Hwy.  
**PROPERTY REFERENCE NO.:** 14-2S-30-8001-001-001  
**ZONING DISTRICT:** COM, Commercial  
**FUTURE LAND USE:** C, Commercial

---

**SUBMISSION DATA:**

**REQUESTED VARIANCE:**

The Applicant is seeking an after the fact variance to increase the allowed signage on an existing commercial site.

**RELEVANT AUTHORITY:**

**Land Development Code of Escambia County, Florida (Ordinance No. 96-3 as amended),  
Section: 5-8.1**

**CRITERIA**

**Land Development Code of Escambia County, Florida (Ordinance No. 96-3 as amended),  
Section 2-6.3**

**CRITERION (1)**

**Special conditions and circumstances exist which are peculiar to the land, structure or building and which are not applicable to other lands, structures or buildings in the same zoning district.**

**FINDINGS-OF-FACT**

Staff was not provided with enough information to make a finding on this criterion.

**CRITERION (2)**

**The special conditions and circumstances do not result from the actions of the applicant.**

**FINDINGS-OF-FACT**

The signs were installed without a permit from the county.

**CRITERION (3)**

**Granting the variance requested will not confer on the applicant any special privilege that is denied by this land development code to other lands, buildings or structures in the same zoning district.**

**FINDINGS-OF-FACT**

Staff was not provided with enough information to make a finding on this criterion.

**CRITERION (4)**

**Strict application of the provisions of the land development code would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the land development code and would create an unnecessary and undue hardship on the applicant. .**

**FINDINGS-OF-FACT**

Staff was not provided with enough information to make a finding on this criterion.

**CRITERION (5)**

**The variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.**

**FINDINGS-OF-FACT**

Staff was not provided with enough information to make a finding on this criterion.

**CRITERION 6**

**The granting of the variance will be consistent with the general intent and purpose of the land development code and that such variance will not be injurious to the area or otherwise detrimental to the public welfare.**

**FINDING OF FACT:**

Staff was not provided with enough information to make a finding on this criterion.

**STAFF RECOMMENDATION**

**BOA DECISION**

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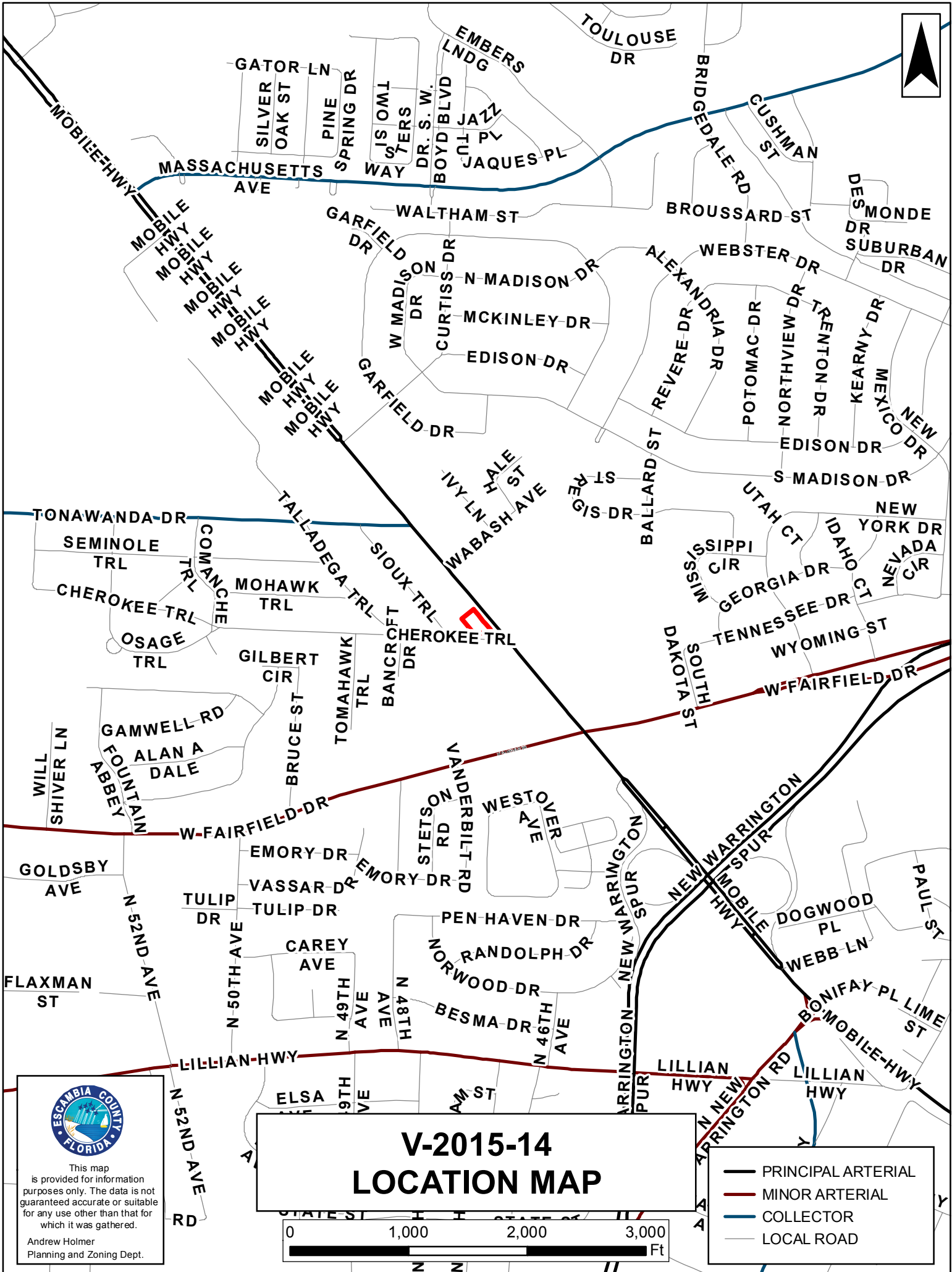
**Attachments**

Working Case File V-2015-14

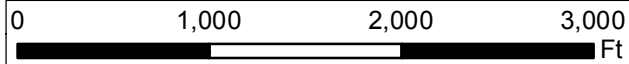
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**V-2015-14**


**4615 Mobile Hwy.**



# V-2015-14 LOCATION MAP

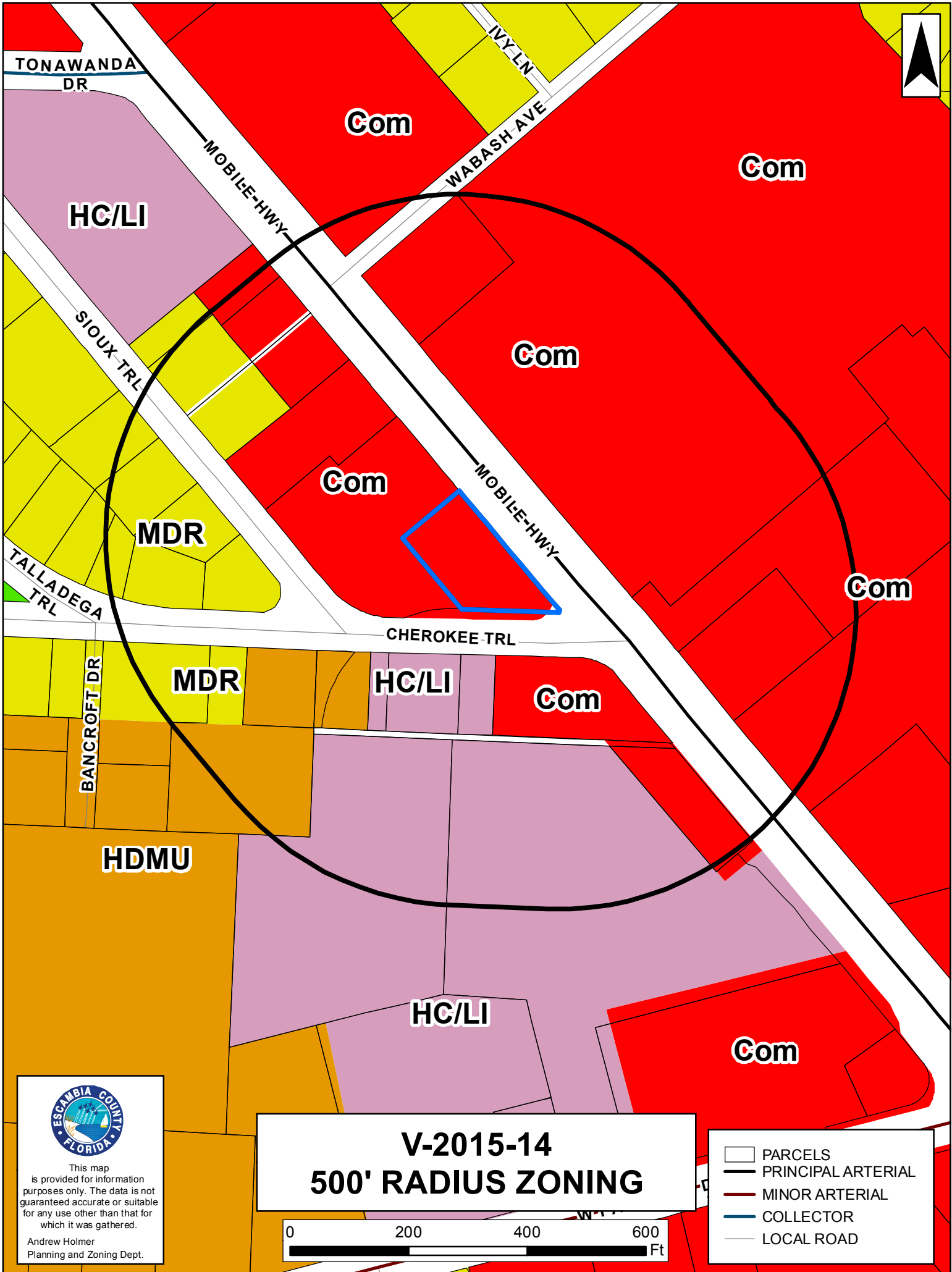


- PRINCIPAL ARTERIAL
- MINOR ARTERIAL
- COLLECTOR
- LOCAL ROAD



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.



# V-2015-14 500' RADIUS ZONING

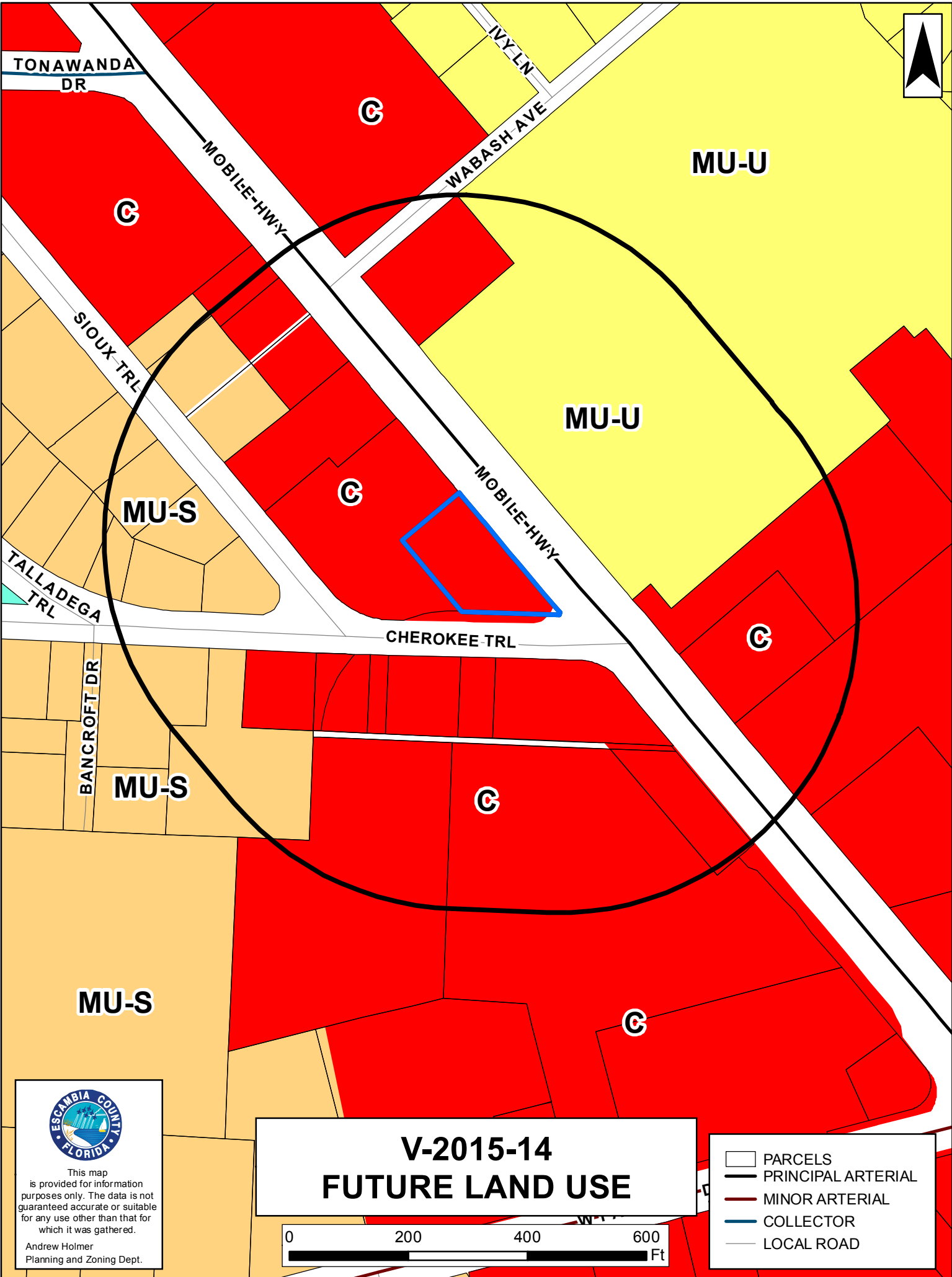


- PARCELS
- PRINCIPAL ARTERIAL
- MINOR ARTERIAL
- COLLECTOR
- LOCAL ROAD



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.



TONAWANDA DR

IVY LN

WABASH AVE

MOBILE-HWY

MU-U

G

G

SIOUX TRL

MU-U

MU-S

G

MOBILE-HWY

TALLADEGA TRL

CHEROKEE TRL

G

BANCROFT DR

MU-S

G

MU-S

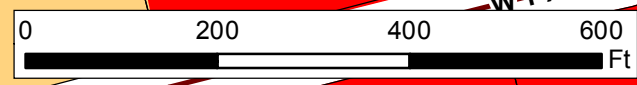
G



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.

# V-2015-14 FUTURE LAND USE



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



MOBILE HWY

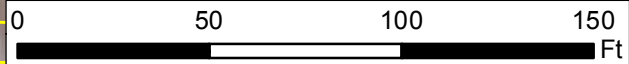
CHEROKEE TRL








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Andrew Holmer  
Planning and Zoning Dept.

# V-2015-14 AERIAL MAP



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

To whom it may concern,

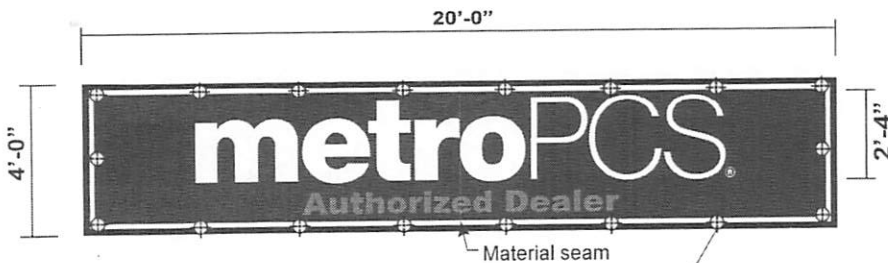
We are requesting a variance for the 2 extra signs at our store located on 4615 Mobile Hwy, Pensacola, FL 32506. The building at the above address is situated in such a manner that the side of the building faces the major intersection adjacent to the building which is crucial for the survival of this location. When we purchased this location the standing building was already constructed and at no point did we make changes to where the building sits. We do not believe this would provide us with any advantage or special privileges as we have checked nearby businesses only to find that they also have signage on multiple sides of the building to accommodate for the angled placements of their buildings relative to intersection and adjacent roadways. We currently have 6 stores total in the Pensacola area and employ over 25 people and have plans to bring more business and jobs to the area. If we are not able to retain the current signage for this location and see a decrease in traffic through this store front we may have to look into possibly shutting the store down which would affect the other locations as well. Where the current signage sits on the building is the absolute minimum we would need to be visible to all angles of traffic and allows us to be recognized for customers looking for our store. The extra signs do not provide any detriment to the surrounding environment or the public welfare. It is our deepest belief that with this variance to retain the extra signage that we will be able to continue to remain standing and operate this location.

Sincerely,

Nader Ghobrial



4615 Mobile Hwy.  
Pensacola, FL.



**General Notes:**

Cabinet is aluminum construction.  
Face is pan formed, .177 Acrysteel with vinyl background.

Authorized dealer is flat vinyl application.  
Face will be in 2 pieces, with butt seam, & overlapping flange on backside to prevent light leaks.

HANGING BAR, OR FACE FASTENED TO FRAME.

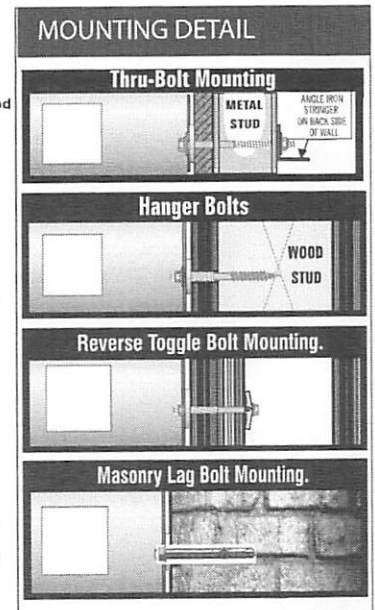
**COLORS**

MetroPCS is White.  
Background is Arlon 2500-3412 Purple  
A. Dealer is Arlon 2500-3411 Orange.  
Cabinet & retainer color is Black.  
Flange of face is White.

Cabinet frame mounted to fascia with eighteen (18) each of the fastener options shown.  
Note: Fasteners will not be visible and are shown to illustrate number and approximate locations. Precise locations will be determined by installer.

Illumination is provided by internal fluorescent lamps. Electronic type ballasts placed where needed.  
120V. 20 A. UL listed disconnect req'd.  
Photocell to control time of lighting provided.  
Existing electrical circuit to be re-used.

This sign conforms to the requirements of Florida Building Code 2010  
Ultimate design wind speed V(ult) = 150 mph  
Risk category = II  
Exposure C



metro PCS cabinet sign  
by The Sign Resource, Inc.

John J. Orlando PE LLC  
165 Old Ridge Road  
Macon, GA 31211 478 731 5394  
Florida registration # 0044089

sheet 1 of 2  
job 01214SR

APPLICATION

Please check application type:
Administrative Appeal
Development Order Extension
Conditional Use Request for:
Variance Request for: Extra Signage
Rezoning Request from: to:

Name & address of current owner(s) as shown on public records of Escambia County, FL

Owner(s) Name: Fadi Mubarak Phone: 813-900-0000
Address: PO Box 290315 Tampa FL, 33687 Email: fadi.mubarak@celltouch.net

Check here if the property owner(s) is authorizing an agent as the applicant and complete the Affidavit of Owner and Limited Power of Attorney form attached herein.

Property Address: 4615 Mobile Hwy, Pensacola, FL 320506
Property Reference Number(s)/Legal Description: 142S308001001001 / MetroPCS retail store

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 enter upon the property referenced herein at any reasonable time for purposes of site inspection and authorize placement of a public notice sign(s) on the property referenced herein at a location(s) to be determined by County staff; and
5) I am aware that Public Hearing notices (legal ad and/or postcards) for the request shall be provided by the Development Services Bureau.

Handwritten signature of Nader Ghobrial
Signature of Owner/Agent
Signature of Owner

Nader Ghobrial
Printed Name Owner/Agent
Date: 10/21/2015
Fadi Mubarak
Printed Name of Owner
Date: 10/21/2015

STATE OF FL COUNTY OF Hillsborough

The foregoing instrument was acknowledged before me this 21 day of October 2015 by Fadi Mubarak

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

Handwritten signature of Notary
Signature of Notary
(notary seal must be affixed)

Handwritten name of Notary: Gina Lara
Printed Name of Notary

FOR OFFICE USE ONLY
CASE NUMBER: V-2015-14
Meeting Date(s): 11-18-15 Accepted/Verified by: DJH/DFL Date: 10-28-15
Fees Paid: \$423.50 Receipt #: 648314 Permit #: PBA151000016



**AFFIDAVIT OF OWNER AND LIMITED POWER OF ATTORNEY**

As owner of the property located at 4615 Mobile Hwy, Pensacola, FL 32506  
Florida, property reference number(s) 142S308001001001

I hereby designate Nader Ghobrial for the sole purpose  
of completing this application and making a presentation to the:

- Planning Board and the Board of County Commissioners to request a rezoning on the above referenced property.
- Board of Adjustment to request a(n) Variance on the above referenced property.

This Limited Power of Attorney is granted on this 21st day of October the year of, 2015, and is effective until the Board of County Commissioners or 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 Bureau.

Agent Name: Nader Ghobrial Email: nader.ghobrial@celltouch.net  
Address: 5120 N. Palafox St, Pensacola, 32505 Phone: 727-504-0960

[Handwritten Signature]

Signature of Property Owner

Fadi Mubarak

Printed Name of Property Owner

10/21/2015  
Date

Signature of Property Owner

Printed Name of Property Owner

Date

STATE OF FL COUNTY OF Hillsborough

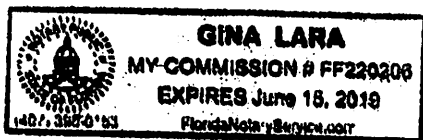
The foregoing instrument was acknowledged before me this 21 day of October, 2015  
by Fadi Mubarak

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

[Handwritten Signature]  
Signature of Notary

Gina Lara  
Printed Name of Notary

(Notary Seal)



Rec - \$ 27.00  
Doc - \$ 2450.00

PREPARED BY AND RETURN TO:

Circle K Stores Inc.  
25 West Cedar Street, Suite K  
Pensacola, FL 32502

CONSIDERATION \$ 350,000.00

PROPERTY APPRAISERS PARCEL I.D. NUMBER:

**THIS SPECIAL WARRANTY DEED** Made the 1<sup>st</sup> day of March, 2014, between Circle K Stores Inc., a Texas corporation whose mailing address is: 25 West Cedar Street, Suite K, Pensacola, Florida 32502 hereinafter called the Grantor, to New Way Land, LLC whose mailing address is: 8560 N. 56<sup>th</sup> Ave., Tampa, FL 33617 hereinafter called the Grantee.

(Wherever used herein the terms "Grantor" and "Grantee" shall include singular and plural, heirs, legal representatives, and assigns of individuals, and the successors and assigns of corporations, wherever the context so admits or requires)

**WITNESSETH**, that said Grantor, for and in consideration of the sum of Three Hundred Fifty Thousand AND 00/100's (\$350,000.00) DOLLARS and other good and valuable considerations to said Grantor in hand paid by said Grantee, the receipt whereof it hereby acknowledged, has granted, bargained and sold to said Grantee forever, the following described land located in the County of Escambia, State of Florida, to-wit:

See Exhibit 'A' attached hereto and by this express reference incorporated herein.

AND the grantor hereby covenants with the grantee that the grantor is lawfully seized of the property described herein in fee simple; that grantor has good right and lawful authority to sell and convey said property; that grantor warrants the title to said property and will defend the same against the lawful claims of all persons claiming by, through or under grantor; and that said property is free of all encumbrances except for real property taxes for the year 2013 and subsequent years and valid easements, restrictions and reservations of record, more particularly set forth on the attached Exhibit B, and by this reference made a part of hereto.

**IN WITNESS WHEREOF**, grantor has hereunto set grantor's hand and seal this day and year first above written.

Signed, sealed and delivered in our presence:

Circle K Stores Inc., a Texas corporation.

Michelle Anderson  
witness signature  
Michelle Anderson  
print name  
Michaela Britton  
witness signature  
Michaela Britton  
print name

Brian Bednarz  
BY: Brian Bednarz  
ITS: Vice President

STATE OF FLORIDA )  
 ) ss:  
COUNTY OF ESCAMBLA )

The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of March, 2014 by Brian Bednarz, who is personally known to me or who has produced \_\_\_\_\_ as identification and who did not take an oath.

Erika M. Nowling  
Notary Public, State of Florida  
ERIKA M. NOWLING  
Notary Public - State of Florida  
My Comm. Expires Aug 1, 2017  
Commission # FF 041921

Return to Brooke McCranie  
Chicago Title Insurance Company  
5690 W Cypress St, Ste A  
Tampa, FL 33607  
File # 4115697

CONTRACT FOR SALE AND PURCHASE – Commercial Improved Property



This Contract for Purchase and Sale is entered into this the 7th day of February, 2014, by and between: Fadi Mubarak and/or Assigns and/or assigns, ("PURCHASER") and Circle K Stores, Inc., ("SELLER").

PURCHASER agrees to buy and SELLER agrees to sell the property described as follows:

Street Address: 4615 Mobile Hwy, Pensacola, FL 32506
Legal Description: See Exhibit "A," attached hereto.
Improvements: Approx. 1,000 SF retail building
Personal / Other Property: N/A

(all collectively known as the "Property" on the terms and conditions as set forth below. Time is of the essence in this contract. Throughout the contract, any date referenced shall end at 5:00 PM, Central Standard Time. Should a date fall on a weekend or official Holiday, the date shall be 5:00 PM Central Time on the first business day following said date.

Table with 2 columns: Item (a-e), Amount. a Full Purchase Price: \$ 350,000; b Earnest Money Deposit: \$ 60,000; c Mortgage to be Applied for: \$; d Deferred Payments to Seller: \$; e Cash at Closing: \$ 290,000

Cash Sale (No Financing Contingency) [X]

Subject to Third Party Financing (to be procured during the Inspection Period): [ ]

2. TITLE: SELLER has the legal capacity to sell and shall convey marketable title to the Property by: General Warranty Deed free and clear of encumbrances of record or known to SELLER, but subject to property taxes and/or assessments for the year of the closing, covenants, zoning restrictions, prohibitions and any other requirements imposed by governmental authority, deed restrictions and public utility easements of record; and (list any other matters to which title will be subject: none known

provided there exists at closing no violation of the foregoing and none of them prevents PURCHASER'S intended use of the Property for: Any use allowed in C-1 zoning. (Immediate intention is to open a cellular phone retail store)

a. Evidence of Title: Unless otherwise agreed herein, the [ ] SELLER / [X] PURCHASER shall, at: [X] SELLER'S / [X] PURCHASER'S expense, and by [5] days [ ] from Effective Date, [5] from date PURCHASER meets or waives all contingencies (End of Inspection Period), deliver to PURCHASER a title insurance commitment by a Florida licensed title insurance and, upon PURCHASER recording the deed, an owner's policy in the amount of the purchase price for Fee Simple Title, subject only to the exceptions stated above.

PURCHASER shall, within 10 days from receipt of the title commitment, deliver written notice to SELLER of title defects. Title shall be deemed acceptable to PURCHASER if (1) PURCHASER fails to deliver proper notice of defects, (2) PURCHASER delivers proper notice and SELLER, at SELLER'S expense, cures the defects within 15 days from receipt of the notice ("Curative Period"). If the defects are cured within the Curative Period, closing shall occur within 10 days from the receipt by PURCHASER of notice of such curing. SELLER may elect not to cure defects if SELLER reasonably believes any defect cannot be cured within the Curative period. If the defects are not cured within the Curative Period, PURCHASER shall have 10 days from the receipt of notice of SELLER'S inability to cure the defects to elect whether to grant (in writing) SELLER more time to cure title, terminate this Contract, or accept title subject to existing defects and close the transaction without reduction in purchase price.

3. CLOSING DATE AND PROCEDURE: This transaction shall be closed in Escambia County, Florida, on or before 45 Days from full execution ("Closing Date"), unless otherwise extended herein.

[ ] SELLER [X] PURCHASER shall designate the closing agent. PURCHASER and SELLER shall, within 3 days prior to Closing Date, deliver to Designated Closing Agent signed instructions which provide for closing procedure. If an institutional lender is providing purchase funds, lender requirements as to place, time of day, and closing procedures shall control over any contrary

EXHIBIT A

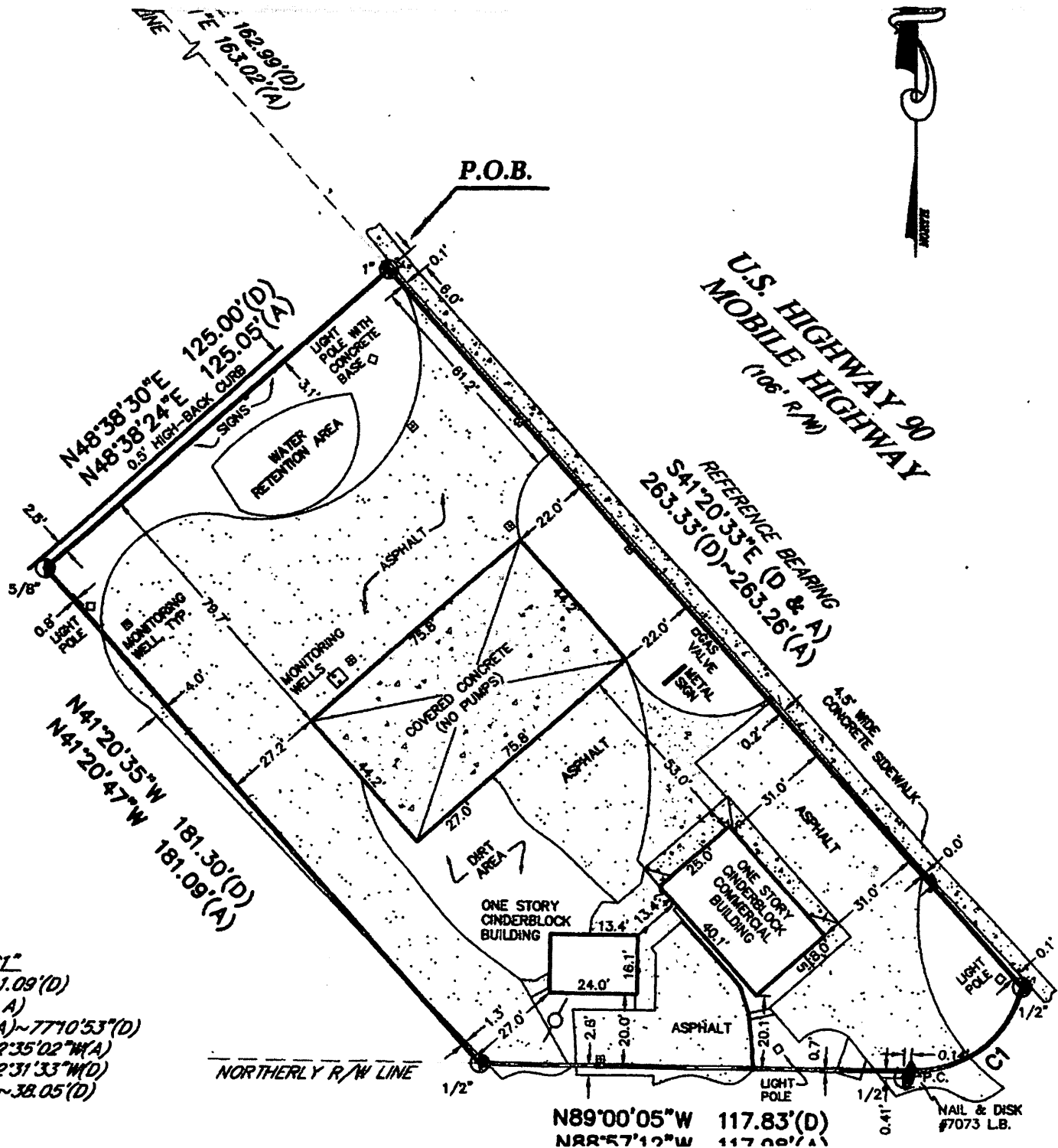
LEGAL DESCRIPTION

That portion of Lots 1, 2, 3, 36 and 37, Block 1 of Osceola Country Club Estates, according to Plat filed in Plat Book 1, Page 18 of the Public Records of Escambia County, Florida, described as follows: Commencing at an iron pipe at the Northwest corner of Lot 34 of said Block 1; thence North 48° 43' 15" East along the North line of said Lot 34, a distance of 126.58 feet to an iron pipe in the West right of way line of U.S. Highway 90 (right of way width 106 feet); thence South 41° 20' 30" East along said right of way line 162.99 feet to an iron pipe for the Point of Beginning; thence continue South 41° 20' 33" East along said right of way line, 295.22 feet to a point being in the extension of the North line of Cherokee Trail, according to said Plat; thence North 89° 00' 05" West along said North line, 169.07 feet to an iron pipe; thence North 41° 20' 35" West 181.30 feet to an iron pipe; thence North 48° 38' 30" East, 125.00 feet to the Point of Beginning; EXCEPTING that portion within said Cherokee Trail, lying outside of the 30.5 feet radius line at the Southeast corner of said Lot 1, according to said Plat, and that portion thereof, if any, within the right of way for State Road 10-A, Section 4802 as conveyed by Ada Oil Company to the State of Florida by deed dated September 9, 1959 and recorded in Escambia County, in Deed Book 525, Page 758.

Also described as:

A portion of Lots 1, 2, 3, 36 and 37, Block 1, Osceola Country Club Estates, Plat Book 1, Page 18, of the Public Records of Escambia County, Florida, being more particularly described as follows: Commence at a rebar marking the intersection of the North line of Lot 34 of said Block 1 with the Southwesterly right-of-way line of Mobile Highway (106 foot right-of-way); thence South 41° 20' 30" East along said right-of-way line a distance of 162.99 feet to a rebar marking the most Northerly corner and Point of Beginning of the following described parcel; thence South 41° 20' 33" East along said right-of-way line a distance of 263.33 feet to a rebar lying on a non-tangent circular curve to the right having a radius of 30.50 feet and a central angle of 77° 10' 53"; thence along said curved right-of-way line an arc distance of 41.09 feet (chord: South 52° 31' 33" West, 38.05 feet) to a nail marking the intersection of said right-of-way line with the Northerly right-of-way line of Cherokee Trail (60 foot right-of-way); thence North 89° 00' 05" West along said right-of-way line a distance of 117.83 feet to a rebar; thence North 41° 20' 35" West a distance of 181.30 feet to a rebar; thence North 48° 38' 30" East a distance of 125.00 feet to the Point of Beginning.

**EXHIBIT B**  
**PERMITTED EXCEPTIONS**  
**NONE**



CURVE DATA "C1"  
 L = 41.02'(A) ~ 41.09'(D)  
 R = 30.50'(D & A)  
 Δ = 77°03'04"(A) ~ 77°10'53"(D)  
 CH BRNG = S52°35'02"W(A)  
 CH BRNG = S52°31'33"W(D)  
 CH = 37.99'(A) ~ 38.05'(D)

N89°00'05"W 117.83'(D)  
 N88°57'12"W 117.00'(A)

NAIL & DISK  
 #7073 LB.



## CONCURRENCY DETERMINATION ACKNOWLEDGMENT

### For Rezoning Requests Only

Property Reference Number(s): 142S308001001001

Property Address: 4615 Mobile Hwy, Pensacola, FL 32506

I/We acknowledge and agree that no future development for which concurrency of required facilities and services must be certified shall be approved for the subject parcel(s) without the issuance of a certificate of concurrency for the development based on the actual densities and intensities proposed in the future development's permit application.

I/We also acknowledge and agree that approval of a zoning district amendment (rezoning) or Future Land Use Map amendment does not certify, vest, or otherwise guarantee that concurrency of required facilities and services is, or will be, available for any future development of the subject parcels.

I/We further acknowledge and agree that no development for which concurrency must be certified shall be approved unless at least one of the following minimum conditions of the Comprehensive Plan will be met for each facility and service of the County's concurrency management system prior to development approval:

- a. The necessary facilities or services are in place at the time a development permit is issued.
- b. A development permit is issued subject to the condition that the necessary facilities and services will be in place and available to serve the new development at the time of the issuance of a certificate of occupancy.
- c. For parks and recreation facilities and roads, the necessary facilities are under construction at the time the development permit is issued.
- d. For parks and recreation facilities, the necessary facilities are the subject of a binding executed contract for the construction of the facilities at the time the development permit is issued and the agreement requires that facility construction must commence within one year of the issuance of the development permit.
- e. The necessary facilities and services are guaranteed in an enforceable development agreement. An enforceable development agreement may include, but is not limited to, development agreements pursuant to Section 163.3220, F.S., or as amended, or an agreement or development order issued pursuant to Chapter 380, F.S., or as amended. For transportation facilities, all in-kind improvements detailed in a proportionate fair share agreement must be completed in compliance with the requirements of Section 5.13.00 of the LDC. For wastewater, solid waste, potable water, and stormwater facilities, any such agreement will guarantee the necessary facilities and services to be in place and available to serve the new development at the time of the issuance of a certificate of occupancy.
- f. For roads, the necessary facilities needed to serve the development are included in the first three years of the applicable Five-Year Florida Department of Transportation (FDOT) Work Program or are in place or under actual construction no more than three years after the issuance of a County development order or permit.

I HEREBY ACKNOWLEDGE THAT I HAVE READ, UNDERSTAND AND AGREE WITH THE ABOVE STATEMENT ON THIS 21st DAY OF October, YEAR OF 2015.

  
Signature of Property Owner

Fadi Mubarak  
Printed Name of Property Owner

10/21/2015  
Date

\_\_\_\_\_  
Signature of Property Owner

\_\_\_\_\_  
Printed Name of Property Owner

\_\_\_\_\_  
Date



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



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

**NEW WAY LAND LLC  
PO BOX 290315  
TAMPA, FL 33687**

**PENSAORNER LLC  
C/O GUY ORNER  
2217 DUXBURY CIR  
LOS ANGELES, CA 90034**

In accordance with the Americans with Disabilities Act, persons needing special accommodation or an interpreter to participate in the public hearing should contact County Administrator's Office at 595-4947 at least seven days prior to the date of the hearing. If you have any questions, please contact the Development Services Department at 595-3475.

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

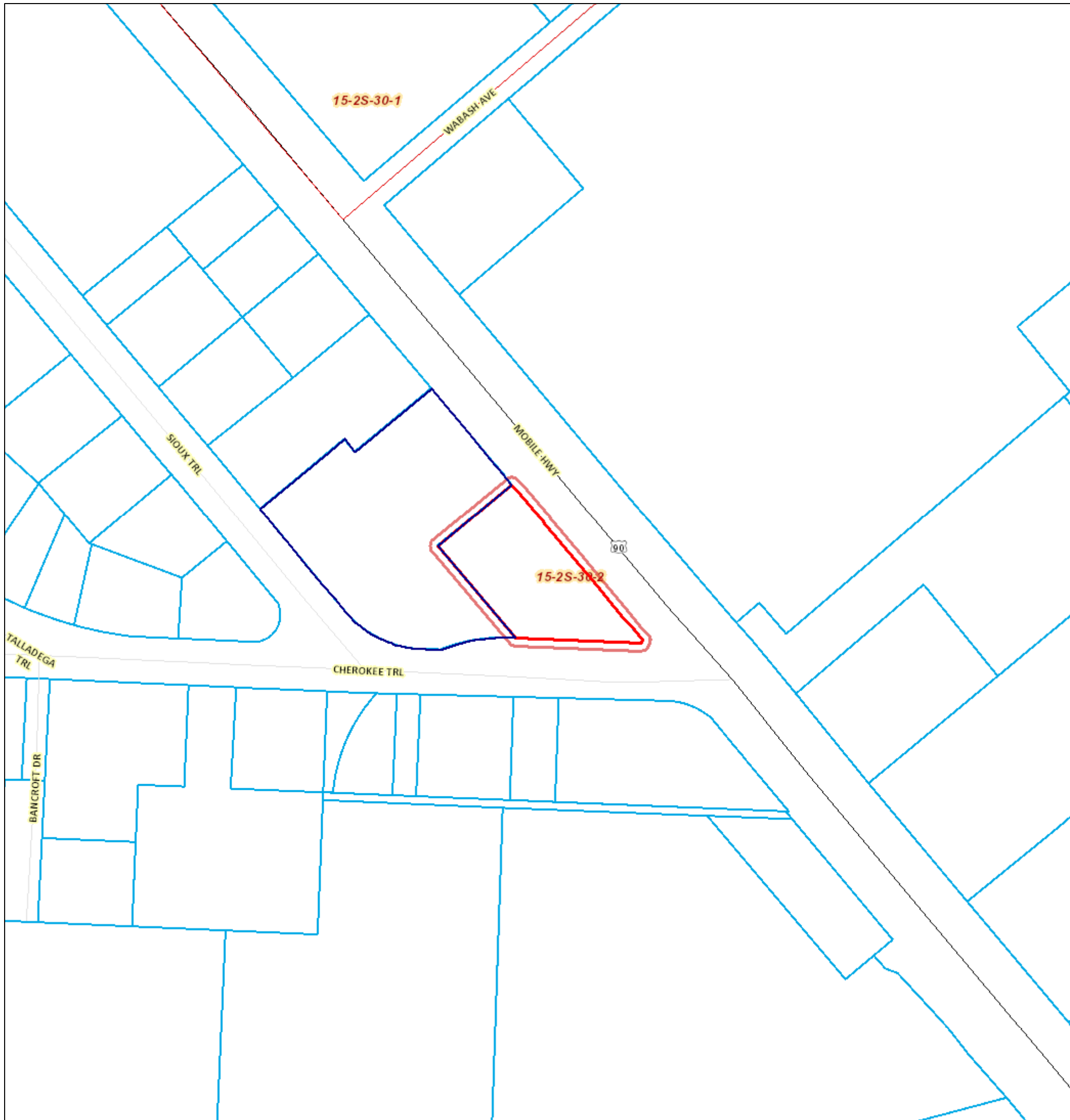


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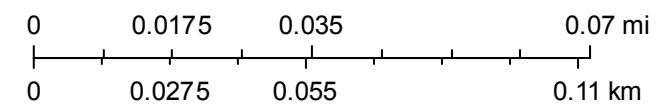
# Chris Jones Escambia County Property Appraiser



October 29, 2015

1:1,530

- ⋮ Map Grid
- City Road
- County Road
- Interstate
- State Road
- US Highway
- All Roads
- ⋮ Property Line





**Development Services Department**

**Building Inspections Division**

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

**RECEIPT**

Receipt No. : **648314**

Date Issued. : 10/28/2015

Cashier ID : KLHARPER

Application No. : PBA151000016

Project Name : V-2015-14

Address : 5120 N. PALAFOX ST.  
Pensacola, FL, 32505

**PAYMENT INFO**

Method of Payment	Reference Document	Amount Paid	Comment
<b>Check</b>	1048	\$423.50	App ID : PBA151000016
		<b>\$423.50</b>	<b>Total Check</b>

Received From : CELL TOUCH ORLANDO, INC DBA

Total Receipt Amount : **\$423.50**

Change Due : \$0.00

**APPLICATION INFO**

Application #	Invoice #	Invoice Amt	Balance	Job Address
PBA151000016	739408	423.50	\$0.00	4615 MOBILE HWY, PENSACOLA, 32506

<b>Total Amount :</b>	<b>423.50</b>	\$0.00	Balance Due on this/these Application(s) as of 10/28/2015
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BOARD OF COUNTY COMMISSIONERS  
ESCAMBIA COUNTY, FLORIDA

DEVELOPMENT SERVICES DEPARTMENT  
3363 WEST PARK PLACE  
Pensacola, FL 32505  
(850) 595-3475 - Phone  
(850) 595-3481 - FAX  
www.myescambia.com

Development Services  
Department

Horace L. Jones  
Department Director

ESCAMBIA COUNTY BOARD OF ADJUSTMENT

All items with an asterisk \* are required.

Please Print Clearly

\*Name: Walter R. Hubrid Phone: (727) 504-0960  
\*Address: 4615 Mobile Hwy \*City, State, and Zip: Pensacola, FL 32506  
\*Agenda Item (CASE NO. #) 11-2015-14 Meeting Date: 11/18/15

\_\_\_\_\_ Please check here if you are:  In Favor ( ) Against

Accepted by Board as an Expert: ( ) Yes ( ) No

\_\_\_\_\_ Please check here if you do not wish to speak: Present for the record only.

\*\*\*\*\*

Chamber Rules

1. All who wish to speak will be heard.
2. You must sign up to speak. This form must be filled out and given to the Clerk in order to be heard.
3. When the Chairman calls your name to speak, please come to the podium, adjust the microphone so you can be heard clearly, then state your NAME and ADDRESS for the record.
4. You are requested to keep your remarks BRIEF and FACTUAL.
5. Both sides of an issue will be granted uniform time to speak, normally 3 – 5 minutes.
6. Should there be a need for information to be handed out, the procedure is:
  - A. Copies are given to the Clerk for distribution.
  - B. Clerk distributes copies to the Board members and staff (13 total copies are needed)
  - C. One copy is placed in the official meeting file.



Board of County Commissioners • Escambia County, Florida

Horace L. Jones, Department Director  
Development Services

November 18, 2015

Mr. Nader Ghobrial  
Agent for Fadi Mubarak, Owner  
4615 Mobile Hwy.  
Pensacola, FL 32506

RE: Notification of Board of Adjustment (BOA) Action on November 18, 2015 for variance case #V-2015-14, 4615 Mobile Hwy.

Dear Applicant:

This letter is to inform you of the Board's action to grant a 30-day continuance, scheduling your case for the December 16, 2015 Board of Adjustment meeting.

- Variance request to increase the allowed signage on an existing commercial site.

Should you have any questions or comments, please contact our office.

Sincerely,

A handwritten signature in blue ink that reads "AD Holmer".

Andrew D. Holmer  
Division Manager

cc: Kristin Hual, Assistant County Attorney  
Fadi Mubarak, P.O. Box 290315, Tampa, FL 32506

**Board of Adjustment**

**6. 2.**

**Meeting Date:** 11/18/2015  
**CASE:** V-2015-14  
**APPLICANT:** Nader Ghobrial, Agent for Fadi Mubarak, Owner  
**ADDRESS:** 4615 Mobile Hwy.  
**PROPERTY REFERENCE NO.:** 14-2S-30-8001-001-001  
**ZONING DISTRICT:** COM, Commercial  
**FUTURE LAND USE:** C, Commercial

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**SUBMISSION DATA:**

**REQUESTED VARIANCE:**

The Applicant is seeking an after the fact variance to increase the allowed signage on an existing commercial site.

**RELEVANT AUTHORITY:**

**Land Development Code of Escambia County, Florida (Ordinance No. 96-3 as amended), Section: 5-8.1**

**CRITERIA**

**Land Development Code of Escambia County, Florida (Ordinance No. 96-3 as amended), Section 2-6.3**

**CRITERION (1)**

**Special conditions and circumstances exist which are peculiar to the land, structure or building and which are not applicable to other lands, structures or buildings in the same zoning district.**

**FINDINGS-OF-FACT**

Staff was not provided with enough information to make a finding on this criterion.

**CRITERION (2)**

**The special conditions and circumstances do not result from the actions of the applicant.**

#### **FINDINGS-OF-FACT**

The signs were installed without a permit from the county.

#### **CRITERION (3)**

**Granting the variance requested will not confer on the applicant any special privilege that is denied by this land development code to other lands, buildings or structures in the same zoning district.**

#### **FINDINGS-OF-FACT**

Staff was not provided with enough information to make a finding on this criterion.

#### **CRITERION (4)**

**Strict application of the provisions of the land development code would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the land development code and would create an unnecessary and undue hardship on the applicant..**

#### **FINDINGS-OF-FACT**

Staff was not provided with enough information to make a finding on this criterion.

#### **CRITERION (5)**

**The variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure .**

#### **FINDINGS-OF-FACT**

Staff was not provided with enough information to make a finding on this criterion.

#### **CRITERION 6**

**The granting of the variance will be consistent with the general intent and purpose of the land development code and that such variance will not be injurious to the area or otherwise detrimental to the public welfare.**

#### **FINDING OF FACT:**

Staff was not provided with enough information to make a finding on this criterion.

#### **STAFF RECOMMENDATION**



Staff is unable to make a finding based on the information submitted and requests a one month continuance to allow the Applicant to meet with staff and clarify the requested variance.

**BOA DECISION**

The Board granted a 30 day continuance and scheduled this case for the December 16, 2015 meeting.

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**Attachments**

Working Case File #V2015-14

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



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

**NEW WAY LAND LLC  
PO BOX 290315  
TAMPA, FL 33687**

**PENSAORNER LLC  
C/O GUY ORNER  
2217 DUXBURY CIR  
LOS ANGELES, CA 90034**

In accordance with the Americans with Disabilities Act, persons needing special accommodation or an interpreter to participate in the public hearing should contact County Administrator's Office at 595-4947 at least seven days prior to the date of the hearing. If you have any questions, please contact the Development Services Department at 595-3475.

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www.myescambia.com

Development Services  
Department

Horace L. Jones  
Department Director

ESCAMBIA COUNTY BOARD OF ADJUSTMENT

All items with an asterisk \* are required.

Please Print Clearly

\*Name: Nader Chobri Phone: (771) 504-0960

\*Address: 5128 N Palatka St. \*City, State, and Zip: Pensacola, FL

\*Agenda Item (CASE NO. #) V-2013-14 Meeting Date: 12/18/15

\_\_\_\_\_ Please check here if you are: (  ) In Favor (  ) Against

Accepted by Board as an Expert: (  ) Yes (  ) No

\_\_\_\_\_ Please check here if you do not wish to speak: Present for the record only.

\*\*\*\*\*

Chamber Rules

1. All who wish to speak will be heard.
2. You must sign up to speak. This form must be filled out and given to the Clerk in order to be heard.
3. When the Chairman calls your name to speak, please come to the podium, adjust the microphone so you can be heard clearly, then state your NAME and ADDRESS for the record.
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  - C. One copy is placed in the official meeting file.



Board of County Commissioners • Escambia County, Florida

Horace L. Jones, Department Director  
Development Services

December 16, 2015

Mr. Nader Ghobrial  
Agent for Fadi Mubarak, Owner  
4615 Mobile Hwy.  
Pensacola, FL 32506

RE: Notification of Board of Adjustment (BOA) Action on December 16, 2015 for Variance case #V-2015-14, 4615 Mobile Hwy.

Dear Applicant:

This letter is to inform you of the Board's action to grant a 30-day continuance, scheduling your case for the January 20, 2016 Board of Adjustment meeting.

- Variance request to increase the allowed signage on an existing commercial site.

Should you have any questions or comments, please contact our office.

Sincerely,

A handwritten signature in blue ink, appearing to read "AD Holmer".

Andrew D. Holmer  
Division Manager

cc: Kristin Hual, Assistant County Attorney  
Fadi Mubarak, P.O. Box 290315, Tampa, FL 32506

**Board of Adjustment**

**6. 1.**

**Meeting Date:** 12/16/2015  
**CASE:** V-2015-14  
**APPLICANT:** Nader Ghobrial, Agent for Fadi Mubarak, Owner  
**ADDRESS:** 4615 Mobile Hwy.  
**PROPERTY REFERENCE NO.:** 14-2S-30-8001-001-001  
**ZONING DISTRICT:** COM, Commercial  
**FUTURE LAND USE:** C, Commercial

---

**SUBMISSION DATA:**

**REQUESTED VARIANCE:**

The Applicant is seeking an after the fact variance to increase the allowed signage on an existing commercial site.

**RELEVANT AUTHORITY:**

**Land Development Code of Escambia County, Florida (Ordinance No. 96-3 as amended), Section: 5-8.1**

**CRITERIA**

**Land Development Code of Escambia County, Florida (Ordinance No. 96-3 as amended), Section 2-6.3**

**CRITERION (1)**

**Special conditions and circumstances exist which are peculiar to the land, structure or building and which are not applicable to other lands, structures or buildings in the same zoning district.**

**FINDINGS-OF-FACT**

Staff was not provided with enough information to make a finding on this criterion.

**CRITERION (2)**

**The special conditions and circumstances do not result from the actions of the applicant.**

**FINDINGS-OF-FACT**

The signs were installed without a permit from the county.

**CRITERION (3)**

**Granting the variance requested will not confer on the applicant any special privilege that is denied by this land development code to other lands, buildings or structures in the same zoning district.**

**FINDINGS-OF-FACT**

Staff was not provided with enough information to make a finding on this criterion.

**CRITERION (4)**

**Strict application of the provisions of the land development code would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the land development code and would create an unnecessary and undue hardship on the applicant..**

**FINDINGS-OF-FACT**

Staff was not provided with enough information to make a finding on this criterion.

**CRITERION (5)**

**The variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure .**

**FINDINGS-OF-FACT**

Staff was not provided with enough information to make a finding on this criterion.

**CRITERION 6**

**The granting of the variance will be consistent with the general intent and purpose of the land development code and that such variance will not be injurious to the area or otherwise detrimental to the public welfare.**

**FINDING OF FACT:**

Staff was not provided with enough information to make a finding on this criterion.

**STAFF RECOMMENDATION**

Staff is unable to make a finding based on the information submitted.

**BOA DECISION**

The Board granted a 30 day continuance and scheduled this case for the January 20, 2016 meeting.

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**Attachments**

Working Case File V-2015-14

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



Escambia County  
Development Services Department  
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**NEW WAY LAND LLC  
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**Board of Adjustment**

**6. 3.**

**Meeting Date:** 01/20/2016  
**CASE:** V-2016-01  
**APPLICANT:** Jesse W. Rigby, Agent for Helen Scarbrough  
**ADDRESS:** 13922 River Rd.  
**PROPERTY REFERENCE NO.:** 14-3S-32-1001-000-130  
**ZONING DISTRICT:** MDR-PK, Medium Density Residential District, Perdido Key  
**FUTURE LAND USE:** MU-PK, Mixed-Use Perdido Key

---

**SUBMISSION DATA:**

**REQUESTED VARIANCE:**

The Applicant is requesting a building height variance to allow ten habitable floors in MDR-PK zoning. The current height allowed on site is four floors.

**RELEVANT AUTHORITY:**

**Land Development Code of Escambia County, Florida (Ordinance No. 96-3 as amended), Section: 3-3.4 (d) (3)**

**(3) Structure height.** A maximum building height of four stories or two stories less than any adjacent building greater than four stories that existed on June 1, 1997, whichever is greater.

**CRITERIA**

**Land Development Code of Escambia County, Florida (Ordinance No. 96-3 as amended), Section 2-6.3**

**CRITERION (1)**

**Special conditions and circumstances exist which are peculiar to the land, structure or building and which are not applicable to other lands, structures or buildings in the same zoning district.**

**FINDINGS-OF-FACT**

The parcel of land in question is narrow and deep, running north from River Rd. to the Intercoastal waterway. While this layout does provide waterfront, the narrowness limits the development possibilities on site. The density allowed by zoning (4.5 units per acre) could not be utilized given the constraints of setbacks imposed by zoning. Allowing the requested height variance would provide relief from the hardships and allow this owner the ability to use the density provided by the zoning district.

## **CRITERION (2)**

**The special conditions and circumstances do not result from the actions of the applicant.**

## **FINDINGS-OF-FACT**

The layout of the land was created long before zoning restrictions or purchase by the current owner.

## **CRITERION (3)**

**Granting the variance requested will not confer on the applicant any special privilege that is denied by this land development code to other lands, buildings or structures in the same zoning district.**

## **FINDINGS-OF-FACT**

The granting of this height variance would allow the applicant to develop in a manner similar to adjacent properties.

## **CRITERION (4)**

**Strict application of the provisions of the land development code would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the land development code and would create an unnecessary and undue hardship on the applicant..**

## **FINDINGS-OF-FACT**

The north/south orientation of the site along with its narrowness, present practical difficulties for development of the site. The requested variance would allow development of the site in spite of the hardship.

## **CRITERION (5)**

**The variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.**

## **FINDINGS-OF-FACT**

The requested variance is the minimum necessary to develop the property at its allowed density given the site limitations.

## **CRITERION 6**

**The granting of the variance will be consistent with the general intent and purpose of the land development code and that such variance will not be injurious to the area or otherwise detrimental to the public welfare.**

## **FINDING OF FACT:**

The granting of the requested height variance will be consistent with the intent and

purpose of the land development code and will not be injurious to the area or otherwise detrimental to the public welfare.

**STAFF RECOMMENDATION**

Staff finds that the request does meet all of the required criteria and recommends approval of the height variance.

**BOA DECISION**

---

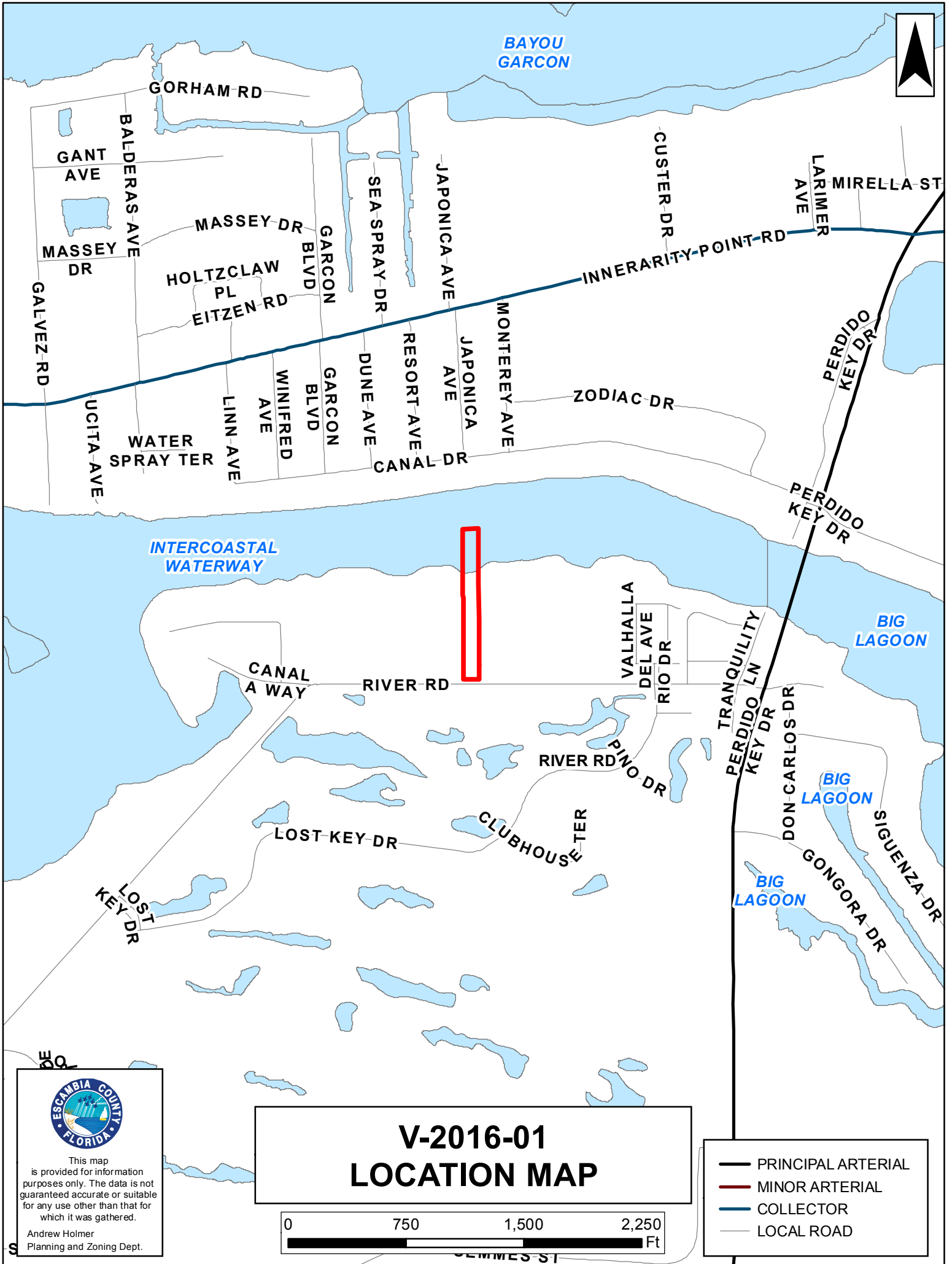
**Attachments**

Working Case File #V-2016-01

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**V-2016-01**

**13922 River Road**



BAYOU GARCON

GORHAM RD

GANT AVE

BALDERAS AVE

MASSEY DR

MASSEY DR

HOLTZCLAW PL

EITZEN RD

SEA SPRAY DR

JAPONICA AVE

CUSTER DR

LARIMER AVE

MIRELLA ST

INNERARITY-POINT RD

GALVEZ RD

UCITA AVE

WATER SPRAY TER

LINN AVE

WINIFRED AVE

GARCON BLVD

DUNE AVE

RESORT AVE

JAPONICA AVE

MONTEREY AVE

ZODIAC DR

PERDIDO KEY DR

INTERCOASTAL WATERWAY



CANAL A WAY

RIVER RD

VALHALLA DEL AVE

RIO DR

TRANQUILITY PERDIDO LN

PERDIDO KEY DR

BIG LAGOON

RIVER RD

PINO DR

BIG LAGOON

LOST KEY DR

CLUBHOUSE TER

DON CARLOS DR

BIG LAGOON

GONGORA DR

SIGUENZA DR

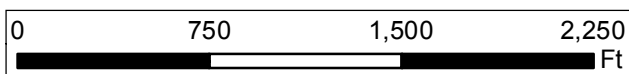
LOST KEY DR



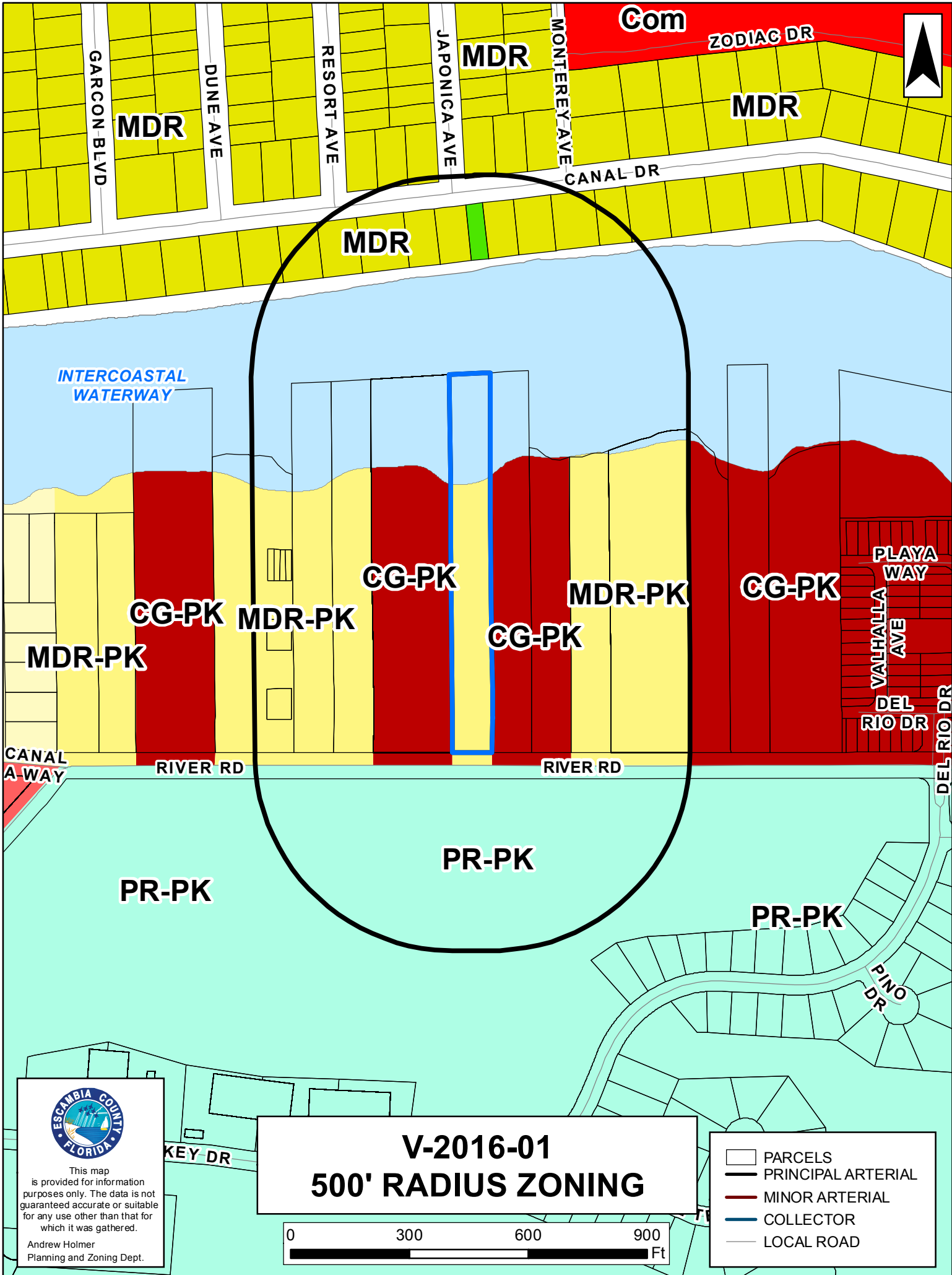
This map is provided for information purposes only. The data is not guaranteed accurate or suitable for any use other than that for which it was gathered.

Andrew Holmer Planning and Zoning Dept.

# V-2016-01 LOCATION MAP



- PRINCIPAL ARTERIAL
- MINOR ARTERIAL
- COLLECTOR
- LOCAL ROAD



Com

ZODIAC DR



GARCON BLVD

MDR

DUNE AVE

RESORT AVE

JAPONICA AVE

MDR

MONTEREY AVE

MDR

CANAL DR

MDR

INTERCOASTAL WATERWAY

CG-PK

MDR-PK

CG-PK

CG-PK

MDR-PK

CG-PK

PLAYA WAY

VALHALLA AVE

DEL RIO DR

DEL RIO DR

CANAL A WAY

RIVER RD

RIVER RD

PR-PK

PR-PK

PR-PK

PINO DR



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.

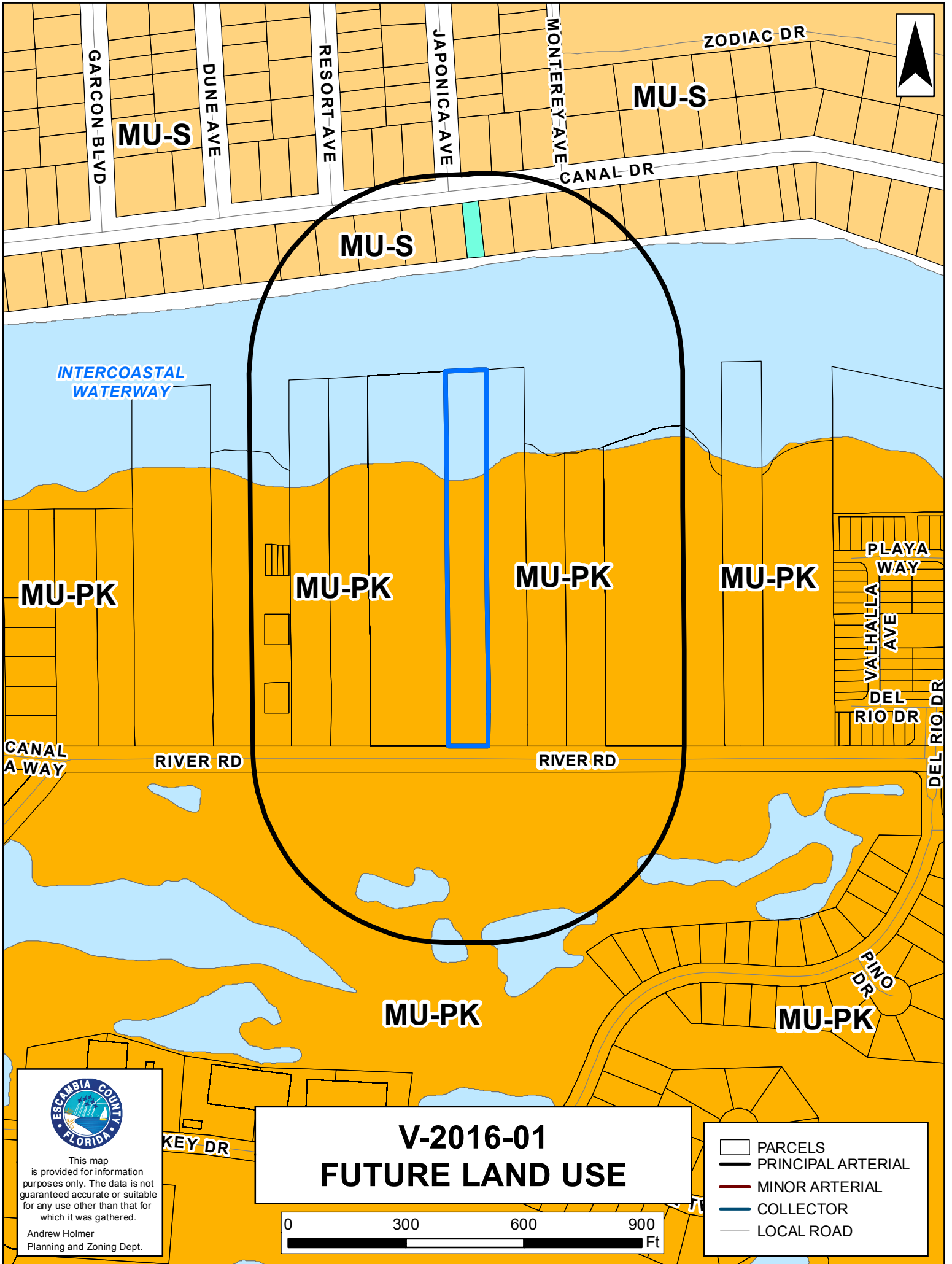
Andrew Holmer  
Planning and Zoning Dept.

KEY DR

V-2016-01  
500' RADIUS ZONING



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



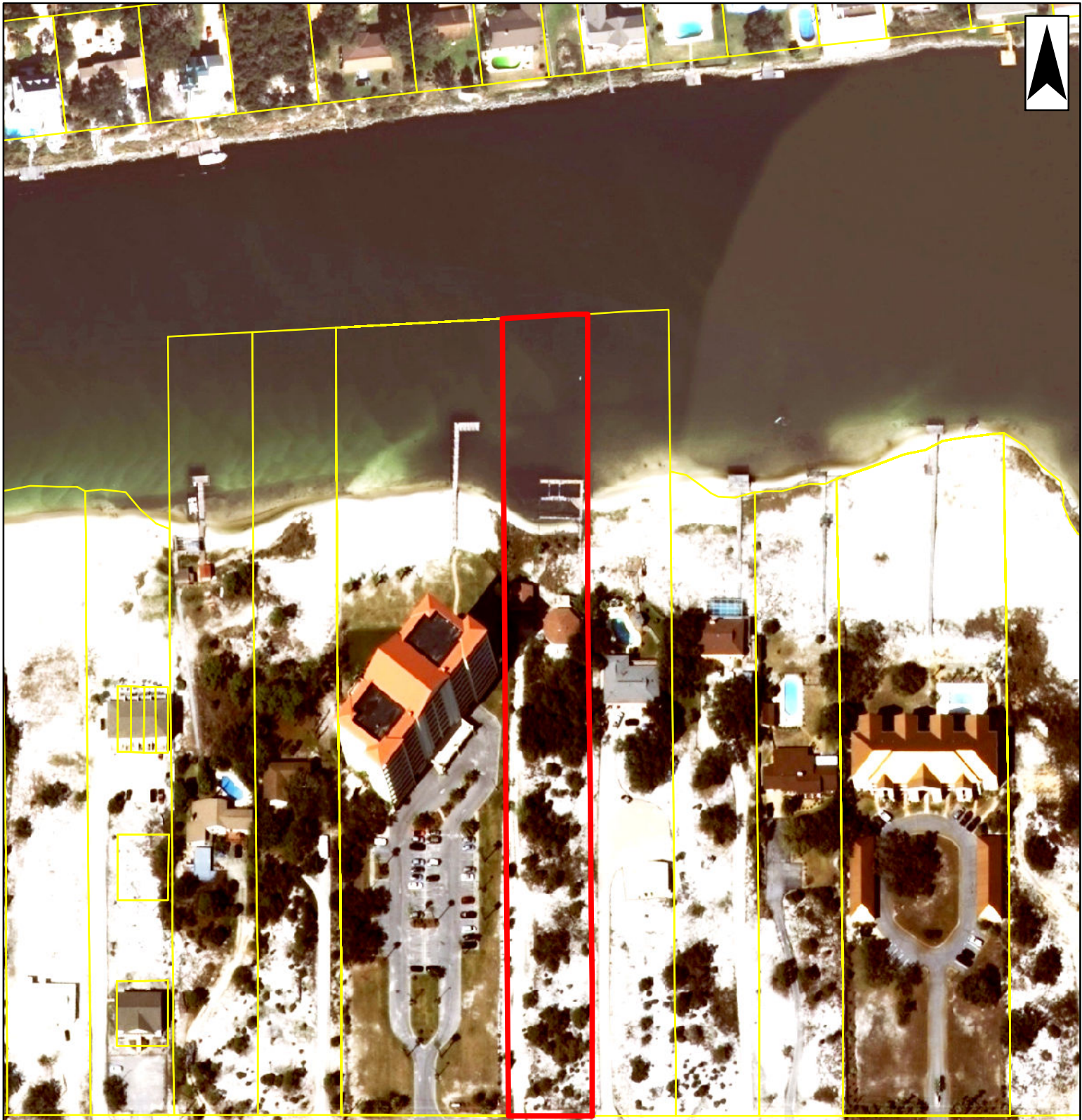
This map is provided for information purposes only. The data is not guaranteed accurate or suitable for any use other than that for which it was gathered.

Andrew Holmer  
Planning and Zoning Dept.

## V-2016-01 FUTURE LAND USE



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



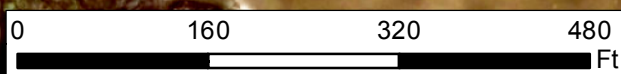
RIVER RD



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.

# V-2016-01 AERIAL MAP



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



**CLARK PARTINGTON HART  
LARRY BOND & STACKHOUSE**

ATTORNEYS AT LAW

Pensacola • Destin • Santa Rosa Beach • Tallahassee • Orange Beach

Jesse W. Rigby  
Direct (850) 434-3282  
jrigby@cphlaw.com

December 16, 2015

Board of Adjustment  
c/o Mr. Horace Jones, Director  
Development Services Department  
Escambia County  
3363 West Park Place  
Pensacola, FL 32505

**Re: Request for Building Height Variance  
Property Owner: Helen Scarbrough  
13922 River Road, Pensacola, FL 32507  
Property Ref. No.: 143S3210010000130**

Dear Mr. Jones:

This letter is filed in support of the application of the property owner for a building height variance to allow ten habitable floors for a multifamily residential building. I am Mrs. Scarbrough's authorized agent for this application.

Mrs. Scarbrough's application, with all required forms, is being submitted at the same time as this letter. A copy of Mrs. Scarbrough's deed is in the application package. The deed contains the legal description for the property. I have also included a copy of the Property Appraiser's print-out, which includes a statement of the acreage of the parcel; namely 2.19 acres. I have a full-size survey of the property, which I can provide if it is needed; however, the survey does not contain a statement of acreage. The survey shows current improvements on the property, which consists of a single-family home and accessory structures. The survey is not a site plan for future development of the parcel. There is no active development plan; however, from the nature of this request you can surmise that the intent for future development is a residential building of 10 habitable floors.

The parcel is zoned MDR-PK. The allowed density is 4.5 units per acre. The density multiplied by the acreage results in 10 dwelling units. The maximum FAR is 1.0, which will not be exceeded. This request does not change the allowed density of the property.

125 West Romana Street • Suite 800 • Pensacola, Florida 32502  
P.O. Box 13010 • Pensacola, Florida 32591-3010  
Phone (850) 434-9200 • Fax (850) 432-7340  
www.cphlaw.com

The height allowed in MDR-PK, without a variance, is four stories. Although the development on the adjacent parcel to the west of Mrs. Scarbrough's property is a 10-story condominium, the building was constructed after June 1, 1997.

**Variance Criteria**

The general variance conditions (criteria) are in LDC § 2-6.3. Please consider the following comments, which address each criterion.

***(1) Special conditions and circumstances exist which are peculiar to the land, structure or building and which are not applicable to other lands, structures or buildings in the same zoning district.***

The shape of Mrs. Scarbrough's property, considered in conjunction with the zoning assigned to the property, constitutes the special condition that is peculiar to the land.

The property is 948 feet deep, but only 100 feet wide. The property value is determined in large part because it has frontage on the Intracoastal Waterway. The MDR-PK zoning district requires 40 feet of lot width for a single family residence, and therefore the owner could subdivide the property into two lots and use 20% of the allowed density. A duplex structure requires 80 feet of lot width at the front building line, and therefore, this development option will still allow use of only 20% of the allowed density. Multifamily housing requires 100 feet of lot width, which the lot has available for the full depth of the lot.

The special circumstance would not be an issue if the property had the same acreage, but was oriented in an east-west configuration with 948 feet of width on the road and Intracoastal Waterway and 100 feet of depth. Such a configuration, with the same acreage, would allow development of 10 single family homes, each with frontage on the road and the waterway.

Considering the specific location of the property on Perdido Key, reasonable development of the property for multifamily mandates both height and only one unit per floor. This development option provides a panoramic view from the upper floors of the Gulf of Mexico in the distance to the south, the Intracoastal Waterway and Innerarity Point to the north, the length of the Intracoastal Waterway and sunrise to the east, and the Intracoastal Waterway, Perdido Key, Ono Island and sunset to the west.

Mrs. Scarbrough is entitled to the full benefit and value of the residential density assigned to this property by the County. With a four story building, she can obtain less than 40% of the value because the units at higher elevation are worth more than the units at lower elevation. Even if she could develop the property with eight units in four floors, she will have lost a substantial portion of the view afforded a one unit per floor development, and she will have lost the higher value associated with units on floors 5 through 10.

***(2) The special conditions and circumstances do not result from the actions of the applicant.***

The special condition of the shape of the property is not the result of actions by the applicant. The area along River Road was platted years ago, with the shape of the lot being determined at that time. The County decided more than a decade ago to afford this property density of 4.5 units per acre. Mrs. Scarbrough acquired the property in 2014, with the existing zoning in place at that time.

***(3) Granting the variance requested will not confer on the applicant any special privilege that is denied by the land development code to other lands, buildings or structures in the same zoning district.***

The same option being afforded by the LDC to Mrs. Scarbrough in this case is available to every other lot owner in MDR-PK with similar lot conditions and circumstances. Each lot owner should be afforded the opportunity to utilize effectively and efficiently the residential density assigned to the property by the County.

***(4) Strict application of the provisions of the land development code would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the land development code and would create an unnecessary and undue hardship on the applicant.***

One of the most significant rights enjoyed by other properties in the same zoning district is the right to develop property at the density of 4.5 units per acre. This is a particularly valuable right on Perdido Key. The undue and unnecessary hardship on Mrs. Scarbrough is that at a maximum height of four stories, she cannot make effective use of her lot, because of the exceptionally narrow and deep character of the property.

***(5) The variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.***

The variance requested allows reasonable development of the property with one residential unit per floor in a multifamily development configuration. This development configuration has already been established on River Road. The adjacent property to the west is Sailmaker's Condominium, which is a 10 story building, consisting of about 42 units on 3.6 acres. The resulting density is more than 11 units per acre. The Sailmaker's property is zoned CG-PK, which allows 12.5 units per acre, with a FAR of 6.0. The FAR for Mrs. Scarbrough's property is 1.0.

***(6) The granting of the variance will be consistent with the general intent and purpose of the land development code and that such variance will not be injurious to the area or otherwise detrimental to the public welfare.***

The general intent and purpose of the LDC is to allow 4.5 residential units per acre in MDR-PK. Each property owner on Perdido Key with property zoned MDR-PK is

Horace Jones  
December 16, 2015  
Page 4

entitled to this same right. The granting of this variance is not injurious to the area, considering that the properties on each side of Mrs. Scarbrough's lot are zoned CG-PK and are allowed to develop the properties at 10 stories and up to 12.5 residential units per acre.

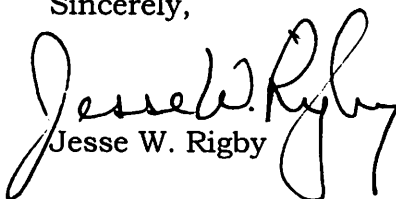
Developing the property with one unit per floor offers other benefits to both the owners of the multifamily units and their neighbors. The footprint of the building can be reduced considerably than would be the footprint of a building of only four floors. The side yard setbacks can be widened. This will afford a less obstructed north-south view from River Road. More importantly, it will allow for the preservation of existing vegetation and dunes structures on the property, especially if the County will allow design of the building with parking beneath the structure.

**Conclusion and Specific Request**

For the reasons stated herein, Mrs. Scarbrough has demonstrated an entitlement to be granted the requested variance. Development of this property at 10 stories is consistent with existing adjacent development, and allows Mrs. Scarbrough to use her property in a manner consistent with the zoning district assigned to the property by the County.

Mrs. Scarbrough respectfully requests that her variance application be granted.

Sincerely,

  
Jesse W. Rigby

JWR\cw  
Enclosures  
cc: Helen Scarbrough  
A2137667.DOC

APPLICATION

Please check application type:
[ ] Conditional Use Request for:
[ ] Administrative Appeal
[ ] Development Order Extension
[ ] Variance Request for: Building Height
[ ] Rezoning Request from: to:

Name & address of current owner(s) as shown on public records of Escambia County, FL

Owner(s) Name: Helen Scarbrough Phone: 850.434.3282 (Attorney)
Address: 8664 Rosemont Dr, Pensacola, FL 32514 Email: jrigby@cphlaw.com

[x] Check here if the property owner(s) is authorizing an agent as the applicant and complete the Affidavit of Owner and Limited Power of Attorney form attached herein.

Property Address: 13922 River Road, Pensacola, FL 32507

Property Reference Number(s)/Legal Description: 143S3210010000130

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 enter upon the property referenced herein at any reasonable time for purposes of site inspection and authorize placement of a public notice sign(s) on the property referenced herein at a location(s) to be determined by County staff; and
5) I am aware that Public Hearing notices (legal ad and/or postcards) for the request shall be provided by the Development Services Bureau.

Signature of Owner/Agent: [Handwritten Signature]
Signature of Owner: [Handwritten Signature]

Jesse W. Rigby, Esquire
Printed Name Owner/Agent
Helen Scarbrough
Printed Name of Owner

12-9-11
Date
12-8-15
Date

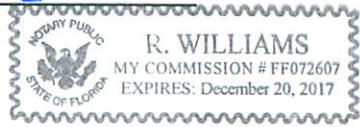
STATE OF FLORIDA COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this 8th day of December 2015, by Helena Scarbrough.

Personally Known [ ] OR Produced Identification [ ]. Type of Identification Produced: FL DL

Signature of Notary: [Handwritten Signature]
(notary seal must be affixed)

R Williams
Printed Name of Notary



FOR OFFICE USE ONLY
CASE NUMBER: V-2016-01
Meeting Date(s): 01-20-16 Accepted/Verified by: DH / DL Date: 12-16-15
Fees Paid: \$ 423.50 Receipt #: 6051641 Permit #: PBA 151200019

**AFFIDAVIT OF OWNER AND LIMITED POWER OF ATTORNEY**

As owner of the property located at 13922 River Road, Pensacola, FL 32507,  
Florida, property reference number(s) 143S3210010000130

I hereby designate Jesse W. Rigby, Esquire for the sole purpose  
of completing this application and making a presentation to the:

Planning Board and the Board of County Commissioners to request a rezoning on the above  
referenced property.

Board of Adjustment to request a(n) building height variance on the above referenced property.

This Limited Power of Attorney is granted on this \_\_\_\_\_ day of December the year of,  
2015, and is effective until the Board of County Commissioners or 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 Bureau.

Agent Name: Jesse W. Rigby, Esquire Email: jrigby@cphlaw.com

Address: Clark Partington Hart; 125 W. Romana St. (Ste. 800) Pensacola FL 32506 Phone: 850.434.3282

Helen Scarbrough  
Signature of Property Owner

Helen Scarbrough  
Printed Name of Property Owner

12-8-15  
Date

\_\_\_\_\_  
Signature of Property Owner

\_\_\_\_\_  
Printed Name of Property Owner

\_\_\_\_\_  
Date

STATE OF FLORIDA

COUNTY OF ESCAMBIA

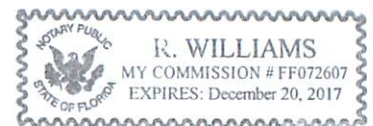
The foregoing instrument was acknowledged before me this 8th day of December 20 15,  
by Helen Scarbrough.

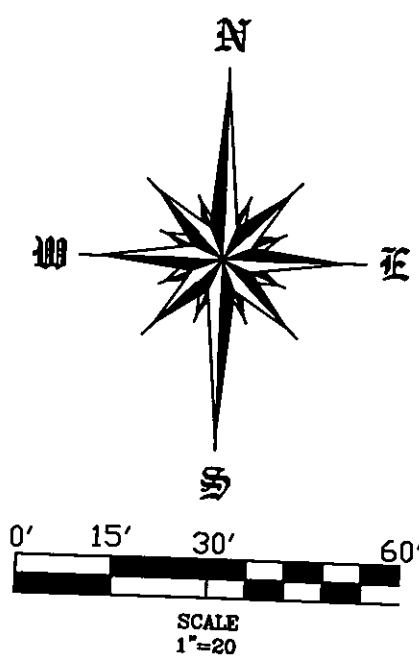
Personally Known  OR Produced Identification . Type of Identification Produced: FC & C

R Williams  
Signature of Notary

R Williams  
Printed Name of Notary

(Notary Seal)





POINT BEARS SOUTH  
85°44' WEST FROM  
POINT DESIGNATED  
"GB-2" STATE PLANE  
COORDINATE OF NORTH  
113,980' AND EAST  
622.020

(D) N 85°44' E 102'±  
(F) N 86°45'31" E 99.92'

DESCRIPTION (AS FURNISHED)

PARCEL 1  
THE WEST HALF OF LOT 130, GULF BEACH SUBDIVISION, A SUBDIVISION OF A PORTION OF SECTIONS 14, 26, 27, 34, AND 35, TOWNSHIP 3 SOUTH, RANGE 32 WEST, ESCAMBIA COUNTY, FLORIDA, ACCORDING TO A PLAT FILED IN PLAT BOOK 4 AT PAGE 52, OF THE PUBLIC RECORDS OF SAID COUNTY

PARCEL 2  
COMMENCING AT A POINT WHICH IS 120 FEET, MORE OR LESS, SOUTH OF THE NORTH LINE AND 3.750 FEET, MORE OR LESS, WEST OF THE EAST LINE OF SAID SECTION 14 AND AT THE SOUTHWEST CORNER OF LOT NO 130 OF THE GULF BEACH SUBDIVISION AS SHOWN IN PLAT BOOK 4, PAGE 52, OF THE PUBLIC RECORDS IN THE CLERK OF THE CIRCUIT COURT OF ESCAMBIA COUNTY, FLORIDA,  
THENCE NORTH ALONG THE WEST LINE OF SAID SUBDIVISION AND SUBSEQUENTLY ALONG THE WEST LINE EXTENDED OF SAID LOT 130 A DISTANCE OF 610 FEET, MORE OR LESS, TO A POINT WHICH IS ON THE BOUNDARY OF A TRACT OF LAND OWNED BY THE UNITED STATES OF AMERICA ON THE GULF INTRACOASTAL WATERWAY AT GULF BEACH, FLORIDA, ON A LINE WHICH BEARS NORTH 89 DEGREES 11 MINUTES EAST FROM AN ALUMINUM MONUMENT STAMPED "P.O.I.-4", SAID MONUMENT BEING AT PLANE COORDINATE POSITION NORTH 113,566.66 FEET AND EAST 520,780.27 FEET, BASED ON TRANSVERSE MERCATOR PROJECTION, ALABAMA WEST ZONE AND THE POINT OF BEGINNING,  
THENCE CONTINUE NORTH ALONG THE WEST LINE EXTENDED OF LOT 130 OF SAID SUBDIVISION A DISTANCE OF 338 FEET, MORE OR LESS TO A POINT ON A LINE WHICH BEARS SOUTH 85 DEGREES 44 MINUTES WEST FROM A POINT DESIGNATED "GB-2" BEING A PLANE COORDINATE POSITION NORTH 113,980 FEET AND EAST 522.020 FEET,  
THENCE NORTH 85 DEGREES 44 MINUTES EAST 102 FEET, MORE OR LESS TO A POINT ON THE EAST LINE EXTENDED OF THE WEST HALF OF SAID LOT 130 A DISTANCE OF 340 FEET, MORE OR LESS TO A POINT ON THE BOUNDARY OF SAID UNITED STATES TRACT,  
THENCE SOUTH 88 DEGREES 11 MINUTES WEST ALONG THE BOUNDARY OF SAID UNITED STATES TRACT A DISTANCE OF 100 FEET, MORE OR LESS TO THE POINT OF BEGINNING

CERTIFY TO  
RONALD ANTHONY BAROCO AND SHERRIE BAROCO  
HELEN SCARBOROUGH  
WILSON, HARRELL, FARRINGTON, FORD, ET AL., P.A  
WESTCOT LAND TITLE INSURANCE COMPANY

ALUMINUM MONUMENT  
P.O.I.-4 NOT FOUND  
STATE PLANE  
COORDINATE OF  
NORTH 113,566.66  
EAST 520,780.27

BOUNDARY OF TRACT OF LAND OWNED  
BY THE UNITED STATES OF AMERICA ON  
THE GULF INTRACOASTAL WATERWAY  
AT GULF BEACH, FLORIDA (PER DEED)

SURVEYORS NOTES:

THIS SURVEY WAS PERFORMED FOR THE CLIENT SHOWN AND IS NOT TO BE USED FOR ANY OTHER PURPOSES OR TRANSACTIONS WITHOUT PRIOR CONSENT FROM THIS SURVEYOR.

ALL MEASUREMENTS WERE MADE ACCORDING TO UNITED STATES FOOT  
NO TITLE RESEARCH WAS PERFORMED BY THIS SURVEYOR, NOR WERE WE FURNISHED WITH SUCH

NO INSTRUMENT OF RECORD REFLECTING EASEMENTS, RIGHT OF WAY, AND/OR OWNERSHIP WERE FURNISHED TO THIS SURVEYOR EXCEPT AS SHOWN

NO UNDERGROUND INSTALLATIONS OR IMPROVEMENTS HAVE BEEN LOCATED EXCEPT AS SHOWN

ALL BEARINGS AND DISTANCES ARE RECORD UNLESS OTHERWISE NOTED  
ERROR OF CLOSURE MEETS MINIMUM TECHNICAL STANDARDS

THERE MAY BE ADDITIONAL RESTRICTIONS AFFECTING THIS PROPERTY THAT MAY BE FOUND RECORDED IN THE PUBLIC RECORDS OF THE CITY/COUNTY/STATE, THAT DO NOT APPEAR ON THE FACE OF THIS PLAT

IMPROVEMENT LOCATIONS SHOWN HEREON MAY BE EXAGGERATED AND NOT TO SCALE FOR CLARITY PURPOSES  
ADDITIONS OR DELETIONS TO SURVEY MAPS OR REPORTS BY OTHER THAN THE SIGNING PARTY OR PARTIES IS PROHIBITED WITHOUT WRITTEN CONSENT OF THE SIGNING PARTY OR PARTIES

BUILDING SET BACK LINES ARE PER PLAT THERE MAY BE ADDITIONAL RESTRICTIONS IN SUBDIVISION COVENANTS AND/OR OTHER CITY/COUNTY/STATE REGULATIONS

IT IS THE RECOMMENDATION OF THIS SURVEYOR TO CHECK WITH THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION FOR ANY WETLAND ISSUES THAT COULD POSSIBLY AFFECT THIS PROPERTY THAT MAY OR MAY NOT BE SHOWN ON THE FACE OF THIS PLAT

BASIS OF BEARING N 88°23'40" E FOR THE NORTH RIGHT-OF-WAY LINE RIVER ROAD  
PER PLAT

REFERENCE SOURCE FIELD WORK AND EXISTING FIELD MONUMENTATION, COUNTY PROPERTY APPRAISER'S TAX MAP COPY OF OR BOOK 522L, PAGE 607, COPY OF PLAT BOOK 4, PAGE 52  
COPY OF DESCRIPTION AS FURNISHED

SWINNEY & ASSOCIATES, INC.

3603 SUNNYSIDE ST  
PENSACOLA, FLORIDA 32507  
(850) 453-4261 FAX. (850) 458-2630  
D.SWINNEY@ATT.NET

LICENSE BUSINESS NO 7092

ADDRESS 13922 RIVER ROAD			
REQUESTED BY LISA DURANT			
TYPE BOUNDARY WITH IMPROVEMENTS			
SECTION 14	TOWNSHIP 3 SOUTH	RANGE 32 WEST	COUNTY ESCAMBIA
SCALE 1"=30'	DRAWN BY REM	FIELD DATE 04/04/2014	
DATE 04/04/2014	CREW MS/ZL	FIELD BOOK 268	PAGES 63-65
REVISION DATE			

SURVEYORS CERTIFICATE  
I HEREBY CERTIFY THAT THIS SURVEY WAS MADE UNDER MY RESPONSIBLE CHARGE AND MEETS THE MINIMUM TECHNICAL STANDARDS AS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS & MAPPERS IN CHAPTER 5J-17.050, 5J-17.051 AND 5J-17.052, PURSUANT TO SECTION 472.027 FLORIDA STATUTES

DAVID MARK SWINNEY  
PROFESSIONAL SURVEYOR AND MAPPER NO 5641  
STATE OF FLORIDA

NOT VALID WITHOUT ORIGINAL RAISED SEAL

DRAWING NUMBER  
14-14190

LEGEND

- ☒ - FOUND 4"X4" CONCRETE MONUMENT (A.C.O.E.) (P.O.I.-3)
- - SET 1/2" CAPPED IRON ROD #7092
- - FOUND 3/4" IRON PIPE
- - FOUND 1/2" CAPPED IRON ROD #2499
- - FOUND 1/2" IRON ROD
- - FOUND 1" IRON PIPE
- - FOUND 1/2" IRON ROD #7107
- A.C.O.E - ARMY CORPS OF ENGINEERS
- P.I - POINT OF INTERSECTION
- P.O.C - POINT OF COMMENCEMENT
- P.O.B - POINT OF BEGINNING
- (D) - DEED
- (P) - PLAT
- (F) - FIELD
- R/W - RIGHT-OF-WAY
- BB - BASE BEARING
- ⊕ - UTILITY POLE
- — — — — OVER HEAD WIRE
- — — — — WOODEN FENCE
- — — — — 3' WOOD FENCE
- — — — — 4' WOOD FENCE
- — — — — METAL FENCE
- — — — — WOOD
- — — — — CONCRETE

P.O.C  
POINT BEING 120 ±  
SOUTH OF THE NORTH  
LINE AND 3760 ± WEST  
OF THE EAST LINE OF  
SECTION 14

RIVER ROAD (60' R/W)

**CONCURRENCY DETERMINATION ACKNOWLEDGMENT**

**For Rezoning Requests Only**

Property Reference Number(s): 143S3210010000130

Property Address: 13922 River Road, Pensacola, FL 32507

I/We acknowledge and agree that no future development for which concurrency of required facilities and services must be certified shall be approved for the subject parcel(s) without the issuance of a certificate of concurrency for the development based on the actual densities and intensities proposed in the future development's permit application.

I/We also acknowledge and agree that approval of a zoning district amendment (rezoning) or Future Land Use Map amendment does not certify, vest, or otherwise guarantee that concurrency of required facilities and services is, or will be, available for any future development of the subject parcels.

I/We further acknowledge and agree that no development for which concurrency must be certified shall be approved unless at least one of the following minimum conditions of the Comprehensive Plan will be met for each facility and service of the County's concurrency management system prior to development approval:

- a. The necessary facilities or services are in place at the time a development permit is issued.
- b. A development permit is issued subject to the condition that the necessary facilities and services will be in place and available to serve the new development at the time of the issuance of a certificate of occupancy.
- c. For parks and recreation facilities and roads, the necessary facilities are under construction at the time the development permit is issued.
- d. For parks and recreation facilities, the necessary facilities are the subject of a binding executed contract for the construction of the facilities at the time the development permit is issued and the agreement requires that facility construction must commence within one year of the issuance of the development permit.
- e. The necessary facilities and services are guaranteed in an enforceable development agreement. An enforceable development agreement may include, but is not limited to, development agreements pursuant to Section 163.3220, F.S., or as amended, or an agreement or development order issued pursuant to Chapter 380, F.S., or as amended. For transportation facilities, all in-kind improvements detailed in a proportionate fair share agreement must be completed in compliance with the requirements of Section 5.13.00 of the LDC. For wastewater, solid waste, potable water, and stormwater facilities, any such agreement will guarantee the necessary facilities and services to be in place and available to serve the new development at the time of the issuance of a certificate of occupancy.
- f. For roads, the necessary facilities needed to serve the development are included in the first three years of the applicable Five-Year Florida Department of Transportation (FDOT) Work Program or are in place or under actual construction no more than three years after the issuance of a County development order or permit.

I HEREBY ACKNOWLEDGE THAT I HAVE READ, UNDERSTAND AND AGREE WITH THE ABOVE STATEMENT ON THIS 8th DAY OF DECEMBER, YEAR OF 2015.

Helen Scarbrough  
Signature of Property Owner

Helen Scarbrough  
Printed Name of Property Owner

12-8-15  
Date

\_\_\_\_\_  
Signature of Property Owner

\_\_\_\_\_  
Printed Name of Property Owner

\_\_\_\_\_  
Date



Prepared by:  
Lisa A. Durant  
Wilson, Harrell, Farrington, Ford, et.al., P.A.  
307 South Palafox Street  
Pensacola, Florida 32502

File Number: 1-48606

### General Warranty Deed

Made this April 8, 2014 A.D. By Ronald Anthony Baroco and Sherrie Baroco, husband and wife, 14320 River Road, Pensacola, FL 32507, hereinafter called the grantor, to Helen Scarbrough, whose post office address is: 8664 Rosemont Drive, Penascola, FL 32514, hereinafter called the grantee:

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

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

See Attached Schedule "A"

Parcel ID Number: 143S321001000130


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

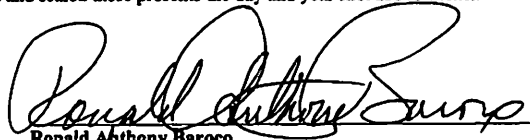
To Have and to Hold, the same in fee simple forever.

And the grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land; that the grantor hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances except taxes accruing subsequent to December 31, 2013.

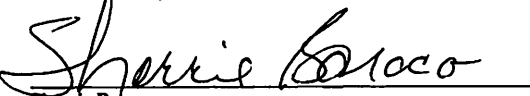
In Witness Whereof, the said grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in our presence:

  
\_\_\_\_\_  
Witness Printed Name William E. Farrington II


  
\_\_\_\_\_  
Ronald Anthony Baroco

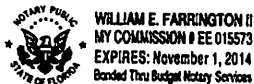
  
\_\_\_\_\_  
Witness Printed Name Angela E. Bonds

  
\_\_\_\_\_  
Sherrie Baroco

State of Florida  
County of Escambia

The foregoing instrument was acknowledged before me this 8th day of April, 2014, by Ronald Anthony Baroco and Sherrie Baroco, husband and wife, who is/are personally known to me or who has produced Identities as identification.

  
\_\_\_\_\_  
Notary Public  
Print Name: William E. Farrington II  
My Commission Expires: 11-1-14



Prepared by:  
Lisa A. Durant  
Wilson, Harrell, Farrington, Ford, et.al., P.A.  
307 South Palafox Street  
Pensacola, Florida 32502

File Number: 1-48606

### "Schedule A"

PARCEL 1: The West half of Lot 130, GULF BEACH SUBDIVISION, a subdivision of a portion of Sections 14, 26, 27, 34, and 35, Township 3 South, Range 32 West, Escambia County, Florida, according to a Plat filed in Plat Book 4 at Page 52, of the Public Records of said County.

PARCEL 2: Commencing at a point which is 120 feet, more or less, South of the North line and 3,750 feet, more or less, West of the East line of said Section 14 and at the Southwest corner of Lot No. 130 of the Gulf Beach Subdivision as shown in Plat Book 4, Page 52, of the Public Records in the Clerk of the Circuit Court of Escambia County, Florida; thence North along the West line of Lot 130 of said subdivision and subsequently along the West line extended of said Lot 130 a distance of 610 feet, more or less, to a point which is on the boundary of a tract of land owned by the United States of America on the Gulf Intracoastal Waterway at Gulf Beach, Florida, on a line which bears North 88 degrees 11 minutes East from an aluminum monument stamped "P.O.L.-4", said monument being at plane coordinate position North 113,566.66 feet and East 520,780.27 feet, based on Transverse Mercator Projection, Alabama West Zone and the Point of Beginning; thence continue North along the West line extended of Lot 130 of said subdivision a distance of 338 feet, more or less to a point on a line which bears South 85 degrees 44 minutes West from a point designated "GB-2" being a plane coordinate position North 113,980 feet and East 522,020 feet; thence North 85 degrees 44 minutes East 102 feet, more or less to a point on the East line extended of the West half of said Lot 130 a distance of 340 feet, more or less to a point on the boundary of said United States tract; thence South 88 degrees 11 minutes West along the boundary of said United States tract a distance of 100 feet, more or less to the Point of Beginning.

**RESIDENTIAL SALES ABUTTING ROADWAY  
MAINTENANCE DISCLOSURE**

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


NAME OF ROADWAY: 13922 River Road

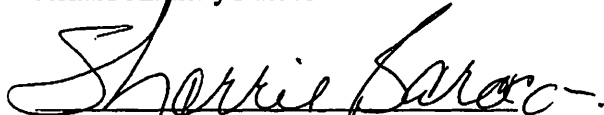
LEGAL ADDRESS OF PROPERTY: 13922 River Road, Pensacola, Florida 32507

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

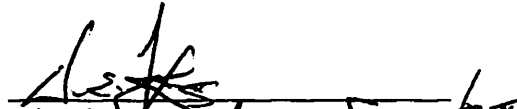
This form completed by: Wilson, Harrell, Farrington, Ford, Wilson, Spain & Parsons P.A.  
13020 Sorrento Road  
Pensacola, FL 32507

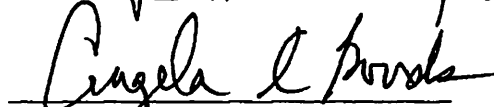
AS TO SELLER(S)

  
Ronald Anthony Baroco

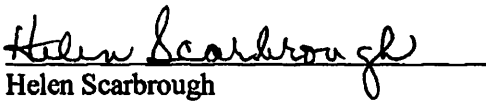
  
Sherrie Baroco

WITNESSES TO SELLER(S):

  
Printed Name: William E. Farrington

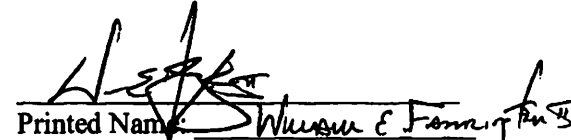
  
Printed Name: Angela E. Bonds

AS TO BUYER(S):

  
Helen Scarbrough

\_\_\_\_\_

WITNESSES TO BUYER(S):

  
Printed Name: William E. Farrington

  
Printed Name: Grace K. Eris

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

<b>General Information</b> <b>Reference:</b> 143S321001000130 <b>Account:</b> 103600000 <b>Owners:</b> SCARBROUGH HELEN <b>Mail:</b> 8664 ROSEMONT DR PENSACOLA, FL 32514 <b>Situs:</b> 13922 RIVER RD 32507 <b>Use Code:</b> SINGLE FAMILY RESID <b>Taxing Authority:</b> COUNTY MSTU <b>Tax Inquiry:</b> <a href="#">Open Tax Inquiry Window</a> Tax Inquiry link courtesy of Janet Holley Escambia County Tax Collector	<b>Assessments</b> <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>2015</td> <td>\$328,000</td> <td>\$96,704</td> <td>\$424,704</td> <td>\$424,704</td> </tr> <tr> <td>2014</td> <td>\$328,000</td> <td>\$92,098</td> <td>\$420,098</td> <td>\$420,098</td> </tr> <tr> <td>2013</td> <td>\$328,000</td> <td>\$83,904</td> <td>\$411,904</td> <td>\$411,904</td> </tr> </tbody> </table> <p style="text-align: center;"><a href="#">Disclaimer</a></p> <p style="text-align: center;"><a href="#">Amendment 1/Portability Calculations</a></p>	Year	Land	Imprv	Total	Cap Val	2015	\$328,000	\$96,704	\$424,704	\$424,704	2014	\$328,000	\$92,098	\$420,098	\$420,098	2013	\$328,000	\$83,904	\$411,904	\$411,904
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<b>Sales Data</b>  <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>04/08/2014</td> <td>7157</td> <td>455</td> <td>\$500,000</td> <td>WD</td> <td><a href="#">View Instr</a></td> </tr> <tr> <td>08/2003</td> <td>5221</td> <td>606</td> <td>\$100</td> <td>QC</td> <td><a href="#">View Instr</a></td> </tr> <tr> <td>05/2003</td> <td>5145</td> <td>639</td> <td>\$100</td> <td>QC</td> <td><a href="#">View Instr</a></td> </tr> <tr> <td>05/2003</td> <td>5145</td> <td>636</td> <td>\$400,000</td> <td>WD</td> <td><a href="#">View Instr</a></td> </tr> <tr> <td>02/1995</td> <td>3743</td> <td>413</td> <td>\$100</td> <td>QC</td> <td><a href="#">View Instr</a></td> </tr> </tbody> </table> <p>Official Records Inquiry courtesy of Pam Childers                  Escambia County Clerk of the Circuit Court and                  Comptroller</p>	Sale Date	Book	Page	Value	Type	Official Records (New Window)	04/08/2014	7157	455	\$500,000	WD	<a href="#">View Instr</a>	08/2003	5221	606	\$100	QC	<a href="#">View Instr</a>	05/2003	5145	639	\$100	QC	<a href="#">View Instr</a>	05/2003	5145	636	\$400,000	WD	<a href="#">View Instr</a>	02/1995	3743	413	\$100	QC	<a href="#">View Instr</a>	<b>2015 Certified Roll Exemptions</b> None  <b>Legal Description</b> W 1/2 OF LT 130 GULF BEACH S/D PB 4 P 52 & BEG AT PT 120 FT S OF N LI & 3750 FT W OF E LI OF SEC BEING SW COR OF LT 130...  <b>Extra Features</b> BOAT DOCK BOAT HOUSE CARPORT
Sale Date	Book	Page	Value	Type	Official Records (New Window)																																
04/08/2014	7157	455	\$500,000	WD	<a href="#">View Instr</a>																																
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02/1995	3743	413	\$100	QC	<a href="#">View Instr</a>																																

**Parcel Information** [Launch Interactive Map](#)

**Section Map Id:**  
[14-3S-32-3](#)

**Approx. Acreage:**  
2.1900

**Zoned:**  
CG-PK  
MDR-PK

**Evacuation & Flood Information**  
[Open Report](#)

RIVER RD

VALHALLA AVE

[View Florida Department of Environmental Protection\(DEP\) Data](#)

**Buildings**

Address:13922 RIVER RD, Year Built: 1981, Effective Year: 1981

**Structural Elements**

**DECOR/MILLWORK-ABOVE AVERAGE**  
**DWELLING UNITS-1**  
**EXTERIOR WALL-SIDING-SHT.AVG.**  
**FLOOR COVER-CARPET**  
**FOUNDATION-PILINGS**  
**HEAT/AIR-CENTRAL H/AC**  
**INTERIOR WALL-DRYWALL-PLASTER**  
**NO. PLUMBING FIXTURES-6**  
**NO. STORIES-1**  
**ROOF COVER-DIMEN/ARCH SHNG**  
**ROOF FRAMING-HIP**  
**STORY HEIGHT-0**  
**STRUCTURAL FRAME-WOOD FRAME**

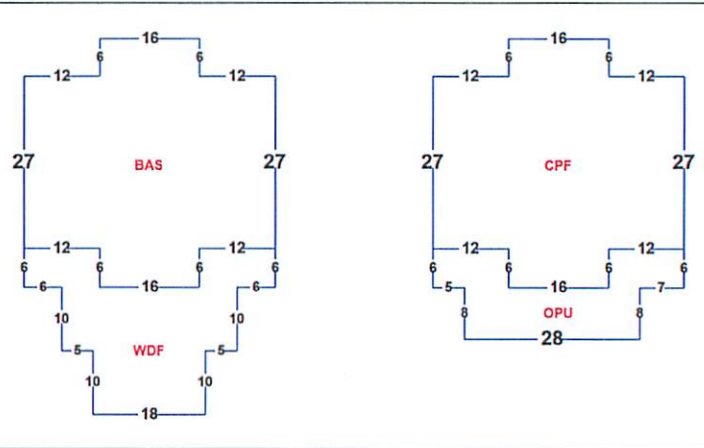
Areas - 3516 Total SF

**BASE AREA - 1272**

**CARPORT FIN - 1272**

**OPEN PORCH UNF - 368**

**WOOD DECK FIN - 604**



**Images**



9/24/12

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.



**Development Services Department**

**Building Inspections Division**

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

**RECEIPT**

Receipt No. : **651641**

Date Issued. : 12/16/2015

Cashier ID : KLHARPER

Application No. : PBA151200019

Project Name : V-2016-01

Address : 125 WEST ROMANA ST  
Pensacola, FL, 32591

**PAYMENT INFO**

Method of Payment	Reference Document	Amount Paid	Comment
<b>Check</b>	013973	\$423.50	App ID : PBA151200019
		<b>\$423.50</b>	<b>Total Check</b>

Received From : CLARK, PARKINGTON, HART & HART, P.A.

Total Receipt Amount : **\$423.50**

Change Due : \$0.00

**APPLICATION INFO**

Application #	Invoice #	Invoice Amt	Balance	Job Address
PBA151200019	743597	423.50	\$0.00	13922 RIVER RD, PENSACOLA, 32507

**Total Amount :** **423.50** \$0.00 Balance Due on this/these Application(s) as of 12/16/2015

**Board of Adjustment**

**6. 4.**

**Meeting Date:** 01/20/2016  
**CASE:** V-2016-02  
**APPLICANT:** Jesse W. Rigby, Agent for Linda H. Dunson Banta  
**ADDRESS:** 13900 River Rd.  
**PROPERTY REFERENCE NO.:** 14-3S-32-1001-000-129  
**ZONING DISTRICT:** MDR-PK, Medium Density Residential  
**FUTURE LAND USE:** MU-PK, Mixed-Use Perdido Key

---

**SUBMISSION DATA:**

**REQUESTED VARIANCE:**

The Applicant is requesting a building height variance to allow nine habitable floors with under structure parking in MDR-PK zoning. The current height allowed on site is four floors.

**RELEVANT AUTHORITY:**

**Land Development Code of Escambia County, Florida (Ordinance No. 96-3 as amended), Section: 3-3.4 (d) (3)**

**(3) Structure height.** A maximum building height of four stories or two stories less than any adjacent building greater than four stories that existed on June 1, 1997, whichever is greater.

**CRITERIA**

**Land Development Code of Escambia County, Florida (Ordinance No. 96-3 as amended), Section 2-6.3**

**CRITERION (1)**

**Special conditions and circumstances exist which are peculiar to the land, structure or building and which are not applicable to other lands, structures or buildings in the same zoning district.**

**FINDINGS-OF-FACT**

This parcel is approximately seven times deeper than its width. This orientation provides waterfront on Old River but severely limits potential for development at the density (4.5 units per acre) allowed by zoning. Building setbacks and minimum lot widths present practical difficulties in development of the parcel.

**CRITERION (2)**

**The special conditions and circumstances do not result from the actions of the applicant.**

**FINDINGS-OF-FACT**

The layout of the parcel and the zoning site limitations do not result from the actions of the applicant.

**CRITERION (3)**

**Granting the variance requested will not confer on the applicant any special privilege that is denied by this land development code to other lands, buildings or structures in the same zoning district.**

**FINDINGS-OF-FACT**

The granting of this height variance would allow the applicant use of their allowed density in a manner similar to properties in the surrounding area.

**CRITERION (4)**

**Strict application of the provisions of the land development code would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the land development code and would create an unnecessary and undue hardship on the applicant..**

**FINDINGS-OF-FACT**

The site development hardships in this case can be alleviated by the granting of the height variance. The requested variance would allow development within the terms of the land development code.

**CRITERION (5)**

**The variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.**

**FINDINGS-OF-FACT**

Given the physical limitations of the site, the requested height variance is necessary to allow development to the allowed density.

**CRITERION 6**

**The granting of the variance will be consistent with the general intent and purpose of the land development code and that such variance will not be injurious to the area or otherwise detrimental to the public welfare.**

**FINDING OF FACT:**

The granting of the requested height variance will be consistent with the intent and purpose of the land development code and will not be injurious to the area or otherwise detrimental to the public welfare.



**STAFF RECOMMENDATION**

Staff finds that the request meets all of the required criteria and recommends approval of the variance.

**BOA DECISION**

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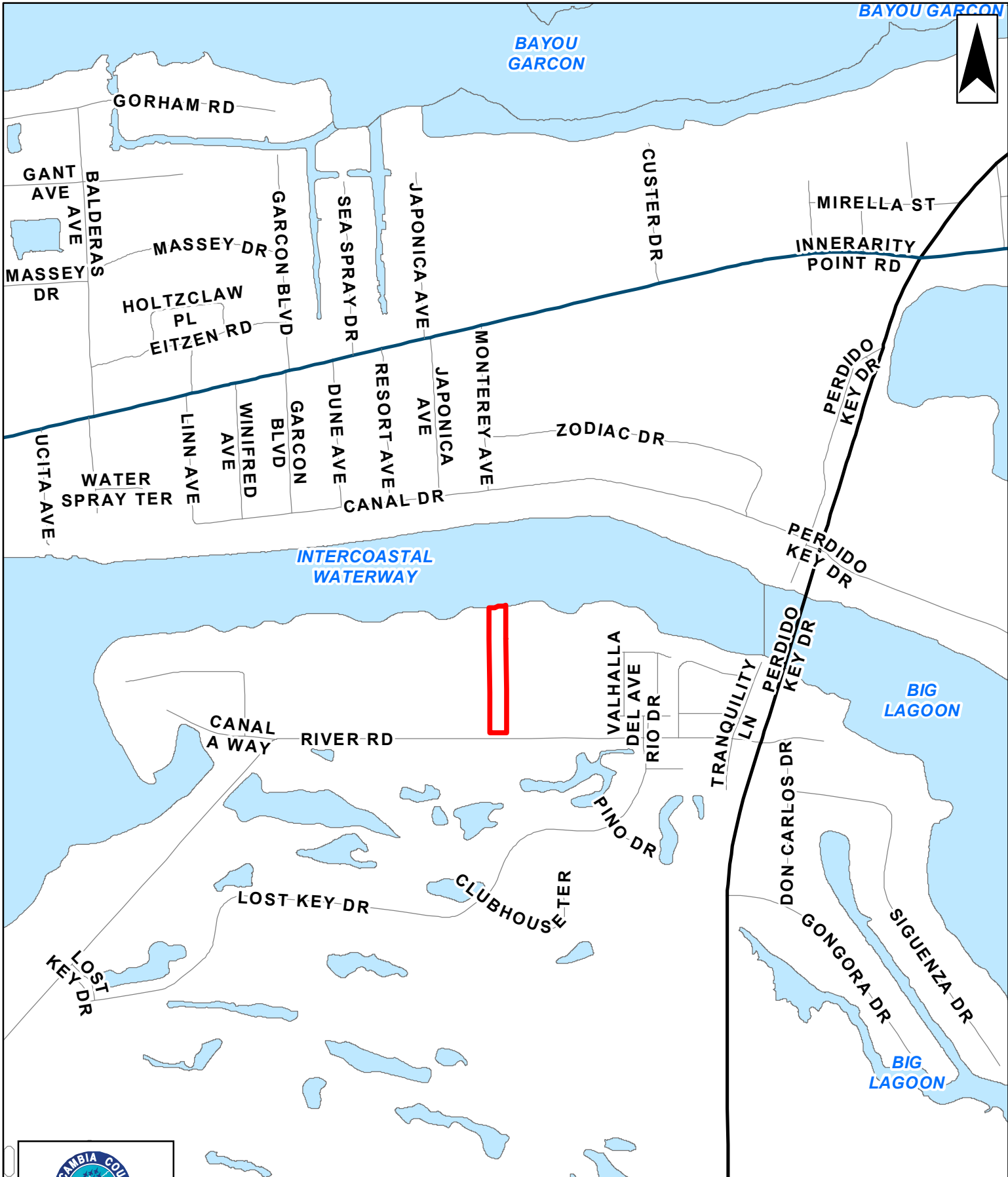
**Attachments**

Working Case File #V-2016-02

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**V-2016-02**

**13900 River Road**



BAYOU GARCON

BAYOU GARCON



GORHAM RD

GANT AVE

MASSEY DR

GARCON BLVD

SEA SPRAY DR

JAPONICA AVE

CUSTER DR

MIRELLA ST

INNERARITY POINT RD

HOLTZCLAW PL

EITZEN RD

RESORT AVE

JAPONICA AVE

MONTEREY AVE

ZODIAC DR

PERDIDO KEY DR

WINIFRED AVE

GARCON BLVD

CANAL DR

WATER SPRAY TER

INTERCOASTAL WATERWAY

PERDIDO KEY DR



VALHALLA DEL AVE

RIO DR

BIG LAGOON

CANAL A WAY RIVER RD

TRANQUILITY LN

PERDIDO KEY DR

PINO DR

BIG LAGOON

LOST KEY DR

CLUBHOUSE TER

DON CARLOS DR

GONGORA DR

SIGUENZA DR

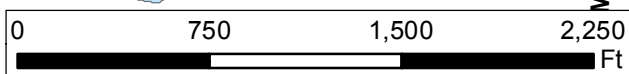
LOST KEY DR



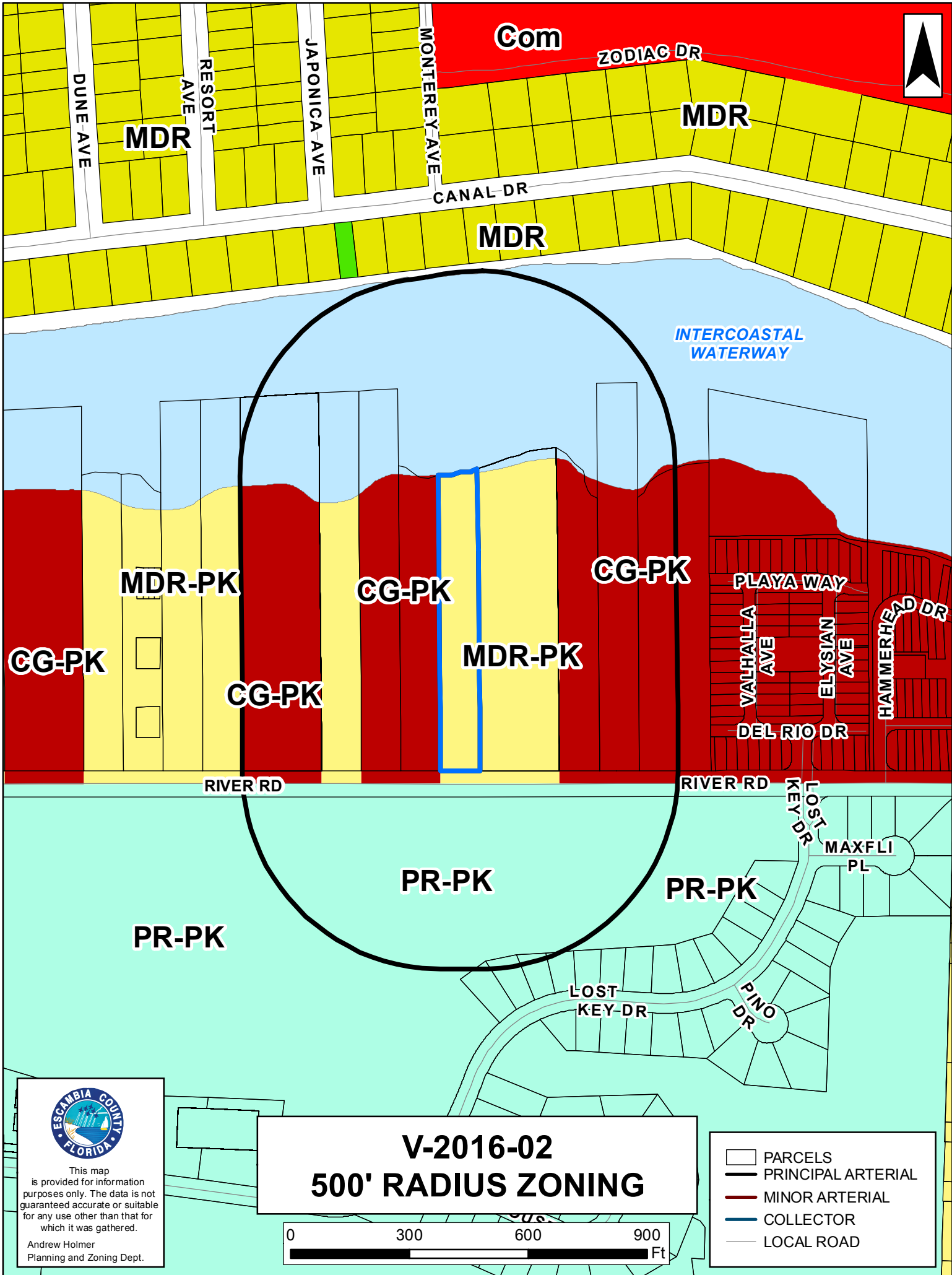
This map is provided for information purposes only. The data is not guaranteed accurate or suitable for any use other than that for which it was gathered.

Andrew Holmer  
Planning and Zoning Dept.

# V-2016-02 LOCATION MAP



- PRINCIPAL ARTERIAL
- MINOR ARTERIAL
- COLLECTOR
- LOCAL ROAD



Com

ZODIAC DR



MDR

MDR

DUNE AVE

RESORT AVE

JAPONICA AVE

MONTEREY AVE

CANAL DR

MDR

INTERCOASTAL WATERWAY

MDR-PK

CG-PK

CG-PK

PLAYA WAY

CG-PK

MDR-PK

VALHALLA AVE

ELYSIAN AVE

HAMMERHEAD DR

CG-PK

DEL RIO DR

RIVER RD

RIVER RD

PR-PK

PR-PK

PR-PK

MAXFLI PL

LOST KEY DR

PINO DR



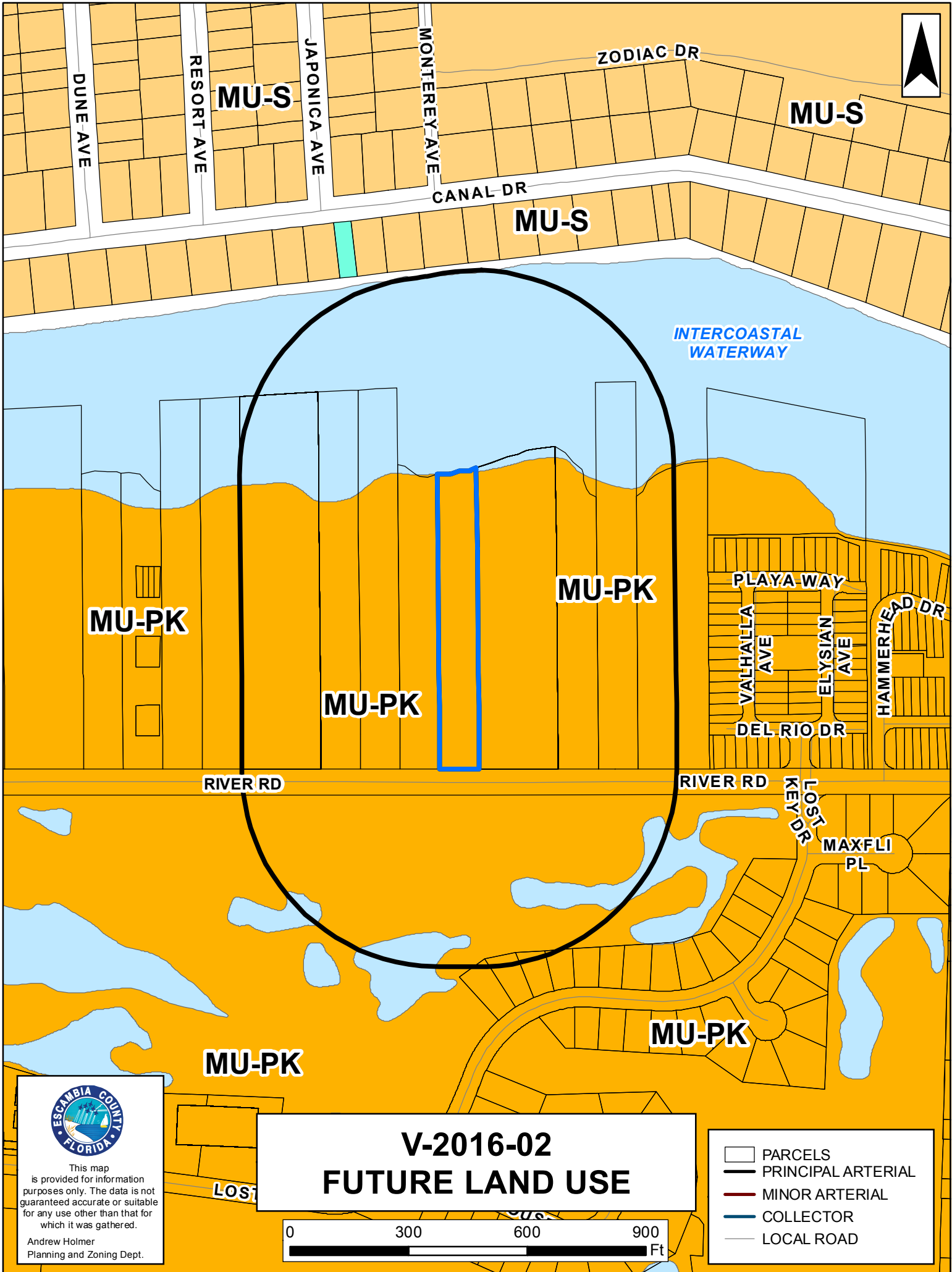
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Andrew Holmer  
Planning and Zoning Dept.

V-2016-02  
500' RADIUS ZONING



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



MU-PK

MU-S

MU-S

MU-S

INTERCOASTAL WATERWAY

MU-PK

MU-PK

RIVER RD

RIVER RD

MU-PK

MU-PK



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.

# V-2016-02 FUTURE LAND USE



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



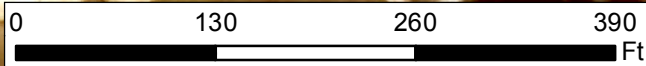
RIVER RD








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.

# V-2016-02 AERIAL MAP



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

**CLARK PARTINGTON HART  
LARRY BOND & STACKHOUSE**

ATTORNEYS AT LAW

Pensacola • Destin • Santa Rosa Beach • Tallahassee • Orange Beach

Jesse W. Rigby  
Direct (850) 434-3282  
jrigby@cphlaw.com

December 16, 2015

Board of Adjustment  
c/o Mr. Horace Jones, Director  
Development Services Department  
Escambia County  
3363 West Park Place  
Pensacola, FL 32505

**Re: Request for Building Height Variance**  
**Property Owner: Linda H. Dunson Banta**  
**13900 River Road, Pensacola, FL 32507**  
**Property Ref. No.: 143S3210010000129**

Dear Mr. Jones:

This letter is filed in support of the application of the property owner for a building height variance to allow nine habitable floors, with parking under the structure, for a multifamily residential building. I am Mrs. Banta's authorized agent for this application.

Mrs. Banta's application, with all required forms, is being submitted at the same time as this letter. A copy of Mrs. Banta's deed is in the application package. The deed contains the legal description for the property. I have also included a copy of the Property Appraiser's print-out, which includes a statement of the acreage of the parcel; namely 1.72 acres. I have a full-size survey of the property, which I can provide if it is needed; however, the survey does not contain a statement of acreage. The survey shows current improvements on the property, which consist of a single-family home and accessory structures. The survey is not a site plan for future development of the parcel.

The parcel is zoned MDR-PK. The allowed density is 4.5 units per acre. The density multiplied by the acreage results in 8 dwelling units. The maximum FAR is 1.0, which will not be exceeded. This request does not change the allowed density of the property. The height allowed in MDR-PK, without a variance, is four stories.

125 West Romana Street • Suite 800 • Pensacola, Florida 32502  
P.O. Box 13010 • Pensacola, Florida 32591-3010  
Phone (850) 434-9200 • Fax (850) 432-7340  
www.cphlaw.com

**Variance Criteria**

The general variance conditions (criteria) are in LDC § 2-6.3. Please consider the following comments, which address each criterion.

***(1) Special conditions and circumstances exist which are peculiar to the land, structure or building and which are not applicable to other lands, structures or buildings in the same zoning district.***

The shape of Mrs. Banta's property, considered in conjunction with the zoning assigned to the property, constitutes the special condition that is peculiar to the land.

The property is approximately 760 feet deep, but only 100 feet wide. The property value is determined in large part because it has frontage on the Intracoastal Waterway. The MDR-PK zoning district requires 40 feet of lot width for a single family residence, and therefore the owner could subdivide the property into two lots and use 25% of the allowed density. A duplex structure requires 80 feet of lot width at the front building line, and therefore, this development option will still allow use of only 25% of the allowed density. Multifamily housing requires 100 feet of lot width, which the lot has available for the full depth of the lot.

The special circumstance would not be an issue if the property had the same acreage, but was oriented in an east-west configuration with 760 feet of width on the road and Intracoastal Waterway and 100 feet of depth. Such a configuration, with the same acreage, would allow development of 8 single family homes, each with frontage on the road and the waterway.

Considering the specific location of the property on Perdido Key, reasonable development of the property for multifamily mandates both height and only one unit per floor. This development option provides a panoramic view from the upper floors of the Gulf of Mexico in the distance to the south, the Intracoastal Waterway and Innerarity Point to the north, the length of the Intracoastal Waterway and sunrise to the east, and the Intracoastal Waterway, Perdido Key, Ono Island and sunset to the west.

Mrs. Banta is entitled to the full benefit and value of the residential density assigned to this property by the County. With a four story building, she can achieve substantially less value because units at higher elevation are worth more than units at lower elevation. Even if she could develop the property with eight units in four floors, she will have lost a substantial portion of the view afforded a one unit per floor development, and she will have lost the higher value associated with units on floors 5 through 9.

The reason for the request for nine habitable floors, rather than eight floors, is to allow the first habitable floor above parking to be used for a condominium office, meeting room and other amenities, such as a work-out room. This same use could be accomplished with the common area meeting room designed as an attached low level



structure, but such a configuration would use more of the lot that should be left as open space.

There is an additional nature feature unique to this lot. There a number of Live Oak trees on the property, including two Heritage Live Oaks that should be saved, if possible. Providing for height, with less of a building footprint, will allow heritage trees to be saved.

***(2) The special conditions and circumstances do not result from the actions of the applicant.***

The special condition of the shape of the property is not the result of actions by the applicant. The area along River Road was platted years ago, with the shape of the lot being determined at that time. Mrs. Banta acquired the property in the early 1970s. The County decided more than a decade ago to afford this property density of 4.5 units per acre, although it was used at the time for a single-family home. The existing zoning has been in place for many years.

***(3) Granting the variance requested will not confer on the applicant any special privilege that is denied by the land development code to other lands, buildings or structures in the same zoning district.***

The same option being afforded by the LDC to Mrs. Banta in this case is available to every other lot owner in MDR-PK with similar lot conditions and circumstances. Each lot owner should be afforded the opportunity to utilize effectively and efficiently the residential density assigned to the property by the County.

***(4) Strict application of the provisions of the land development code would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the land development code and would create an unnecessary and undue hardship on the applicant.***

One of the most significant rights enjoyed by other properties in the same zoning district is the right to develop property at the density of 4.5 units per acre. This is a particularly valuable right on Perdido Key. The undue and unnecessary hardship on Mrs. Banta is that at a maximum height of four stories, she cannot make effective and efficient use of her lot, because of the exceptionally narrow and deep character of the property.

***(5) The variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.***

The variance requested allows reasonable development of the property with one residential unit per floor in a multifamily development configuration. This development configuration has already been established on River Road. There are other 10 story multifamily residential buildings along this stretch of River Road, some with considerably higher density per acre than the 4.5 units per acre allowed on Mrs.

Horace Jones  
December 16, 2015  
Page 4

Banta's property. In addition, the property adjacent to Mrs. Banta to the east is zoned CG-PK, which allows 12.5 units per acre, with a FAR of 6.0. The FAR for Mrs. Banta's property is 1.0. The property adjacent to Mrs. Banta on the west is zoned MDR-PK, but the second property to the west is zoned CG-PK.

***(6) The granting of the variance will be consistent with the general intent and purpose of the land development code and that such variance will not be injurious to the area or otherwise detrimental to the public welfare.***

The general intent and purpose of the LDC is to allow 4.5 residential units per acre in MDR-PK. Each property owner on Perdido Key with property zoned MDR-PK is entitled to this same right. The granting of this variance is not injurious to the area, considering that there are properties to the east and west of Mrs. Banta's lot that are zoned CG-PK. All of the CG-PK properties can be developed, or redeveloped, at 10 stories and with 12.5 residential units per acre.

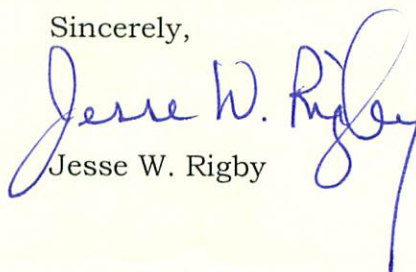
Developing the property with one unit per floor offers other benefits to both the owners of the multifamily units and their neighbors. The footprint of the building can be reduced considerably than what would be the footprint of a building of only four floors. The side yard setbacks can be widened. This will afford a less obstructed north-south view from River Road. More importantly, it will allow for the preservation of existing vegetation on the property, especially if the County will allow design of the building with parking beneath the structure.

#### **Conclusion and Specific Request**

For the reasons stated herein, Mrs. Banta has demonstrated an entitlement to be granted the requested variance. Development of this property at 9 stories is consistent with existing adjacent development, and allows Mrs. Banta to use her property in a manner consistent with the zoning district assigned to the property by the County.

Mrs. Banta respectfully requests that her variance application be granted.

Sincerely,

  
Jesse W. Rigby

JWR\cw  
Enclosures  
cc: Linda H. Dunson Banta

A2137730.DOC

**APPLICATION**

<b>Please check application type:</b>	<input type="checkbox"/> Conditional Use Request for: _____
<input type="checkbox"/> Administrative Appeal	<input checked="" type="checkbox"/> Variance Request for: <u>Building Height</u>
<input type="checkbox"/> Development Order Extension	<input type="checkbox"/> Rezoning Request from: _____ to: _____

**Name & address of current owner(s) as shown on public records of Escambia County, FL**

Owner(s) Name: Linda H. Dunson Banta Phone: 850.434.3282 (Attorney)  
 Address: 13900 River Road, Pensacola, FL 32507 Email: jrigby@cphlaw.com

Check here if the property owner(s) is authorizing an agent as the applicant and complete the Affidavit of Owner and Limited Power of Attorney form attached herein.

Property Address: 13900 River Road, Pensacola, FL 32507

Property Reference Number(s)/Legal Description: 143S3210010000129

**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 enter upon the property referenced herein at any reasonable time for purposes of site inspection and authorize placement of a public notice sign(s) on the property referenced herein at a location(s) to be determined by County staff; and
- 5) I am aware that Public Hearing notices (legal ad and/or postcards) for the request shall be provided by the Development Services Bureau.

Jesse W. Rigby  
Signature of Owner/Agent

Linda H. Dunson Banta  
Signature of Owner

Jesse W. Rigby, Esquire  
Printed Name Owner/Agent

Linda H. Dunson Banta  
Printed Name of Owner

12/9/10  
Date

12/08/15  
Date

STATE OF FLORIDA


COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this 8th day of Dec, 2015, by Linda H. Dunson Banta.

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

Darlene Pugh  
Signature of Notary  
(notary seal must be affixed)

Darlene Pugh  
Printed Name of Notary

 **Darlene Pugh**  
Florida Notary No. EE829961  
Commission Expires 11/15/16

<b>FOR OFFICE USE ONLY</b>	CASE NUMBER: <u>V-2011e-02</u>
Meeting Date(s): <u>01-20-16</u>	Accepted/Verified by: <u>DH/ DL</u> Date: <u>12-16-15</u>
Fees Paid: \$ <u>423.50</u>	Receipt #: <u>651647</u> Permit #: <u>PBA 15 12 000 20</u>

**AFFIDAVIT OF OWNER AND LIMITED POWER OF ATTORNEY**

As owner of the property located at 13900 River Road, Pensacola, FL 32507,  
Florida, property reference number(s) 143S3210010000129

I hereby designate Jesse W. Rigby, Esquire for the sole purpose  
of completing this application and making a presentation to the:

Planning Board and the Board of County Commissioners to request a rezoning on the above  
referenced property.

Board of Adjustment to request a(n) building height variance on the above referenced property.

This Limited Power of Attorney is granted on this 8<sup>th</sup> day of December the year of,  
2015, and is effective until the Board of County Commissioners or 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 Bureau.

Agent Name: Jesse W. Rigby, Esquire Email: jrigby@cphlaw.com

Address: Clark Partington Hart; 125 W. Romana St. (Ste. 800) Pensacola FL 32508 Phone: 850.434.3282

Linda H. Dunson Banta  
Signature of Property Owner

Linda H. Dunson Banta  
Printed Name of Property Owner

12/08/15  
Date

\_\_\_\_\_  
Signature of Property Owner

\_\_\_\_\_  
Printed Name of Property Owner

\_\_\_\_\_  
Date

STATE OF FLORIDA

COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of Dec. 20 15  
by Linda H. Dunson Banta.

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

Darlene Pugh  
Signature of Notary

Darlene Pugh  
Printed Name of Notary

(Notary Seal)



**Darlene Pugh**  
Florida Notary No. **EE829961**  
Commission Expires **11/15/16**

4.00  
60.00  
22.00  
86.00

State of Florida  
Escambia County

# WARRANTY DEED

PREPARED BY: METZGER & VIVIANO  
ATTORNEYS AT LAW  
322 S. ALCANIZ ST  
PENSACOLA, FLORIDA 32501

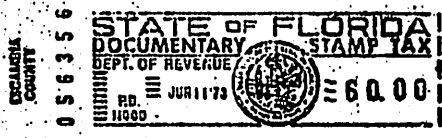
703 PAGE 943

Know All Men by These Presents: That we, Roy L. Campbell and Jewell Campbell, husband and wife

for and in consideration of Ten (\$10.00) Dollars and other good and valuable considerations the receipt whereof is hereby acknowledged, do bargain, sell, convey and grant unto James O. Dunson and Linda H. Dunson, husband and wife

their heirs, executors, administrators and assigns, forever, the following described real property, situate, lying and being in the County of Escambia State of Florida

to-wit: East 100.0 feet of Lot 129, Gulf Beach Subdivision being a portion of Sections 14, 26, 27, 34, and 35, Township 3 South, Range 32 West, Escambia County, Florida, according to Plat recorded in Plat Book 4, page 52 of the records of said County.



FILED IN THE PUBLIC RECORDS OF ESCAMBIA COUNTY, FLA. ON JUN 7 3 52 PM '73

548788

There is expressly excepted from the warranties herein contained all easements and restrictions of record, if any, and the lien of ad valorem real property taxes for the year 1973 and subsequent years.

Together with all and singular the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining, free from all exemptions and right of homestead.

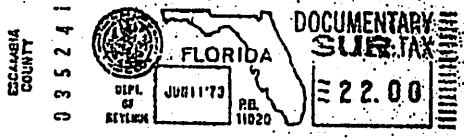
And we covenant that we are well seized of an indefeasible estate in fee simple in the said property, and have a good right to convey the same; that it is free of lien or encumbrance, and that our heirs, executors and administrators, the said grantee, our heirs, executors, administrators and assigns, in the quiet and peaceable possession and enjoyment thereof, against all persons lawfully claiming the same, shall and will forever warrant and defend.

IN WITNESS WHEREOF, we have hereunto set our hand and seal this 7th day of June, A. D. 1973

Signed, sealed and delivered in the presence of  
*[Signatures]*

*Roy L. Campbell* (SEAL)  
Roy L. Campbell  
*Jewell Campbell* (SEAL)  
Jewell Campbell

State of Florida  
Escambia County



Before the subscriber personally appeared Roy L. Campbell, and Jewell Campbell

his wife, known to me, and known to me to be the individual described by said name in and who executed the foregoing instrument and acknowledged that they executed the same for the uses and purposes therein set forth.

Given under my hand and official seal this 7th day of June, 1973



*Evelyn A. Shelley*  
Notary Public

My commission expires 12/29/74

Source: Escambia County Property Appraiser

[←](#) Navigate Mode  
  Account  
  Reference  
 [→](#)

[Restore Full Page Version](#)

General Information		Assessments				
<b>Reference:</b>	143S321001000129	<b>Year</b>	<b>Land</b>	<b>Imprv</b>	<b>Total</b>	<b>Cap Val</b>
<b>Account:</b>	103599000	2015	\$328,000	\$131,969	\$459,969	\$200,369
<b>Owners:</b>	BANTA LINDA H DUNSON	2014	\$328,000	\$127,551	\$455,551	\$198,779
<b>Mail:</b>	13900 RIVER RD PENSACOLA, FL 325079679	2013	\$328,000	\$114,795	\$442,795	\$195,842
<b>Situs:</b>	13900 RIVER RD 32507	<a href="#">Disclaimer</a>				
<b>Use Code:</b>	SINGLE FAMILY RESID	<a href="#">Amendment 1/Portability Calculations</a>				
<b>Taxing Authority:</b>	COUNTY MSTU					
<b>Tax Inquiry:</b>	<a href="#">Open Tax Inquiry Window</a>					
Tax Inquiry link courtesy of Janet Holley Escambia County Tax Collector						

Sales Data		2015 Certified Roll Exemptions				
<b>Sale Date</b>	<b>Book Page</b>	<b>Value</b>	<b>Type</b>	<b>Official Records (New Window)</b>	HOMESTEAD EXEMPTION	
01/1973	703 943	\$20,000	WD	<a href="#">View Instr</a>	<b>Legal Description</b>	
01/1971	576 142	\$100	QC	<a href="#">View Instr</a>	E 100 FT OF LT 129 GULF BEACH S/D PB 4 P 52 SEC 14/26/27/34/ 35 T 3S R 32 W OR 1147 P 230	
01/1971	567 465	\$10,000	WD	<a href="#">View Instr</a>	<b>Extra Features</b>	
01/1909	1147 230	\$55,800	WD	<a href="#">View Instr</a>	BOAT DOCK FRAME SHED POOL UTILITY BLDG WOOD DECK	
Official Records Inquiry courtesy of Pam Childers Escambia County Clerk of the Circuit Court and Comptroller						

**Parcel Information**

**Section Map Id:**  
[14-3S-32-3](#)

**Approx. Acreage:**  
1.7200

**Zoned:**  
MDR-PK

**Evacuation & Flood Information**  
[Open Report](#)

[Launch Interactive Map](#)

RIVER RD

DEL RIO DR

[View Florida Department of Environmental Protection\(DEP\) Data](#)

**Buildings**

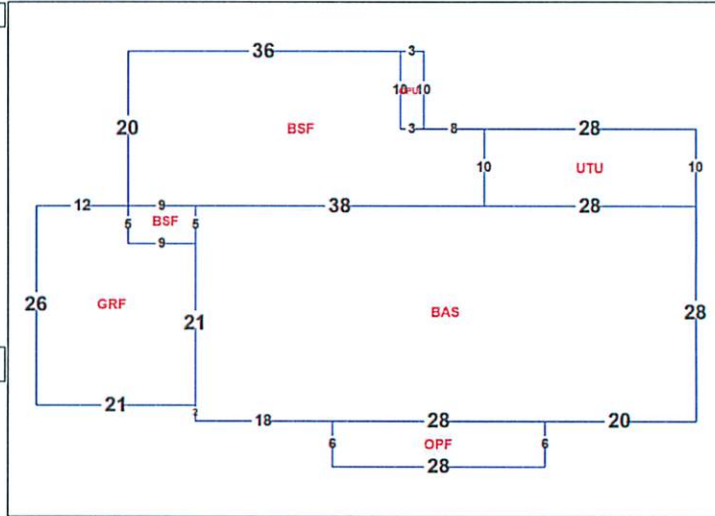
Address:13900 RIVER RD, Year Built: 1975, Effective Year: 1975

**Structural Elements**

DECOR/MILLWORK-AVERAGE  
 DWELLING UNITS-1  
 EXTERIOR WALL-BRICK-COMMON  
 FLOOR COVER-CARPET  
 FOUNDATION-SLAB ON GRADE  
 HEAT/AIR-CENTRAL H/AC  
 INTERIOR WALL-DRYWALL-PLASTER  
 INTERIOR WALL-PANEL-PLYWOOD  
 NO. PLUMBING FIXTURES-13  
 NO. STORIES-1  
 ROOF COVER-COMPOSITION SHG  
 ROOF FRAMING-GABLE-HI PITCH  
 STORY HEIGHT-0  
 STRUCTURAL FRAME-WOOD FRAME

Areas - 3702 Total SF

BASE AREA - 1848  
 BASE SEMI FIN - 875  
 GARAGE FIN - 501  
 OPEN PORCH FIN - 168  
 OPEN PORCH UNF - 30  
 UTILITY UNF - 280



**Images**

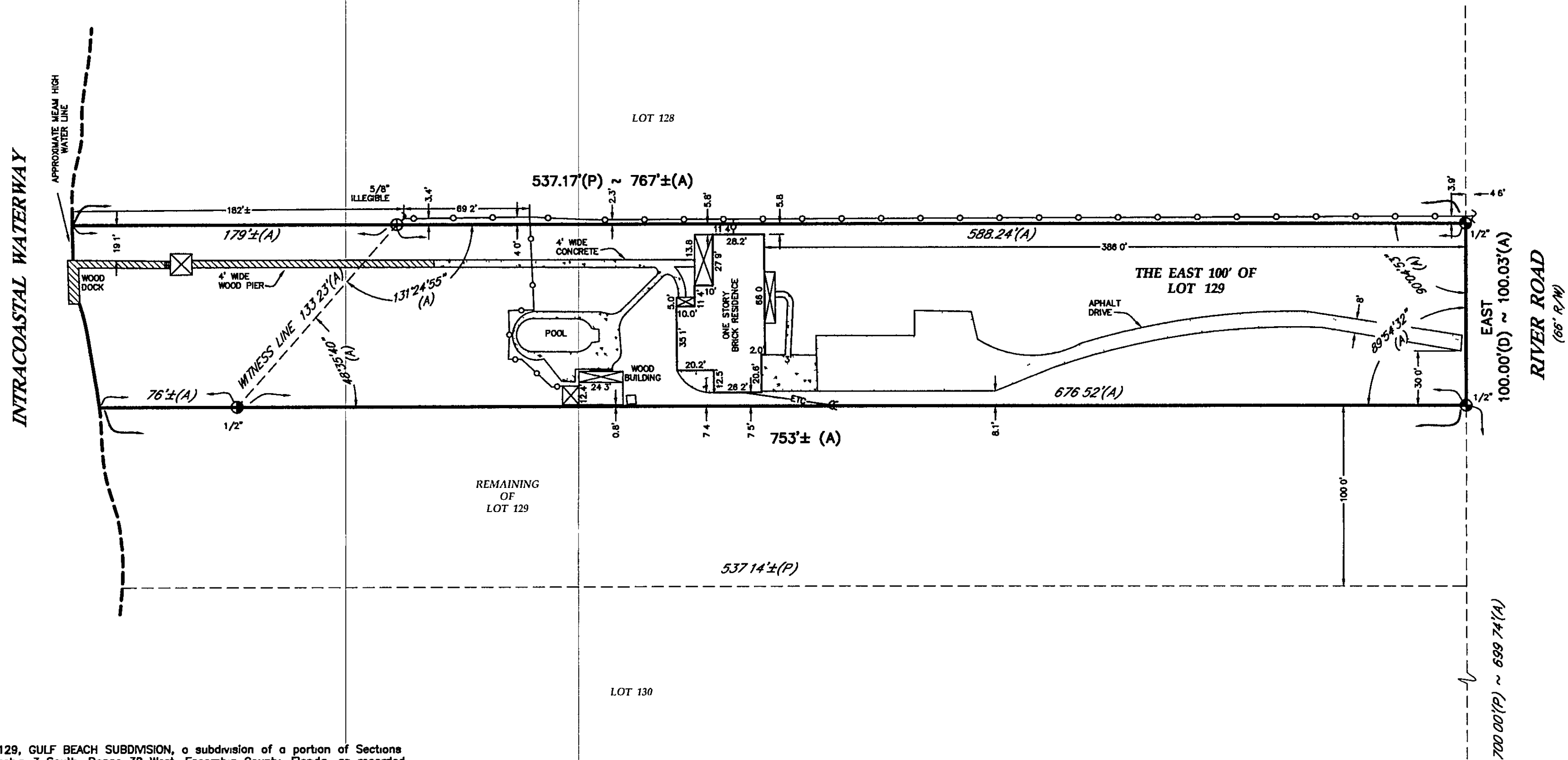


12/5/11

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.

# BOUNDARY SURVEY

A Portion Of Sections 14, 26, 27, 34 & 35, Township 3 South, Range 32 West,  
County Of Escambia, State Of Florida



**DESCRIPTION**  
East 100 feet of Lot 129, GULF BEACH SUBDIVISION, a subdivision of a portion of Sections 14, 26, 27, 34 & 35, Township 3 South, Range 32 West, Escambia County, Florida, as recorded in Public Record Book 4 at Page 52 of the public records of said County.

The information Recorded Plat & Deed Description as furnished by client. There may be additional restrictions, easements and/or right-of-ways that were not furnished to this firm that may be found in the public records of said County. Footings, foundations or any other surface structures not located. No title work performed by this firm.

This drawing reflects only those building setback lines that are noted and/or appear on the recorded plat.

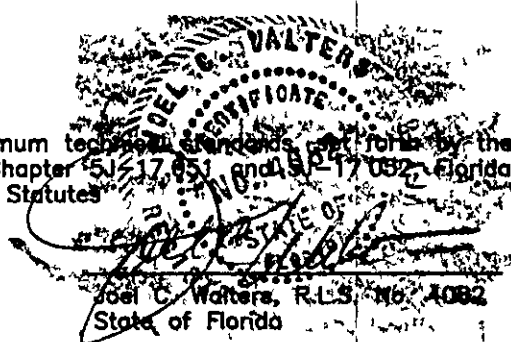
Address: 13900 River Road

The address shown hereon is based on information furnished by the client and/or their agents. This address has not been verified with the US Postal Service. Any certifications shown hereon do not apply or cover the said address.

THIS SURVEY IS NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER

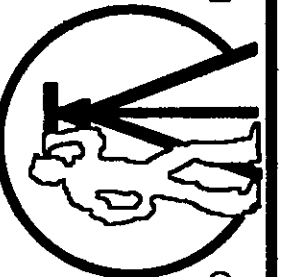
**SURVEYOR'S CERTIFICATE**

I hereby certify the survey shown hereon meets the minimum technical requirements as set forth by the Board of Professional Surveyors and Mappers in Chapter 51-17, F.S. and 61A-17, F.S., Florida Administrative Code, pursuant to Section 472.027, Florida Statutes.



### LEGEND:

- - 4" x 4" (PRM) Permanent Reference Monument Found
- - (P.C.P.) Permanent Control Point Found
- ⊕ - Capped Iron Rod Found
- - 1/2" Capped Iron Rod LS #4082 Set
- ⊙ - Iron Rod Unnumbered Found
- ⊗ - Iron Pipe Unnumbered Found
- ▲ - Nail & disk Found
- ⊖ - Utility Pole
- ⊕ - Guy Anchor Wire
- ⊕ - Aerial Electric, Telephone, Cable Lines
- ⊕ - Elevation
- X— Chain Link Fence
- XX— Wire Fence
- O— Wood Fence
- R/W - Right of Way
- B.S.L. - Building Setback Line
- CONC - Concrete
- ⊕ - Centerline
- R - Property Line
- P.O.L. - Point on Line
- CM - Concrete Monument
- P.O.C. - Point of Commencement
- P.O.B. - Point of Beginning
- P.C. - Point of Curvature
- P.T. - Point of Tangency
- P.I. - Point of Intersection
- PRC - Point of Reverse Curvature
- P.C.C. - Point of Compound Curvature
- R - Radius
- Δ - Delta
- L - Length of Arc
- C - Chord
- CB - Chord Bearing
- T - Tangent
- (P) - Plat
- (D) - Description or Deed
- (A) - Actual
- (TYP) - Typical
- LB - Licensed Business
- LS - Licensed Surveyor
- ⊗ - Indicates Covered
- ⊕ - Benchmark
- ⊕ - Set Hub & Tack
- NR - Non-Radial
- NTS - Not to Scale



JOEL WALTERS

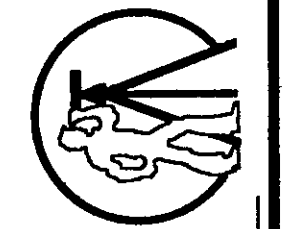
TELEPHONE NO  
(850) 944-7926

9191 RUBY'S FISH CAMP ROAD

PENSACOLA, FL 32526

LAND SURVEYING

FAX NO  
(850) 944-3012



DRAWN BY: HAA

JOB NO. 14-11-044  
CAD FILE: 141044  
SCALE: 1"=50'  
REQUESTED BY: DEB FRED  
DATE OF SURVEY: 12/02/2014  
FIELD BOOK: 847  
PAGE: 25-28  
ENCROACHMENTS: AS SHOWN  
REVISIONS:

1

SHEET 1 OF 1  
FILE NO. E-1476



## CONCURRENCY DETERMINATION ACKNOWLEDGMENT

### For Rezoning Requests Only

Property Reference Number(s): 143S3210010000129

Property Address: 13900 River Road, Pensacola, FL 32507

I/We acknowledge and agree that no future development for which concurrency of required facilities and services must be certified shall be approved for the subject parcel(s) without the issuance of a certificate of concurrency for the development based on the actual densities and intensities proposed in the future development's permit application.

I/We also acknowledge and agree that approval of a zoning district amendment (rezoning) or Future Land Use Map amendment does not certify, vest, or otherwise guarantee that concurrency of required facilities and services is, or will be, available for any future development of the subject parcels.

I/We further acknowledge and agree that no development for which concurrency must be certified shall be approved unless at least one of the following minimum conditions of the Comprehensive Plan will be met for each facility and service of the County's concurrency management system prior to development approval:

- a. The necessary facilities or services are in place at the time a development permit is issued.
- b. A development permit is issued subject to the condition that the necessary facilities and services will be in place and available to serve the new development at the time of the issuance of a certificate of occupancy.
- c. For parks and recreation facilities and roads, the necessary facilities are under construction at the time the development permit is issued.
- d. For parks and recreation facilities, the necessary facilities are the subject of a binding executed contract for the construction of the facilities at the time the development permit is issued and the agreement requires that facility construction must commence within one year of the issuance of the development permit.
- e. The necessary facilities and services are guaranteed in an enforceable development agreement. An enforceable development agreement may include, but is not limited to, development agreements pursuant to Section 163.3220, F.S., or as amended, or an agreement or development order issued pursuant to Chapter 380, F.S., or as amended. For transportation facilities, all in-kind improvements detailed in a proportionate fair share agreement must be completed in compliance with the requirements of Section 5.13.00 of the LDC. For wastewater, solid waste, potable water, and stormwater facilities, any such agreement will guarantee the necessary facilities and services to be in place and available to serve the new development at the time of the issuance of a certificate of occupancy.
- f. For roads, the necessary facilities needed to serve the development are included in the first three years of the applicable Five-Year Florida Department of Transportation (FDOT) Work Program or are in place or under actual construction no more than three years after the issuance of a County development order or permit.

I HEREBY ACKNOWLEDGE THAT I HAVE READ, UNDERSTAND AND AGREE WITH THE ABOVE STATEMENT ON THIS 8<sup>th</sup> DAY OF DECEMBER, YEAR OF 2015.

  
Signature of Property Owner

Linda H. Dunson Banta  
Printed Name of Property Owner

12/08/15  
Date

\_\_\_\_\_  
Signature of Property Owner

\_\_\_\_\_  
Printed Name of Property Owner

\_\_\_\_\_  
Date



**Development Services Department**

**Building Inspections Division**

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

**RECEIPT**

Receipt No. : **651647**

Date Issued. : 12/16/2015

Cashier ID : CASTILLS

Application No. : PBA151200020

Project Name : V-2016-02

Address : 125 WEST ROMANA  
Pensacola, FL, 32591

**PAYMENT INFO**

Method of Payment	Reference Document	Amount Paid	Comment
<b>Check</b>			
	13974	\$423.50	App ID : PBA151200020
		<b>\$423.50</b>	<b>Total Check</b>

Received From : CLARK/PARTINGTON/ART&HART PA

Total Receipt Amount : **\$423.50**

Change Due : \$0.00

**APPLICATION INFO**

Application #	Invoice #	Invoice Amt	Balance	Job Address
PBA151200020	743606	423.50	\$0.00	13900 RIVER RD, PENSACOLA, 32507

**Total Amount :** **423.50**      \$0.00      Balance Due on this/these Application(s) as of 12/16/2015

**Board of Adjustment**

**6. 5.**

**Meeting Date:** 01/20/2016  
**CASE:** CU-2016-01  
**APPLICANT:** David & Dayna Beddick, Owners  
**ADDRESS:** 9838 N. Davis Highway  
**PROPERTY REFERENCE NO.:** 02-1S-30-0601-000-006  
**ZONING DISTRICT:** Com  
**FUTURE LAND USE:** MU-U, Mixed-Use Urban  
**OVERLAY DISTRICT:** N/A

---

**SUBMISSION DATA:**

**REQUESTED CONDITIONAL USE:**

Conditional Use to allow a Microbrewery in a Commercial zoning district.

**RELEVANT AUTHORITY:**

**Land Development Code of Escambia County, Florida (Ordinance 96-3 as amended),  
Section: 3-2.10.c.6.b**

b. Microbreweries, microdistilleries, microwineries,

**CRITERIA:**

**Land Development Code of Escambia County, Florida (Ordinance 96-3 as amended),  
Section 2-6.4**

**CRITERION (a)**

**General compatibility.** The proposed use can be conducted and operated in a manner that is compatible with adjacent properties and other properties in the immediate area.

**FINDINGS-OF-FACT**

The proposed microbrewery will be compatible with adjacent properties and other properties in the immediate area. This site is located in a commercial corridor along an arterial roadway.

**CRITERION (b)**

**Facilities and services.** Public facilities and services, especially those with adopted levels of service, will be available, will provide adequate capacity to serve the proposed use consistent with capacity requirements.

#### **FINDINGS-OF-FACT**

The proposed microbrewery will be addressed on an arterial roadway, US Highway 90/North Davis Highway. The level of services and adequate capacity to serve the proposed use will be addressed during the Site Plan Review process.

#### **CRITERION (c)**

**On-site circulation.** Ingress to and egress from the site and its structures will be sufficient, particularly regarding vehicle and pedestrian safety and convenience, efficient traffic flow and control, on-site parking and loading, and emergency vehicle access.

#### **FINDINGS-OF-FACT**

The property project is proposing one access point at North Davis Highway. All access points will be further reviewed during the Site Plan Review process.

#### **CRITERION (d)**

**Nuisances and hazards.** The scale, intensity, and operation of the use will not generate unreasonable noise, glare, dust, smoke, odor, vibration, electrical interference, or other nuisances or hazards for adjoining properties and other properties in the immediate area.

#### **FINDINGS-OF-FACT**

Staff does not find any anticipated nuisances or hazards associated with the proposed use.

#### **CRITERION (e)**

**Solid waste.** All on site solid waste containers will be appropriately located for functional access, limited off-site visibility and minimal odor and other nuisance impacts.

#### **FINDINGS-OF-FACT**

Solid waste service is available for the subject property.

#### **CRITERION (f)**

**Screening and buffering.** Where not otherwise required by the LDC, screening and buffering will be provided if appropriate to the proposed use and site.

**FINDINGS OF FACT:**

Screening and buffering requirements will be reviewed during the Site Plan Review Process.

**CRITERION (g)**

**Signs and lighting.** All exterior signs and lights, whether attached or freestanding, will be compatible with adjoining properties and other properties in the immediate area, especially regarding glare and traffic safety.

**FINDINGS OF FACT:**

All proposed signage and lighting will be addressed during the Site Plan Review process to comply with Chapter 5 general development standards, Article 8 for signage and Article 9.3 for lighting.

**CRITERION (h)**

**Site characteristics.** The size, shape, location and topography of the site appear adequate to accommodate the proposed use, including setbacks, intensity, bulk, height, open space and aesthetic considerations.

**FINDINGS OF FACT:**

The use will be situated on the northern portion of the property, oriented towards Davis Hwy. and away from the residential uses to the south.

**CRITERION (i)**

**Use requirements.** The proposed use complies with any additional conditional use requirements of the applicable zoning district, use, or other provisions of the LDC.

**FINDINGS OF FACT:**

The proposed Conditional Use is consistent with all other relevant provisions of this Code.

**STAFF FINDINGS**

Staff recommends that the Board approve the proposed Conditional Use request with the following condition:

The project must meet all conditions imposed through the Site Plan Review process.

**BOA DECISION**

---

## Attachments

Working Case File #CU-2016-01

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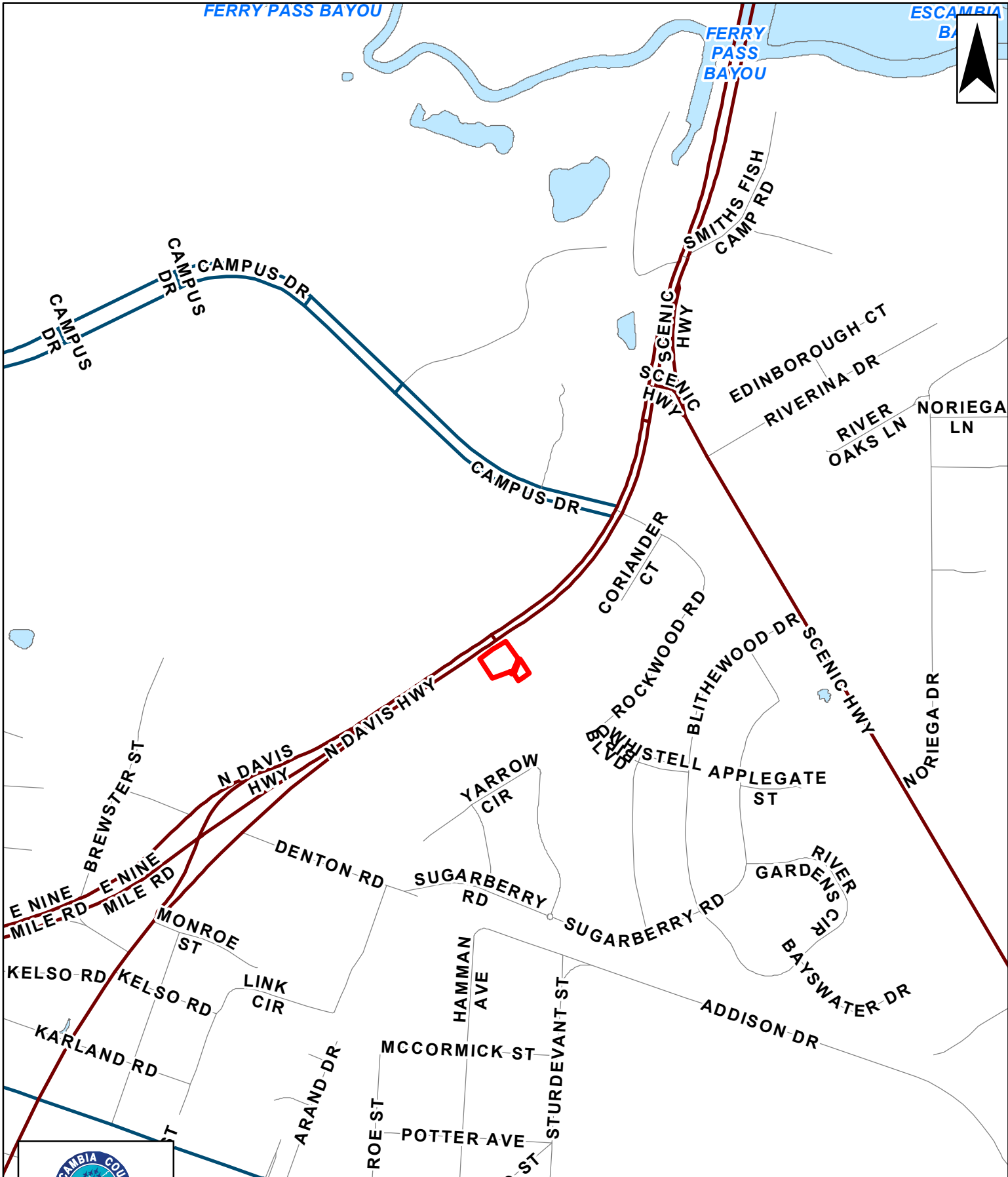
**CU-2016-01**

**9838 N. Davis Hwy.**

FERRY PASS BAYOU

ESCAMBIA BAY

FERRY PASS BAYOU



CAMPUS DR

CAMPUS DR

CAMPUS-DR

CAMPUS-DR

SMITHS FISH CAMP RD

SCENIC HWY

EDINBOROUGH CT  
RIVERINA DR

RIVER OAKS LN  
NORIEGA LN

CORIANDER CT

ROCKWOOD RD  
BLITHEWOOD DR

SCENIC-HWY

NORIEGA DR

BREWSTER ST

N DAVIS HWY

N-DAVIS-HWY

YARROW CIR

STELL APPLEGATE ST

E NINE MILE RD

E-NINE MILE RD

DENTON RD

SUGARBERRY RD

SUGARBERRY RD

RIVER GARDENS CIR

KELSO RD

KELSO RD

MONROE ST

LINK CIR

HAMMAN AVE

STURDEVANT ST

ADDISON DR

BAYSWATER DR

KARLAND RD

ARAND DR

MCCORMICK ST

ROE ST

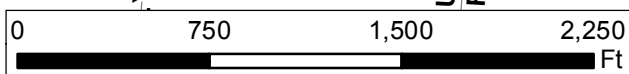
POTTER AVE



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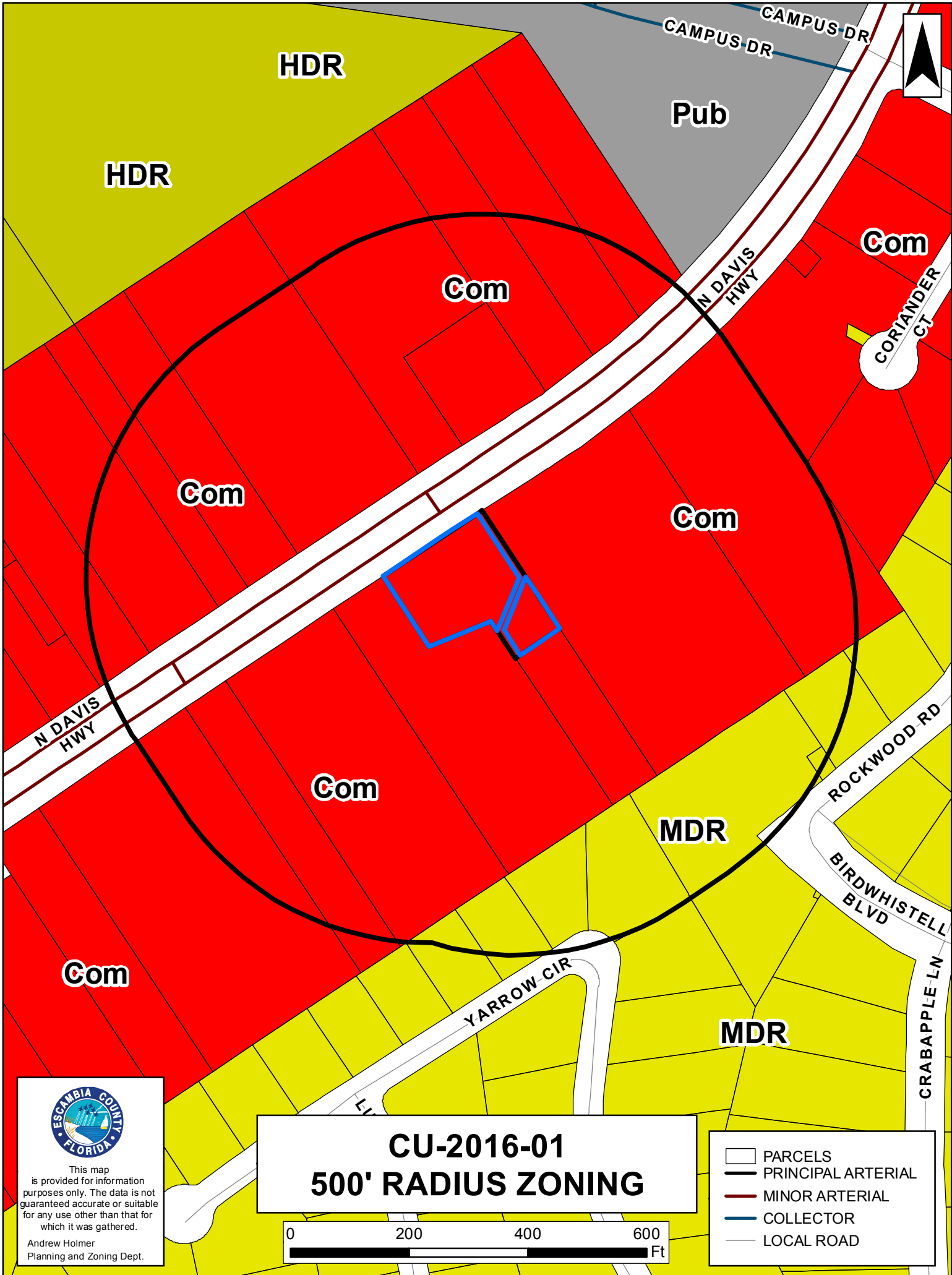
Andrew Holmer  
Planning and Zoning Dept.

# CU-2016-01 LOCATION MAP



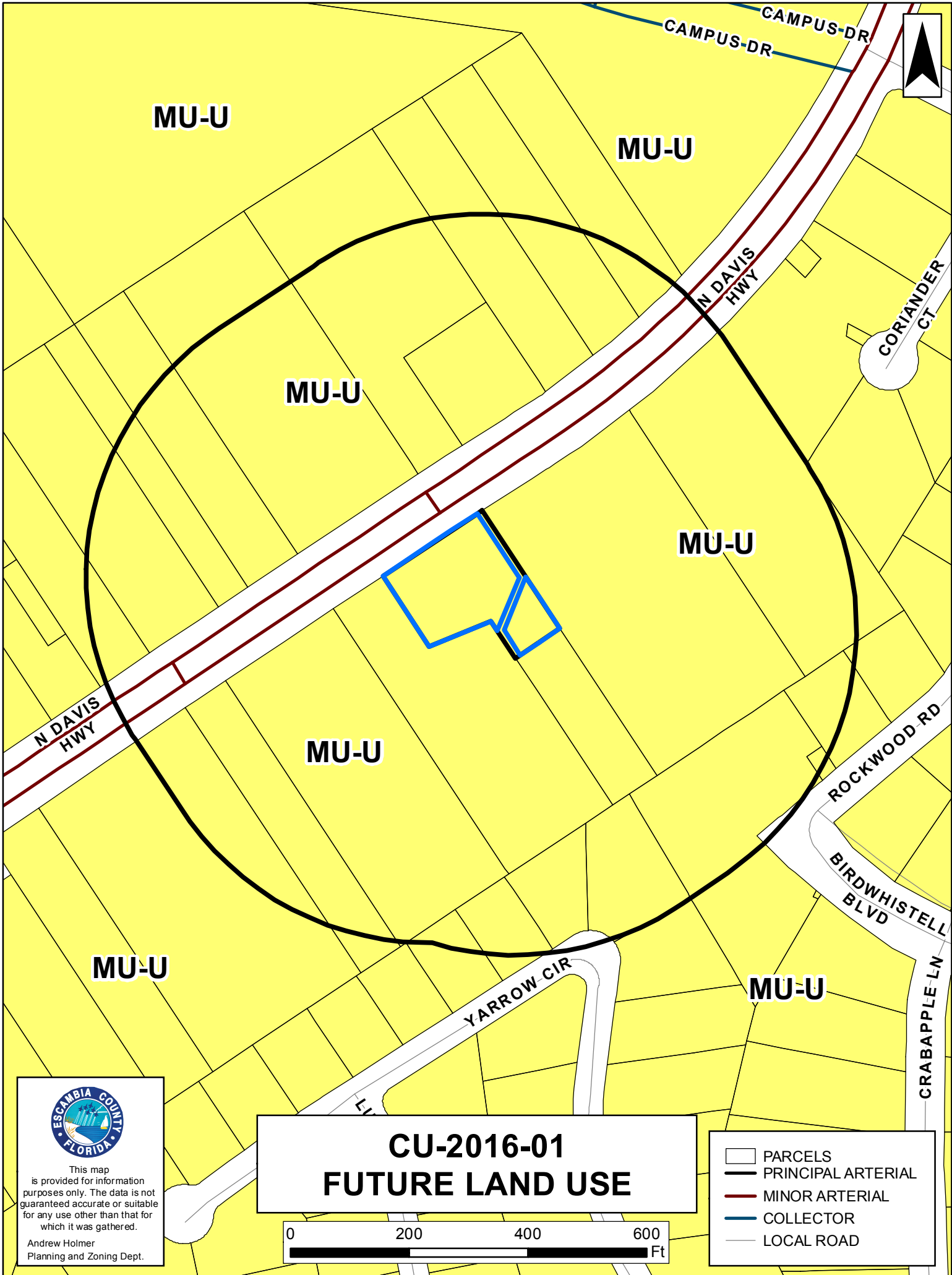
- PRINCIPAL ARTERIAL
- MINOR ARTERIAL
- COLLECTOR
- LOCAL ROAD





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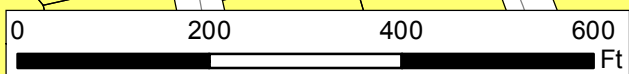
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Andrew Holmer  
Planning and Zoning Dept.

## CU-2016-01 FUTURE LAND USE








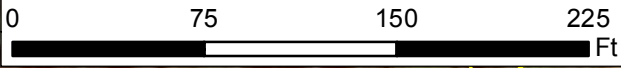

- PARCELS
- PRINCIPAL ARTERIAL
- MINOR ARTERIAL
- COLLECTOR
- LOCAL ROAD



N DAVIS HWY  
N DAVIS HWY  
N DAVIS HWY

# CU-2016-01 AERIAL MAP

-  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.

Dear Ladies and Gentleman of the Board of Adjustments,

We, the applicants, David & Dayna Beddick, would like to seek conditional usage for our commercial property located at 9838 North Davis Highway to develop the parcel for a microbrewery. The property is identified as 02-1S-30-0601-000-006. We require conditional usage to develop this property for a microbrewery as indicated in the currently proposed amendment to the land use code that will be voted on for inclusion during the next Board of County Commissioners meeting on January 7<sup>th</sup>, 2016.

With the board's approval, we would like to be one of the first businesses to redevelop the land outside of the east entrance of the University of West Florida (UWF). This area was originally developed residential many decades ago, but has reverted back to overgrown lots mostly covered with invasive kudzu. While a few businesses have come and gone over the years since being transitioned to commercial zoning, only one property with an office on it is in use. All other properties on the east bound side heading towards Pace are undeveloped, for sale, and/or contain billboards. We live and work in Ferry Pass, we both have received Master's degrees at UWF, and our daughter is currently in daycare at UWF as well. We are excited to initiate the development of this commercial area as the University continues to grow.

Our development will be similar to that of Pensacola Bay Brewery (PBB) on a slightly smaller scale. As you may be aware, PBB is located within the historic district of downtown Pensacola and their neighbors include a Yoga Studio, churches, Seville Square, and several restaurants. The city of Pensacola is proud to have their business in this location as it generates revenue, promotes Pensacola, and creates a fresh local product for the community. Hours of operation are reasonable as they do not stay open into the late night as is typical for a bar.

The focus of the product produced at our location will be a high quality, low quantity, fresh, natural beverage using sustainable techniques. As we do at our home, we hope to utilize green, solar energy to generate electricity and to heat the water. We will repurpose much of the waste generated during the beverage making process by donating spent grains to local farmers for use as chicken and cattle feed or compost. With our small business venture, we hope to expand our philanthropic giving that we have contributed to as members of the Escambia Bay Homebrew Club. We have supported events to generate funds for the First City Arts Center, the Big Brothers/Big Sisters of Northwest Florida, the Seville Rotary Club, the Pensacola Area Chief Petty Officers Association, and the Catholic High Baseball Program.

We thank you in advance for considering our application for Conditional usage so that we may realize our dream of being small business owners.

Sincerely,



David & Dayna Beddick

1. The property location is on the east bound side of North Davis Highway along a two lane portion of the highway. Ingress and egress to the property provide for safe automotive and pedestrian travel. On-site parking meets the requirements for a restaurant, but is otherwise not defined in the code for this business type.
2. The proposed development will not adversely impact nearby properties in regards to noise, glare, smoke, or other hazards. The production of beverage on the site will produce a sweet, bread-like aroma during short periods of time.
3. Solid waste will be collected via curbside pickup using the large, county, rolling garbage and recycling cans. Spent grains generated during the brewing process will be picked up by local farmers to be repurposed as chicken and cattle feed or composted.
4. Water and electric utilities are available from the feeds running along the front of the property.
5. The appropriate buffers for building setback, wetlands, and riverine/uplands will be maintained as per the site plan. Natural vegetation will be maintained as much as possible in these areas. Buffers will comply as per the designations in the land use code.
6. A small sign will be posted on the center front of the property following the requirements in the land use code. Three flag poles will be installed in this location as well and the US Flag Code will be observed to ensure proper display of the flags.
7. Development on this property will remain entirely outside of the 25' upland buffer from the riverine feature. Stormwater retention is positioned to capture water from the building and all parking areas. Natural topsoil at this site was lost decades ago during initial development. The vegetative community consists of numerous invasive species with large portions of the property being engulfed in kudzu.
8. All properties along this section of road are zoned commercial or HCLI/COM2. Most properties are vacant, previously developed lands that have not been maintained. The 500' buffer around the property does include several residences that are located within a nearby subdivision, however, the property is not adjacent to these. A commercial multi-family residential property, owned by the applicant, borders the rear of the property, but is buffered by natural vegetation, topography, and a water feature. Across the four lane highway there are two churches, however, as defined in the code the distance from main entrance to main entrance is greater than 1000' (>2800') thus permitting for alcohol sales (7.14.01). Just beyond the 500' buffer, the University of West Florida has just completed construction of a strip mall type facility including restaurants and shops.
9. No additional requirements are known as this is a new zoning type in Escambia County.

Property acreage =	0.76	or	33110	ft^2
	sqft	%_lot		
Building	6000	18%		
PavedSurf	12498	38%		
TotImperv	18498	56%		
Stormwater	5125	15%		
TotPervious	14778	45%		

APPLICATION

Please check application type:

- Administrative Appeal, Development Order Extension, Conditional Use Request for: MICROBREWERY ON COMMERCIAL, Variance Request for, Rezoning Request from: to:

Name & address of current owner(s) as shown on public records of Escambia County, FL

Owner(s) Name: DAVID & DAYNA BEDDICK Phone: (724) 875-8622
Address: 369 MIRABELLE DR, PENSACOLA Email: DLBJRL3@ALUMNI.PITT.EDU

Check here if the property owner(s) is authorizing an agent as the applicant and complete the Affidavit of Owner and Limited Power of Attorney form attached herein.

Property Address: 9838 9383 NORTH DAVIS HIGHWAY, PENSACOLA, FL 32514
Property Reference Number(s)/Legal Description: 02-15-30-0601-000-006

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 enter upon the property referenced herein at any reasonable time for purposes of site inspection and authorize placement of a public notice sign(s) on the property referenced herein at a location(s) to be determined by County staff; and
5) I am aware that Public Hearing notices (legal ad and/or postcards) for the request shall be provided by the Development Services Bureau.

Signature of Owner/Agent

DAVID L. BEDDICK, JR
Printed Name Owner/Agent

12/17/15
Date

Signature of Owner

DAYNA L. BEDDICK
Printed Name of Owner

12/17/15
Date

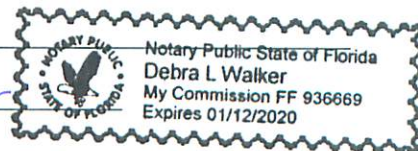
STATE OF Florida COUNTY OF Escambia

The foregoing instrument was acknowledged before me this 17th day of December 20 15, by David and Dayna Beddick.

Personally Known OR Produced Identification. Type of Identification Produced:

Signature of Notary (notary seal must be affixed)

Debra L Walker
Printed Name of Notary



FOR OFFICE USE ONLY CASE NUMBER: CU-2016-01
Meeting Date(s): Jan 20, 2016 Accepted/Verified by: Date: 12/17/15
Fees Paid: \$127050 Receipt #: 651751 Permit #: PBA151200021



# Chris Jones Escambia County Property Appraiser

- Real Estate Search
- Tangible Property Search
- Sale List
- Amendment 1/Portability Calculations

[Back](#)

← [Navigate Mode](#)  [Account](#)  [Reference](#) →

[Printer Friendly Version](#)

<p><b>General Information</b></p> <p><b>Reference:</b> 021S300601000006</p> <p><b>Account:</b> 013729300</p> <p><b>Owners:</b> BEDDICK DAVID JR &amp; BEDDICK DAYNA L</p> <p><b>Mail:</b> 369 MIRABELLE DR PENSACOLA, FL 32514</p> <p><b>Situs:</b> 9838 N DAVIS HWY 32514</p> <p><b>Use Code:</b> VACANT COMMERCIAL <input type="checkbox"/></p> <p><b>Taxing Authority:</b> COUNTY MSTU</p> <p><b>Tax Inquiry:</b> <a href="#">Open Tax Inquiry Window</a></p> <p><small>Tax Inquiry link courtesy of Janet Holley Escambia County Tax Collector</small></p>	<p><b>Assessments</b></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>Year</th> <th>Land</th> <th>Imprv</th> <th>Total</th> <th>Cap Val</th> </tr> </thead> <tbody> <tr> <td>2015</td> <td>\$29,520</td> <td>\$0</td> <td>\$29,520</td> <td>\$29,520</td> </tr> <tr> <td>2014</td> <td>\$34,440</td> <td>\$0</td> <td>\$34,440</td> <td>\$34,440</td> </tr> <tr> <td>2013</td> <td>\$34,440</td> <td>\$0</td> <td>\$34,440</td> <td>\$34,440</td> </tr> </tbody> </table> <p style="text-align: center;"><a href="#">Disclaimer</a></p> <hr/> <p style="text-align: center;"><a href="#">Amendment 1/Portability Calculations</a></p>	Year	Land	Imprv	Total	Cap Val	2015	\$29,520	\$0	\$29,520	\$29,520	2014	\$34,440	\$0	\$34,440	\$34,440	2013	\$34,440	\$0	\$34,440	\$34,440
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**Buildings**  
Images  
None


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.



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[View Florida Department of Environmental Protection\(DEP\) Data](#)

<b>Buildings</b>
<b>Images</b>

None

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.

# *Certificate of Status*

I certify from the records of this office that A LITTLE MADNESS BREWING COMPANY is a corporation organized under the laws of the State of Florida, filed electronically on September 21, 2015, effective September 21, 2015.

The document number of this corporation is P15000078237.

I further certify that said corporation has paid all fees due this office through December 31, 2015, and its status is active.

I further certify that said corporation has not filed Articles of Dissolution.

I further certify that this is an electronically transmitted certificate authorized by section 15.16, Florida Statutes, and authenticated by the code noted below.

Authentication Code: 150923170313-300277285073#1

Given under my hand and the  
Great Seal of the State of Florida  
at Tallahassee, the Capital, this the  
Twenty Third day of September, 2015



*Ken Detzner*  
Ken Detzner  
Secretary of State

# *Certified Copy*

I certify the attached is a true and correct copy of the Articles of Incorporation of A LITTLE MADNESS BREWING COMPANY, a Florida corporation, filed electronically on September 21, 2015 effective September 21, 2015, as shown by the records of this office.

I further certify that this is an electronically transmitted certificate authorized by section 15.16, Florida Statutes, and authenticated by the code noted below.

The document number of this corporation is P15000078237.

Authentication Code: 150923170313-300277285073#1

Given under my hand and the  
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at Tallahassee, the Capital, this the  
Twenty Third day of September, 2015



*Ken Detzner*  
Ken Detzner  
Secretary of State

**Electronic Articles of Incorporation  
For**

P15000078237  
FILED  
September 21, 2015  
Sec. Of State  
tchang

A LITTLE MADNESS BREWING COMPANY

The undersigned incorporator, for the purpose of forming a Florida profit corporation, hereby adopts the following Articles of Incorporation:

**Article I**

The name of the corporation is:

A LITTLE MADNESS BREWING COMPANY

**Article II**

The principal place of business address:

9838 NORTH DAVIS HIGHWAY  
PENSACOLA, FL. US 32514

The mailing address of the corporation is:

9838 NORTH DAVIS HIGHWAY  
PENSACOLA, FL. US 32514

**Article III**

The purpose for which this corporation is organized is:

ANY AND ALL LAWFUL BUSINESS.

**Article IV**

The number of shares the corporation is authorized to issue is:

100

**Article V**

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

DAVID L BEDDICK JR.  
369 MIRABELLE DRIVE  
PENSACOLA, FL. 32514

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

Registered Agent Signature: DAVID L. BEDDICK, JR.

## Article VI

The name and address of the incorporator is:

DAVID L. BEDDICK, JR.  
9838 NORTH DAVIS HIGHWAY  
  
PENSACOLA, FL 32514

Electronic Signature of Incorporator: DAVID L. BEDDICK, JR.

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

## Article VII

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

Title: PRES  
DAVID L BEDDICK JR.  
369 MIRABELLE DRIVE  
PENSACOLA, FL. 32514 US

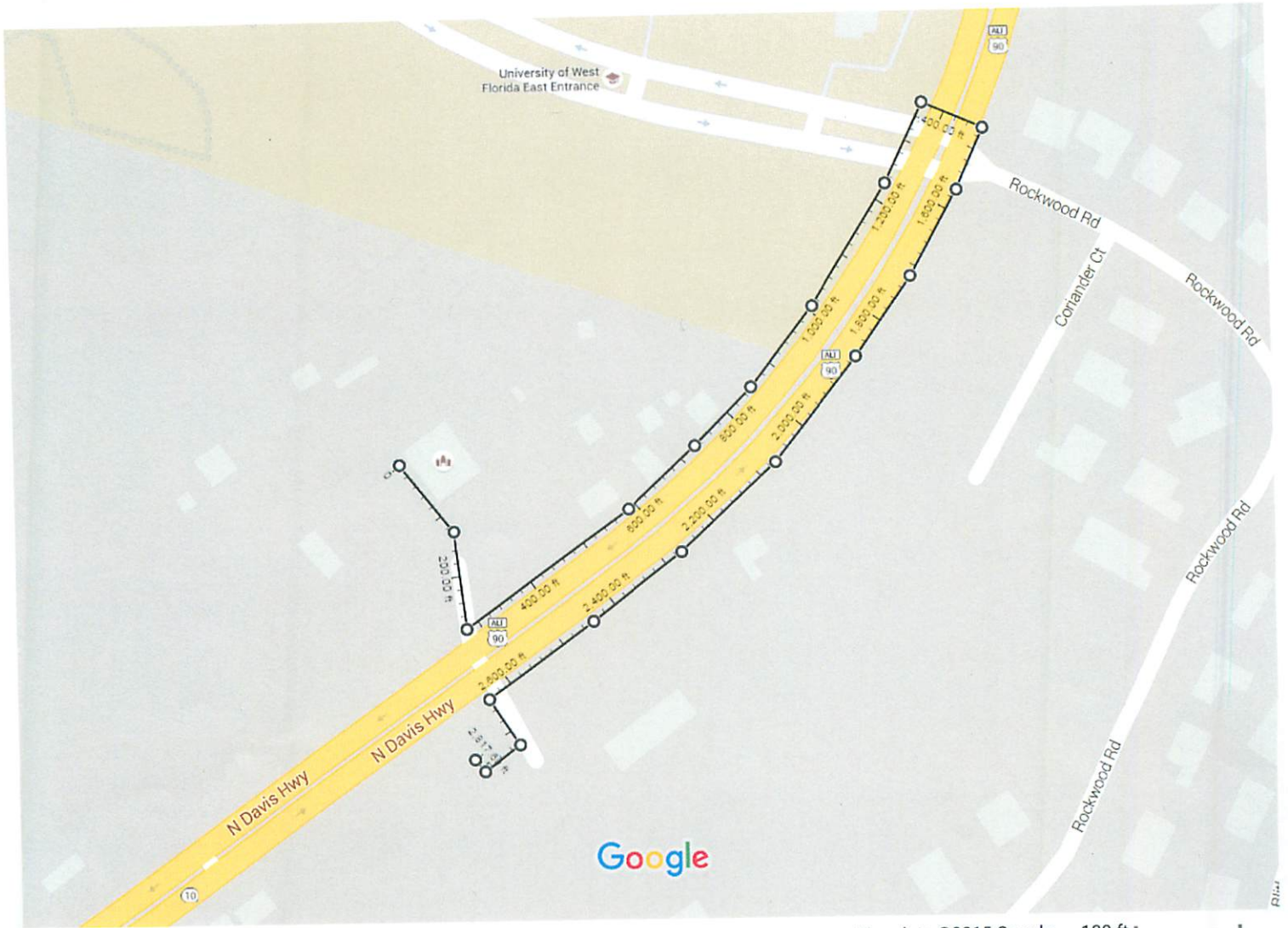
Title: TRES  
DAYNA L BEDDICK  
369 MIRABELLE DRIVE  
PENSACOLA, FL. 32514 US

Title: SEC  
ANGEL SWAB  
8585 WESTVIEW LANE  
PENSACOLA, FL. 32514 US

## Article VIII

The effective date for this corporation shall be:

09/21/2015



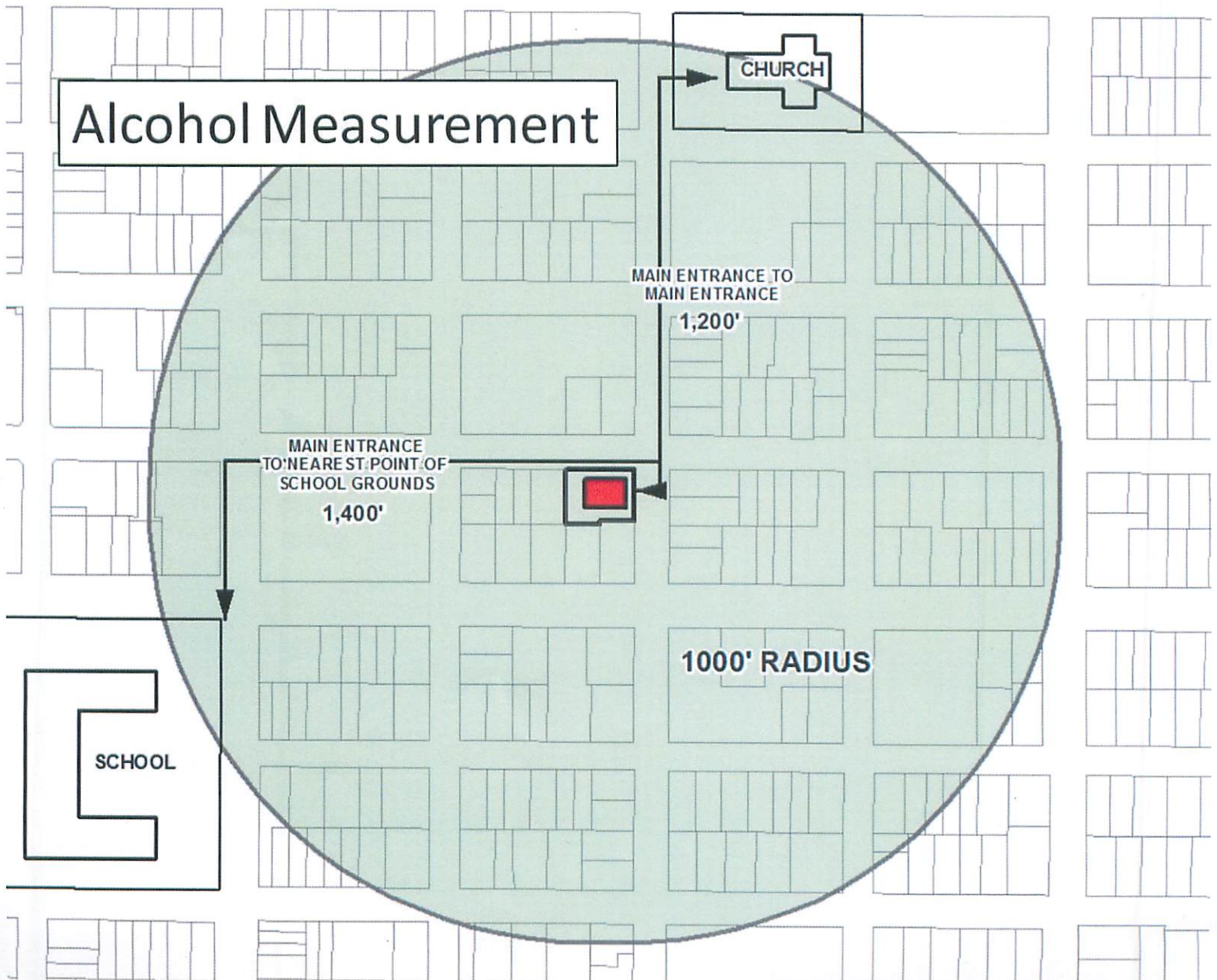
Map data ©2015 Google 100 ft

Measure distance  
Total distance: 2,817.69 ft (858.83 m)

**7.14.01. Purpose.** The purpose of this section is to establish a prohibition of the issuance of permits for the sale of alcoholic beverages within 1,000 feet of a place of worship or educational facility.

**B. Measurement.** The distance as set out above, shall be measured by following the shortest route of ordinary pedestrian travel along the public thoroughfare from the main entrance of such place of business to the main entrance of the church, and in the case of a school, to the nearest point of the school grounds in use as part of the school facilities. Measurements concerning child care and day care facilities shall be taken in the same manner as for educational facilities.

**EXAMPLE:**





CONCEPTUAL SITE PLAN

CITY, STATE - STREET  
DAVIS HIGHWAY  
PENSACOLA, FL

PROTOTYPE:	DEVELOPER		DESIGNER	DATE
BUILDING AREA: 3,000	COMPANY: DAVID BEDDICK	COMPANY: BELL ENGINEERING SERVICES, LLC	12/11/15	
ACREAGE: 0.76 ± AC	NAME:	NAME: JENNIFER D. BELL, P.E.		
PARKING SPACES: 30	PHONE:	PHONE: (850) 723-7185		



SITE SPECIFIC INFORMATION:  
PROPERTY REFERENCE #  
02-15-30-0601-000-006 (0.76 AC)  
TOTAL AREA 0.76 ± AC  
ZONING: COMMERCIAL

SCALE: 1" = 60'  
(ON 8.5" X 11")

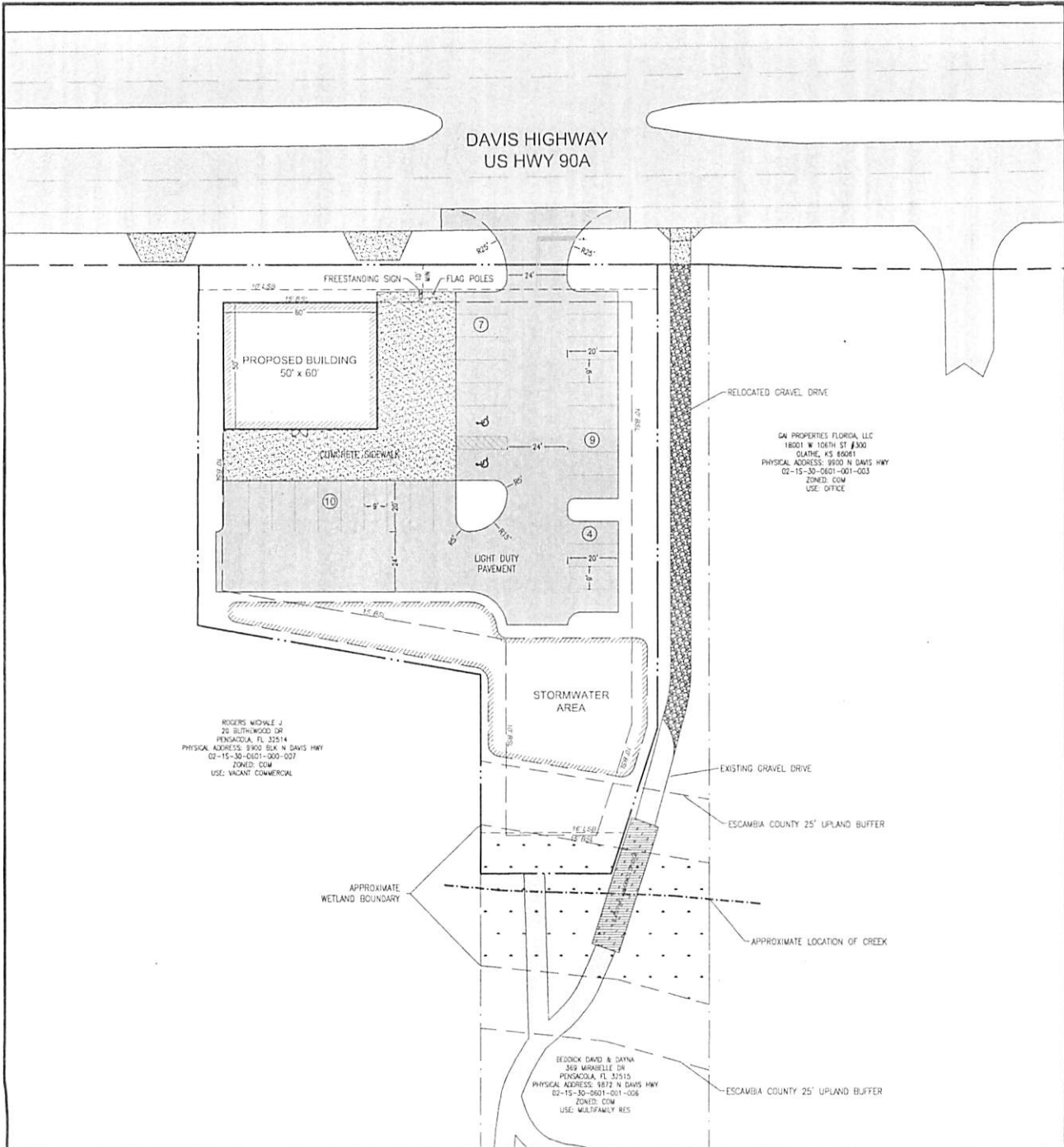
LEGEND

- EXISTING ASPHALT
- PROPOSED CONCRETE
- PROPOSED ASPHALT
- PROPOSED GRAVEL

**PARKING REQUIREMENTS:**  
TOTAL REQUIRED PARKING SPACES  
10 SPACES PER 1,000 GFA  
3,000 SF / 1,000 \* 10 SPACES = 30 SPACES  
TOTAL PARKING SPACES PROVIDED = 30  
STANDARD PARKING SPACES = 28  
H.C. PARKING SPACES = 2  
(1 H.C. / 25 SPACES)

GENERAL NOTES:

- PRELIMINARY BOUNDARY BASED ON INFORMATION OBTAINED FROM ESCAMBA COUNTY PROPERTY APPRAISER WEBSITES & SHALL BE USED FOR ILLUSTRATIVE PURPOSES ONLY. THIS PLAN SHALL NOT BE INTENDED TO CERTIFY THE ACCURACY OF EXISTING SURFACE OR SUBSURFACE CONDITIONS. ALL AREAS AND DIMENSIONS ARE APPROXIMATE AND SHOULD BE VERIFIED BY ACTUAL BOUNDARY AND TOPOGRAPHICAL SURVEY.
- PROPOSED ACCESS LOCATIONS SHALL BE APPROVED BY REGULATORY AGENCIES HAVING JURISDICTION.
- SOLID WASTE WILL BE COLLECTED VIA CURB SIDE PICKUP.







August 19, 2015

David Beddick  
724-875-8622  
Dlbr13@gmail.com

**Re: Aerial Wetland Assessment  
9800 Block Davis Highway, Pensacola, Escambia County, FL  
WSI Project # 2015-386**

Dear Mr. Beddick,

At your request Wetland Sciences, Inc. has estimated wetland resources that may be present within the above referenced lot identified by the Escambia County Property Appraiser by identification number #02-1S-30-0601-000-006/001-006. This request was based on the review of available photogrammetric, soil survey data, and a quick informal site inspection as a diagnostic step to generate a sketch of potential wetland resources found within each of the subject properties.

The primary resource used in the delineation of wetland resources was aerial photographic data obtained from the Florida Department of Environmental Protection Land and Boundary Information System and US Department of Agricultural Soil Survey data. This complex of photogrammetric procedures will provide a relatively accurate determination of potential wetland resources that may exist within each particular parcel. This review should be considered as preliminary; with a more concise field-orientated delineation to follow if you so wish to proceed. Wetland Sciences, Inc. has approximated the wetland resources as delineated within this effort (Please see attached sketch).

It appears the wetlands identified will be under the regulatory jurisdiction of the US Army Corps of Engineers (Corps) under **33 CFR 320-330**, Florida Department of Environmental Protection (DEP) and/or Northwest Florida Water Management District (NFWMD) under **Chapter 62-340 F.A.C.**, and Escambia County. Escambia County also regulates those lands upland "upland buffer" of the jurisdictional wetland boundary under Chapter 4, Article 5, Section 4-5.3 of the Land Development Code. If your development will not require wetland impacts the upland buffer shall be 10 feet. If your development will require a state Environmental Resource Permit the upland buffer shall be a minimum of 15 feet with an average of 25 feet.

As stated at the outset, the information presented within this report furnished the clients with a rough approximation of the status of wetland resources on the site under consideration. Although the above-cited conclusions are provided with some degree of confidence, it is essential that field confirmations authenticate the photogrammetric findings and provide a formal survey of wetland boundaries.

Please be advised that various development activities within the jurisdictional wetlands, such as filling, mechanical land-clearing, and construction of some piling supported structures require permitting from the State of Florida, United States Army Corps of Engineers, and Escambia County. As you may or may not know the agencies above which regulate wetlands evaluate

permits on the basis of avoidance and minimization, practical alternatives, and mitigation. This is a complex process and better explained over the telephone or in a meeting.

A quick site inspection of the property to ecologically characterize a portion of property between North Davis Highway and the creek revealed that the property is heavily disturbed and no natural areas are present; the vegetative community primarily consists of kudzu (*Pueraria lobate*), privet (*Ligustrum sinense*), and cherry laurel (*Prunus caroliniana*).

This concludes our report. Be advised, the information presented within this report represents the professional opinion of the scientist that performed the work and is intended to furnish the client with a rough approximation of the status of wetland resources on the site under consideration. It is the responsibility of the regulatory agencies to verify our approximation before this determination can be considered legally binding.

Finally, I have included a statement of our firm for services rendered and expenses incurred associated with this effort. If you find this statement in order, please place it in line for payment.

If you have any questions, please do not hesitate to me at (850) 453-4700.

Respectfully,

**WETLAND SCIENCES, INC.**



Jason Taylor  
Environmental Scientist

Enclosures: As indicated



NOTE: THIS IS NOT A SURVEY. THE WETLAND BOUNDARY DEPICTED IN THIS SKETCH IS AN INTERPRETATION OF POTENTIAL WETLANDS BASED ON THE REVIEW OF AVAILABLE PHOTOGRAMMETRIC, SOIL SURVEY DATA, & SITE INSPECTION. THE PROPERTY BOUNDARY SHOWN ON THIS SKETCH WAS PROVIDED BY THE CLIENT. THIS SKETCH SHOULD BE CONSIDERED PRELIMINARY UNLESS VERIFIED BY A FIELD SURVEY OR OTHER MEANS.



**ENVIRONMENTAL CONSULTANTS**  
3308 GULF BEACH HIGHWAY  
PENSACOLA, FLORIDA 32507  
TEL: 850.453.4700  
JTAYLOR@WETLANDSCIENCES.COM

PROJECT NAME: BECOME 1 BREWING	
AERIAL WETLAND INTERPRETATION	
PROJECT NO.: 2015-386	
DRAWN BY: JAT	DATE: 9/14/2015
SHEET: 1 OF 1	



**Development Services Department**

**Building Inspections Division**

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

**RECEIPT**

Receipt No. : **651751**

Date Issued. : 12/17/2015

Cashier ID : CASTILLS

Application No. : PBA151200021

Project Name : CU-2016-01

**PAYMENT INFO**

Method of Payment	Reference Document	Amount Paid	Comment
<b>Check</b>	773	\$1,275.50	App ID : PBA151200021
		<b>\$1,275.50</b>	<b>Total Check</b>

Received From : DAVID BEDDICK

Total Receipt Amount : **\$1,275.50**

Change Due : \$0.00

**APPLICATION INFO**

Application #	Invoice #	Invoice Amt	Balance	Job Address
PBA151200021	743789	5.00	\$0.00	9800 BLK N DAVIS HWY, PENSACOLA, 32514
PBA151200021	743790	1,270.50	\$0.00	9800 BLK N DAVIS HWY, PENSACOLA, 32514

**Total Amount :**

**1,275.50**

\$0.00

Balance Due on this/these  
Application(s) as of 12/18/2015