

AGENDA
ESCAMBIA COUNTY BOARD OF ADJUSTMENT
ADMINISTRATIVE APPEAL
August 3, 2017–8:30 a.m.
Escambia County Central Office Complex
3363 West Park Place, Room 104

1. Call to Order.
2. Swearing in of Staff and acceptance of staff as expert witness
3. Acceptance of the BOA Meeting Package with the Development Services Staff Findings-of-Fact, into evidence.
4. Proof of Publication and waive the reading of the legal advertisement.
5. **Consideration of the following cases:**
 - A. **CASE NO.: AP-2017-01**
ADDRESS: 2975 E. Johnson Ave.
REQUESTED APPEAL: Appeal of the Development Review Committee approval of site plan #PSP170400056, Ellyson Oaks
REQUESTED BY: Bradley S. Odom, Esq., Agent for Emerald Coast Utilities Authority
6. Discussion Items.
7. Old/New Business.
8. Announcement.

The next Board of Adjustment Meeting is scheduled for Wednesday, August 16, 2017 at 8:30 a.m., at the Escambia County Central Office Complex, Room 104, 3363 West Park Place.
9. Adjournment.



DEVELOPMENT SERVICES ADMINISTRATIVE APPEAL WORKSHEET

Board of Adjustment-Administrative Appeal

5. A.

Meeting Date: 08/03/2017

I. SUBMISSION DATA:

APPLICANT: Bradley S. Odom, Esq., Agent for Emerald Coast Utilities Authority

DATE OF ADMINISTRATIVE DECISION: June 7, 2017

DATE OF APPEAL APPLICATION: June 23, 2017

PROJECT ADDRESS: 2791 E. Johnson Ave.

PROPERTY REFERENCE NO.: 17-1S-30-1209-000-000

ZONING DISTRICT: C, Commercial

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

III. REQUESTED APPEAL::

The Applicant is requesting an appeal of the Development Review Committee's (DRC) approval of project #PSP170400056, Ellyson Oaks.

III. RELEVANT APPEAL AUTHORITY:

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

Sections 2.04.00, Appeal of Administrative Decisions and 2.04.01, Procedures for the Appeal of Administrative Decisions of the Escambia County Land Development Code (Ordinance No. 96-3 as amended), provide the relevant authority for the BOA's review of administrative decisions.

A. The BOA is authorized to hear and to rule upon any appeal made by those persons aggrieved by administration of this Code. An administrative decision, or staff interpretation, shall not be reversed, altered, or modified by the BOA unless it finds that:

1. A written application for the appeal was submitted within 15 days of the administrative decision or action indicating the section of this Code under which said appeal applies together with a statement of the grounds on which the appeal is based; and

2. That the person filing said appeal has established that the decision or action of the

administrative official was arbitrary and capricious; or

3. An aggrieved party who files an appeal of a decision of the DRC approving or approving with conditions a development plan application, must show, by competent substantial evidence that:

(i) The decision of the DRC is not in compliance with the Comprehensive Plan or the Land Development Code;

(ii) Their property will suffer an adverse impact as a result of the development approval decision;

(iii) The adverse impact must be to a specific interest protected or furthered by the Comprehensive Plan or the Land Development Code; and

(iv) It must be greater in degree than any adverse impact shared by the community at large.

4. In the event the owner, developer, or applicant is aggrieved or adversely affected by a denial of a development plan application or the imposition of conditions, the owner, developer or applicant filing the appeal must show, by competent substantial evidence, that the denial of the development plan or the imposition of conditions is neither required nor supported by the Comprehensive Plan or the Land Development Code or the application of technical design standards and specifications adopted by reference in the Code, or Concurrency Management Procedures and is, therefore, arbitrary and capricious.

IV. BACKGROUND INFORMATION

The Ellyson Oaks site plan was submitted to the County for site plan approval on April 7, 2017, for a multi-family residential development. The plan consists of 9 buildings with 37 total units on a 3.87 acre parcel, associated driveway and parking, landscaping, and a stormwater retention pond.

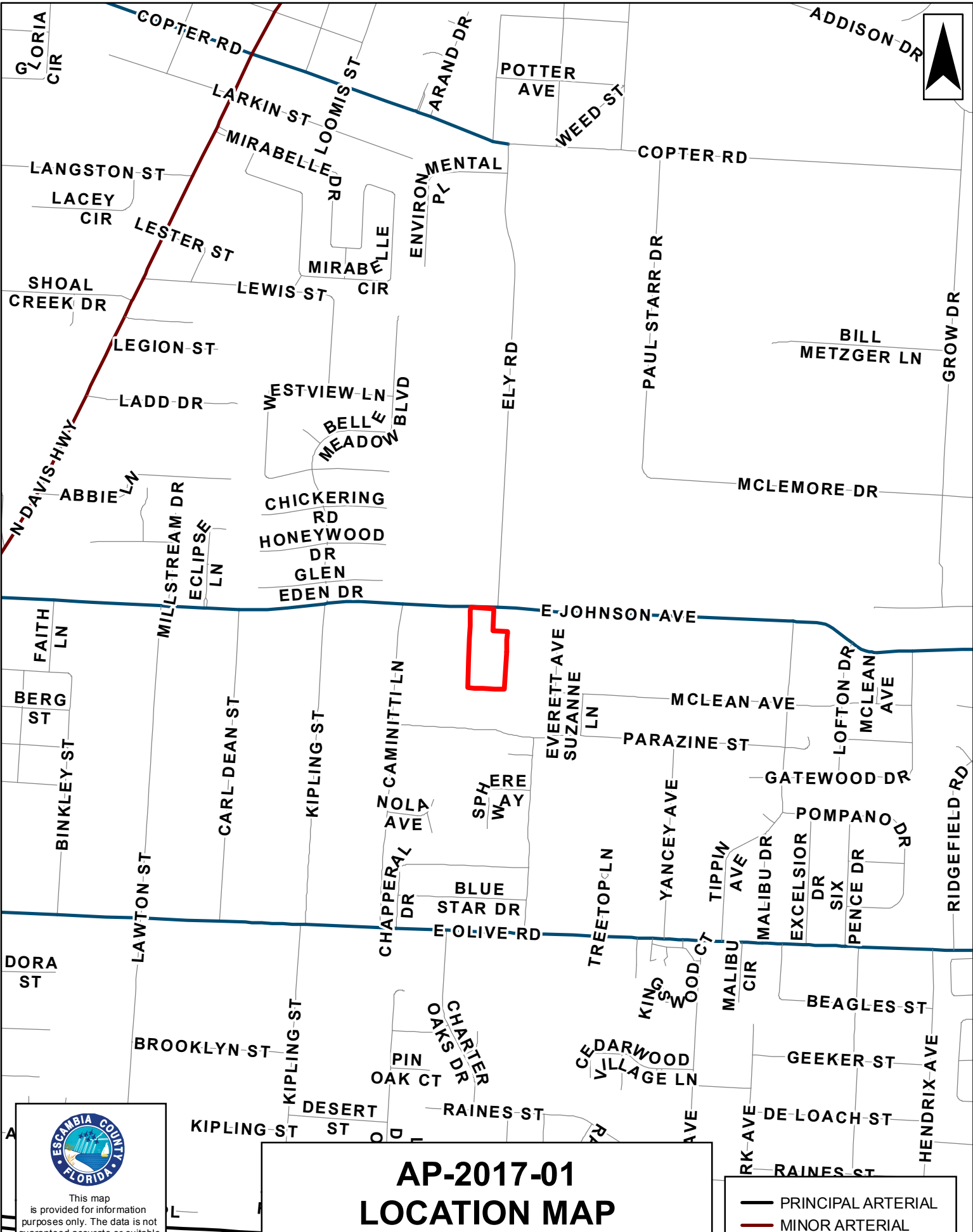
This project was reviewed by the members of the committee and recommended for approval as having met the requirements of the Land Development Code (LDC).

At the June 7, 2017, DRC meeting, the Development Order was approved with specific conditions related to wellhead concerns expressed by ECUA staff.





Attachments

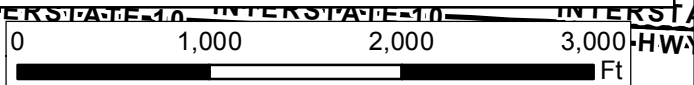

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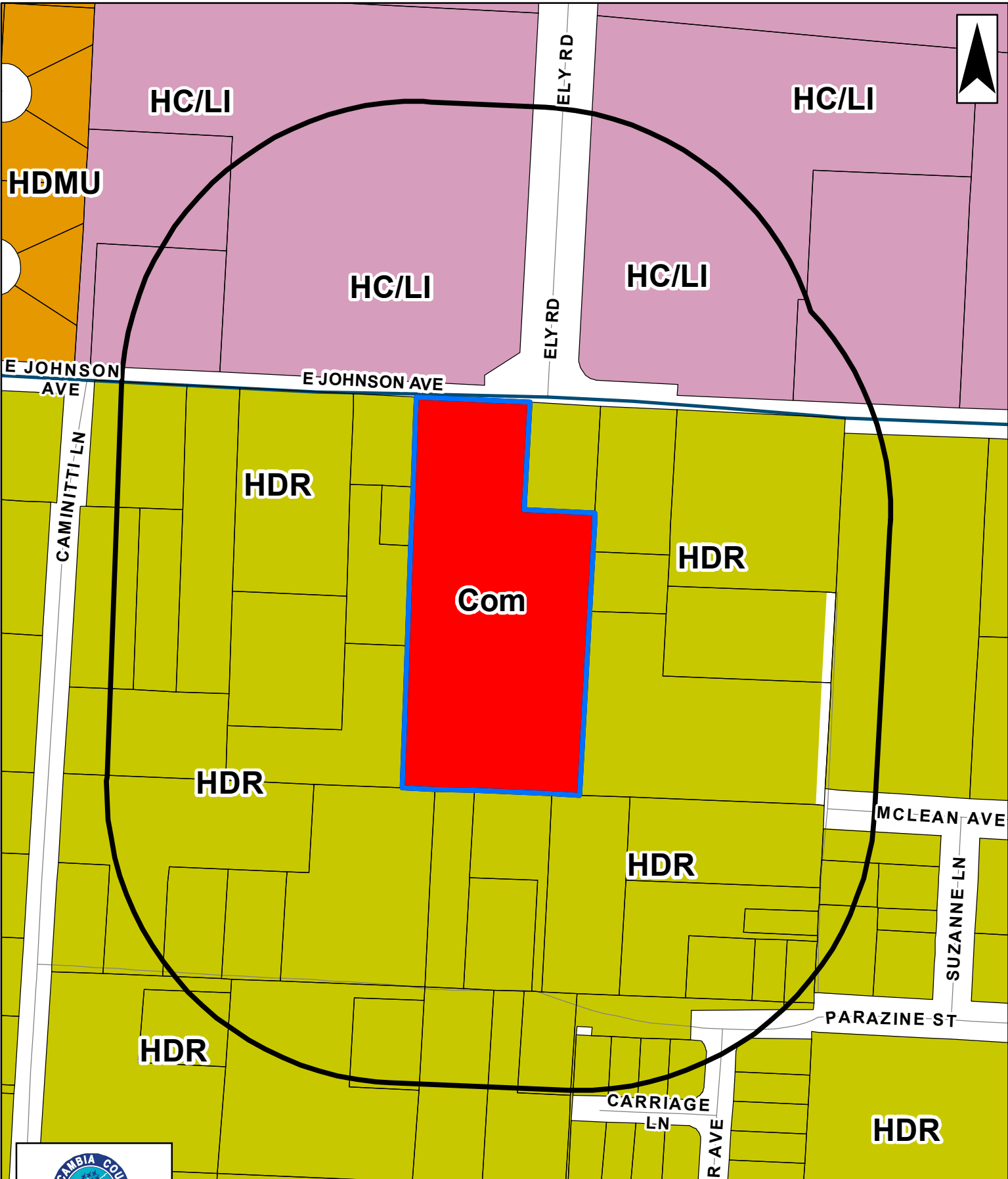
AP-2017-01 LOCATION MAP

-  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.



HDMU

HC/LI

HC/LI

HC/LI

HC/LI

E JOHNSON AVE

E JOHNSON AVE

ELY RD

CAMINITTI LN

HDR

Com

HDR

HDR

HDR

MCCLEAN AVE

SUZANNE LN

PARAZINE ST

HDR

CARRIAGE LN

HDR

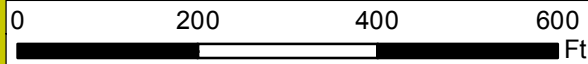
R AVE



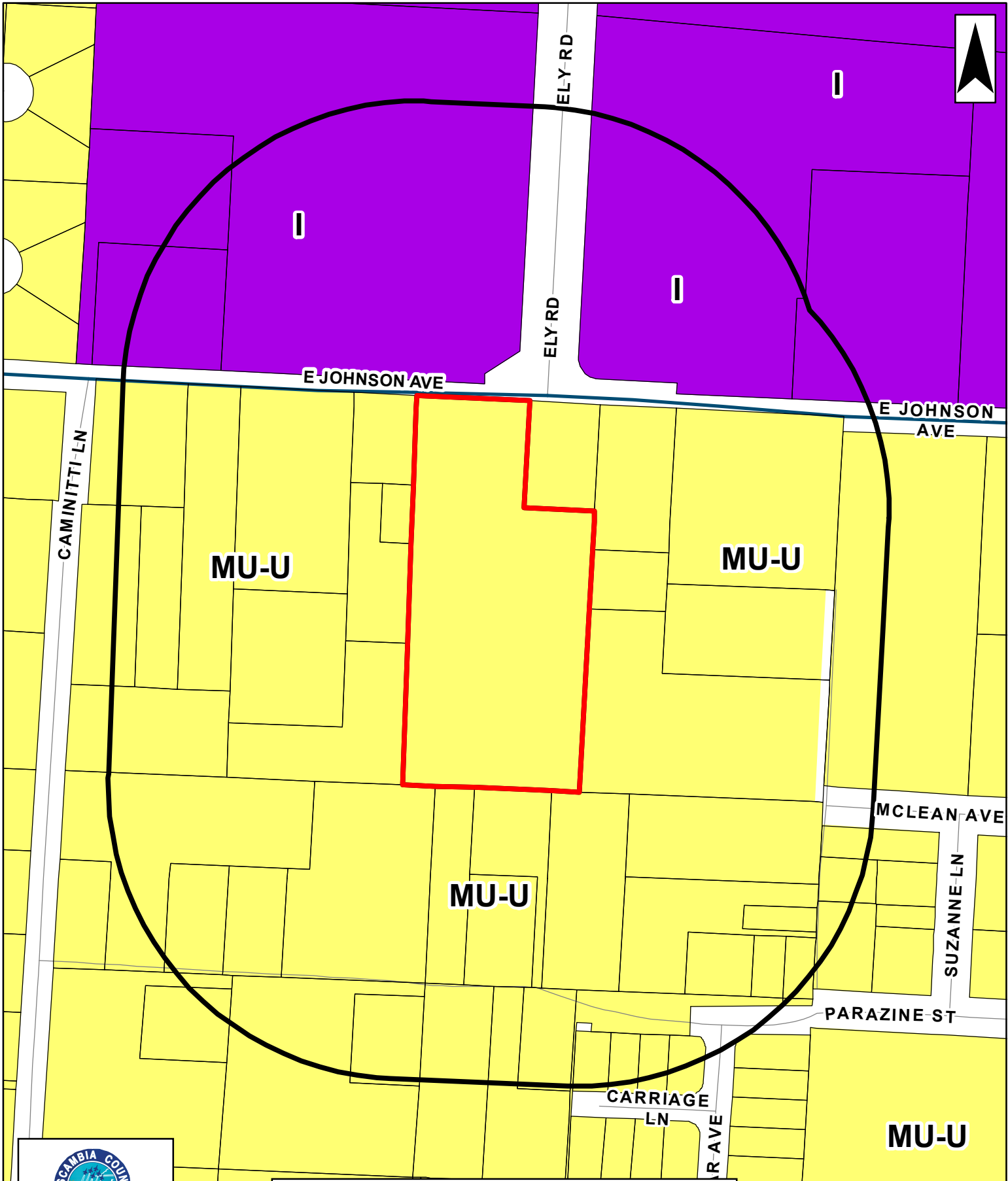
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Andrew Holmer
Planning and Zoning Dept.






AP-2017-01 500' RADIUS ZONING

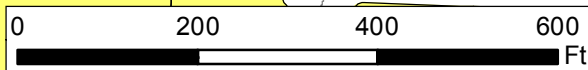



- PARCELS
- PRINCIPAL ARTERIAL
- MINOR ARTERIAL
- COLLECTOR
- LOCAL ROAD



AP-2017-01 FUTURE LAND USE

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

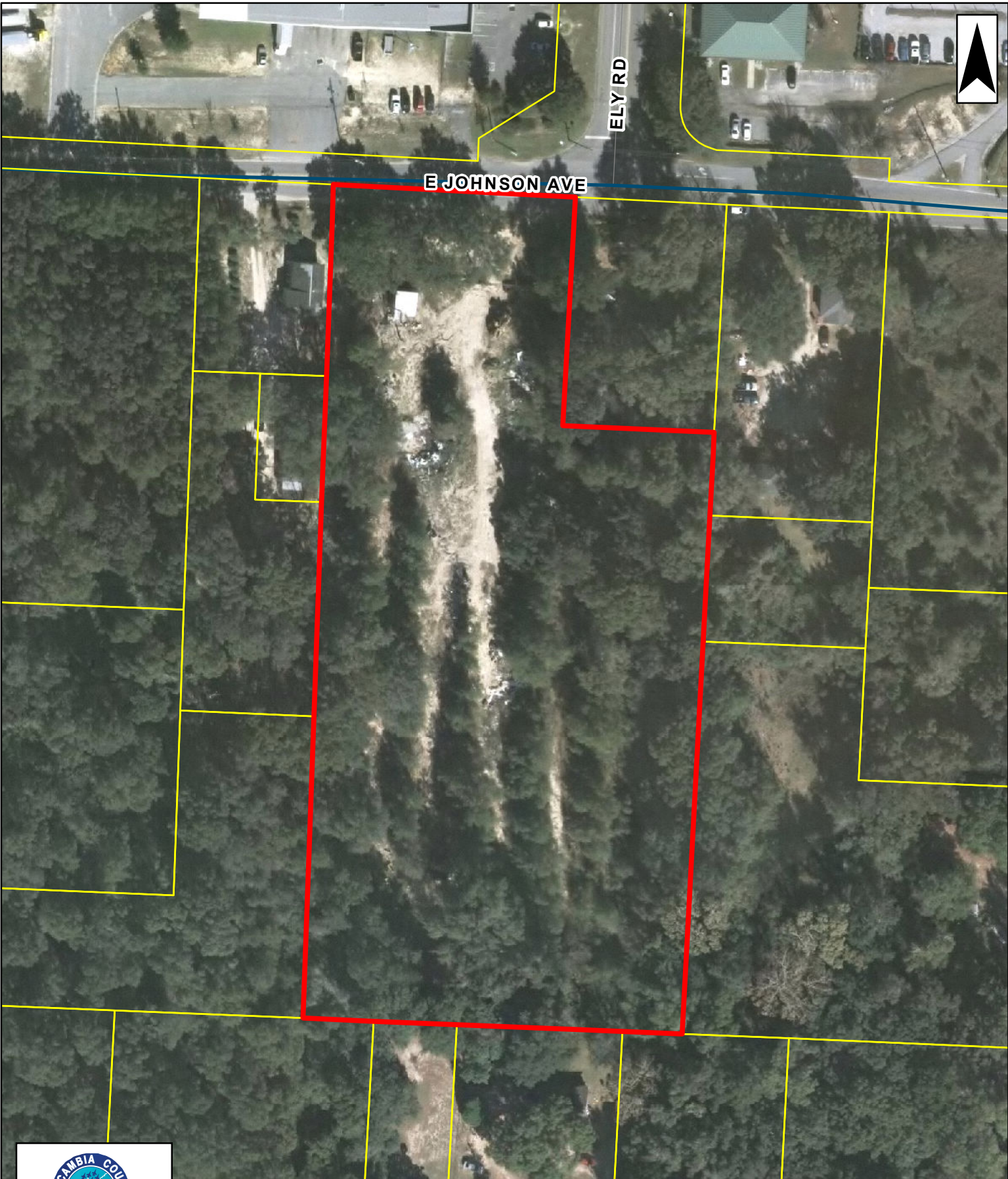
This map is provided for information purposes only. The data is not guaranteed accurate or suitable for any use other than that for which it was gathered.

Andrew Holmer
Planning and Zoning Dept.



ELY RD

E JOHNSON AVE








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Andrew Holmer
Planning and Zoning Dept.

AP-2017-01 AERIAL MAP



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



**ECUA
PARCEL**

7 YEAR

20 YEAR

E JOHNSON-AVE

ELY RD

CAMINITTI LN

20 YEAR

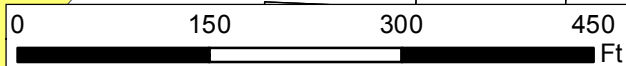
7 YEAR








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

Andrew Holmer
Planning and Zoning Dept.

**AP-2017-01
CURRENT WHPA**



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



Escambia County Planning and Zoning

Development Services Department

3363 West Park Place

Pensacola, FL 32505

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

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

Board of Adjustment Application

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

_____ Development Order Extension

Administrative Appeal

1. Contact Information:

A. Property Owner/Applicant: Emerald Coast Utilities Authority
c/o Timothy Haag
 Mailing Address: 9255 Sturdevant Street, Pensacola, FL 32514
 Business Phone: 969-3300 Cell: _____
 Email: tim.haag@ecua.fl.gov

B. Authorized Agent (if applicable): Odom & Barlow, P.A.
c/o Bradley S. Odom, Esq.
 Mailing Address: 1800 North E Street, Pensacola, FL 32501
 Business Phone: 434-3527 Cell: _____
 Email: email@odombarlow.com

Note: Owner must complete the attached Agent Affidavit. If there is more than one owner, each owner must complete an Agent Affidavit. Application will be voided if changes to this application are found.

2. Property Information:

A. Project Name & Development Order Number (if applicable): Ellyson Oaks
PSP170400056

B. Existing Street Address: 2975. East Johnson Avenue, Pensacola, FL
 Parcel ID (s): 17-1S-30-1209-000-000

C. Total acreage of the subject property: Believed to be 3.87 acres

3. Reason for Request

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

See attached Application for Appeal of Administrative Decision.

1. Decision appealed: See paragraph 1.
2. LDC reference: Section 4-5.9(d)(2), 4-5.9(c)(3), 4-5.9(b)(1) & (2), and Section 1-7 of Chapter 2 of the Design Standards Manual.
3. Alleged error: See paragraphs 1-14.
4. Conditions: Not applicable, as ECUA contends the conditions for issuance of the Site Plan Development Order were not satisfied.
5. Remedy: See paragraph 14 and "wherefore" clause.

B. Development Order Extension

The LDC requires good faith efforts in adhering to its established periods, but extension of an eligible LDC time limit may be requested according to the provisions of this section whereby a landowner asserts that the limit does not anticipate legitimate delays in compliance. However, no applicant is automatically entitled to any extension. Short-term (6 month) extensions are evaluated by the Planning Official, and longer extensions (one year) shall be evaluated through a quasi-judicial public hearing review by the BOA. These extension processes allow additional time for concluding the compliance review, developing an approved use, and continuing or reestablishing some uses.

1. Limits on extensions. Extensions to LDC periods are subject to the following limitations:

a. Availability. Extensions are available and may be granted only for LDC periods that specifically provide that option, only if a complete application for the extension was submitted prior to the expiration of the period for which the extension is requested, and only as otherwise allowed by the provisions of the LDC.

b. Approving authority. Extensions to any period not required by the LDC but imposed as a condition of approval by an approving authority cannot be granted by another approving authority.

c. Individual and multiple limits. An extension can only be granted based on a specific review of an individual period. If an extension of more than one period is requested, the extension criteria shall be evaluated for each limit.

C. Administrative Appeal

Application for appeal of an administrative decision shall be submitted for compliance review within 15 days after the date of the decision being appealed. A quasi-judicial public hearing for the appeal shall be scheduled to occur within 30 business days after receipt of a complete application. The application shall provide information as required by the adopted appeal procedures, including the following:

1. Decision appealed. A copy of the written administrative decision to be reviewed on appeal.

2. LDC reference. Identification of the specific LDC provisions for which noncompliance is alleged.

3. Alleged error. A description of how the decision of the administrative official is considered arbitrary or capricious.

4. Conditions. Documentation satisfying the conditions established in the compliance review provisions of this section.

5. Remedy. A description of the proposed remedy.

6. Other information. Any other pertinent information the applicant wishes to have considered.

D. Medical Hardship

Temporary placement of a manufactured (mobile) home or park trailer may be requested according to the provisions of this section when a landowner asserts that existing medical conditions require in-home care and an accessory dwelling to reasonably provide it. The manufactured home may be placed within any mainland zoning district to remedy a medical hardship according to the temporary use provisions of Chapter 4, regardless of the density limits of the applicable zoning. The requirements to grant the temporary use of a manufactured home or park trailer as an accessory dwelling to provide in-home medical care is considered by the BOA in a quasi-judicial hearing whether conditions warrant such use.

The BOA shall conduct a quasi-judicial public hearing as noticed to consider the requested medical hardship temporary use of a manufactured home or park trailer according to the provisions of this article. The applicant has the burden of presenting competent substantial evidence to the board that establishes each of the following conditions:

1. Certified need. A Florida-licensed physician certifies in writing the medical need, specifying the extent of the need for in-home medical care and the approximate length of time for such in-home medical care.

2. Minimum necessary. Conditions and circumstances make it difficult or impossible for the recipient and provider of medical care to reside in the same dwelling and the temporary accessory dwelling is the minimum necessary to provide relief of that medical hardship.

3. Adequate public services. The manufactured home or park trailer will have adequate water, sewer, solid waste removal, and electric services available.

4. Compatibility. The temporary use will not produce adverse impacts on the uses of surrounding properties.

5. Standard conditions. The temporary use can comply with the applicable standards of Chapter 4.

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

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

As owner of the property located at 2902 East Johnson Avenue
Pensacola, Florida, property reference number(s) 16-1S-30-1101-000-023

I hereby designate Bradley S. Odom

for the sole purpose of completing this application and making a presentation to the Board of Adjustment and the Board of County Commissioners to request a rezoning on an appeal of the issuance of the Site Plan Development Order for the above referenced property. This Limited Power of Attorney is granted on this _____ day of _____ the year of, _____, 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: Bradley S. Odom Email: email@odombarlow.com

Address: 1800 North "E" Street, Pensacola, FL 32501 Phone: 434-3527

Timothy M. Haag
Signature of Property Owner

ECUA
by Timothy Haag
Printed Name of Property Owner

6/21/17
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 21st day of June 2017,
by Timothy Haag

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

Cynthia A. Bush
Signature of Notary

Printed  **CYNTHIA A. BUSH**
NOTARY PUBLIC
STATE OF FLORIDA
Comm# FF040329
Expires 10/22/2017

(Notary Seal)

5. Submittal Requirements

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

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

Note: Fees include all notices and advertisements required for the public hearing and a \$5 technical fee. Payments must be submitted prior to 3 pm of the closing date of acceptance of application. Please make checks payable to Escambia County. MasterCard and Visa are also accepted.

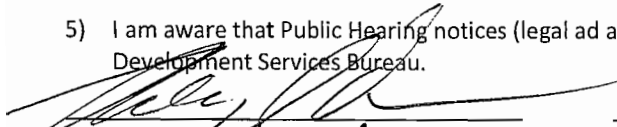
C. _____ Legal Proof of Ownership (ex: copy of Tax Notice or Warranty Deed) AND a Certified Boundary Survey (Include Corporation/LLC documentation if applicable.)

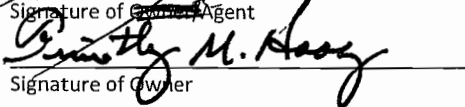
D. _____ Compatibility Analysis (if applicable): If the subject property does not meet the roadway requirements of Locational Criteria, a compatibility analysis prepared by the applicant is required to provide substantial evidence of unique circumstances regarding the parcel or use that were not anticipated by the alternative criteria. (See "Documented Compatibility" within the request zoning district of the LDC.)

E. _____ Signed and Notarized Affidavit of Owner/Limited Power of Attorney AND Concurrency Determination Acknowledgement (pages 4 and 5).

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 non-secure areas of ECUA's property at 2902 East Johnson Avenue 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


 Signature of Owner

Bradley S. Odom

 Printed Name Owner/Agent
Timothy Haag

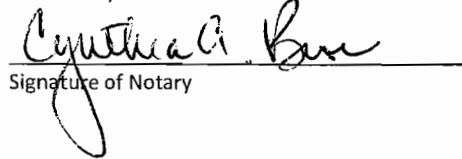
 Printed Name of Owner

6/21/2017


 Date
6/21/17

 Date

STATE OF FLORIDA COUNTY OF ESCAMBIA The foregoing instrument was acknowledged before me this 21st day of June 20 17, by Bradley S. Odom & Timothy Haag
 Personally Known OR Produced Identification . Type of Identification Produced: _____



 Signature of Notary

 CYNTHIA A. BUSH

 Printed Name of Notary
NOTARY PUBLIC
STATE OF FLORIDA
 Comm# FF040329
 Expires 10/22/2017 (notary seal)

ODOM & BARLOW, P.A.
ATTORNEYS AT LAW
1800 NORTH "E" STREET
PENSACOLA, FLORIDA 32501

BRADLEY S. ODOM*
RICHARD D. BARLOW
ROBERT W. KIEVIT**
ELLEN ODOM**
*Also licensed in Alabama
**Of Counsel

June 20, 2017

TELEPHONE: (850) 434-3527
FACSIMILE: (850) 434-6380
E-MAIL: email@odombarlow.com

VIA HAND DELIVERY

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


Re: Appeal of Issuance of Site Plan Development Order
Ellyson Oaks

Dear Board Members:

I represent the Emerald Coast Utilities Authority (ECUA), which is appealing the Site Plan Development Order issued on June 7, 2017 regarding the Ellyson Oaks Development to be constructed at 2975 East Johnson Avenue in Pensacola, Florida. Towards that end, enclosed please find ECUA's Application for Appeal of Administrative Decision as well as a check made payable to Escambia County, Florida in the amount of \$682.60, which we understand to be the applicable fee associated with this appeal.

Should anything else be required of us in order to perfect this filing, please advise, and we will be happy to comply.

Sincerely,


Bradley S. Odom

BSO:cab

Enclosures

P.S.: Please note that neither the Application for Appeal of Administrative Decision nor this cover letter have been forwarded to other parties, as I do not know who is serving as the representative of the developer or who will be representing the County's interests in this matter. If you have their addresses and would like us to forward the referenced documentation to them, please advise, and we will be more than willing to comply.

**BOARD OF ADJUSTMENTS
FOR
ESCAMBIA COUNTY, FLORIDA**

IN RE: SITE PLAN DEVELOPMENT
 ORDER FOR ELLYSON OAKS
 PROJECT (Issued on June 7, 2017)

APPLICATION FOR APPEAL OF ADMINISTRATIVE DECISION

COMES NOW the Emerald Coast Utilities Authority (hereinafter "ECUA"), by and through its undersigned counsel, and hereby files its Application for Appeal of Administrative Decision which is being submitted in accordance with Section 2-6.10 of the County's Land Development Code (hereinafter "LDC"). As grounds therefore, ECUA states as follows:

1. On June 7, 2017 Escambia County, Florida issued a Site Plan Development Order (hereinafter "Order") for a project known as Ellyson Oaks, with an identified street address of 2975 East Johnson Avenue in Pensacola, Florida (hereinafter the "Property"). That Order is attached hereto at Tab 1, as required by Section 2-6.10(b)(1)a.

2. ECUA has a substantial interest in the Order, as it owns and operates a public potable water supply well on property which has a street address of 2902 East Johnson Avenue, Pensacola, Florida and has a property boundary which is approximately 75 feet from the boundary of the Property which is the subject of that Order.

3. This public potable water supply well is known as the Ellyson Well, and it is permitted to produce and distribute 2,000 gallons per minute of potable water to residential and commercial properties in its general vicinity, which would include the

Property which is the subject of the Order. ECUA's Ellyson Well also serves as one of the emergency feeds for the West Florida Hospital and is considered vital to adequately servicing ECUA's ratepayers. ECUA is thus also a water provider as that term is used within the LDC, and it has certain rights under the LDC as a result. Those rights also provide ECUA a substantial interest in the Order.

4. According to documents provided on behalf of the developer, the Property was previously used as an automobile junkyard. Those documents further note that "[t]he long-term use of the [Property] as a junkyard with probable discharges of petroleum products onto the ground was found to represent a recognized environmental condition for the target property." After the observation of soil staining was noted, it stated

[s]uch staining is suggestive of discharges of petroleum products (of unknown quantity) onto the ground's surface. These findings suggest the presence of recognized environmental conditions in connection with the target property.

(parenthesis in original). That documentation further notes that on at least a portion of the Property, Arsenic was present at levels which exceeded the Florida residential Soil Cleanup Target Level.

5. Despite the fact the Property is within the Wellhead Protection Area for the Ellyson Well, the Order nevertheless authorizes the disposal of stormwater directly into the aquifer from which the Ellyson Well extracts water by way of a sand chimney which eliminates/bypasses natural percolation.

6. A portion of the Property which is the subject of the Order is within the seven-year time of travel contour of ECUA's Ellyson Well, and all of the Property is

within the 20-year time of travel contour of ECUA's Ellyson Well. (See Tab 2, delineating seven-year and 20-year time of travel contours).

7. ECUA is therefore a party whose substantial interests have been adversely affected by the Order, and it has standing to file this appeal pursuant to Section 2-6.10(a).

8. The grounds for this appeal include the fact that the Order was issued in violation of Section 4-5.9(d)(2), which states, in relevant part, the following:

Groundwater/Wellhead Impact Report. For all proposed development within a seven-year or 20-year time of travel contour, except a single family dwelling, a groundwater/wellhead impact report *shall be prepared and submitted* to the County (DSM Chapter 2, Specifications of Groundwater/ Wellhead Impact Report). The water provider may waive this report requirement with record of that decision provided to the County.

Section 4-5.9(d)(2) (emphasis added). Nevertheless, a groundwater/wellhead impact report meeting the requirements of Section 1-7 of Chapter 2 of the Design Standards Manual was neither prepared nor submitted to the County prior to issuance of the Order.

9. The development authorized by the Order is within the seven-year and 20-year time of travel contours of ECUA's Ellyson Well, and the development is not for a single-family dwelling. Therefore, Section 4-5.9(d)(2) required that a groundwater/wellhead impact report be prepared and submitted. Moreover, ECUA, as the water provider, did not waive that requirement. It was therefore arbitrary and capricious for this mandatory requirement to have been excused, and the official entering the Order lacked the authority to excuse that mandatory requirement.

10. The issuance of the Order is further violative of Section 4-5.9(c)(3) as the use of the Property involves “facilities which provide for the disposal of stormwater directly into the aquifer absent normal percolation[,]” by way of a sand chimney, which had to have been reviewed by a representative “of the water provider and county technical staff to evaluate risk to the public water supply[,]” prior to issuance of the Order. By failing to submit the groundwater/wellhead impact report required in Section 4-5.9(d)(2), however, the developer denied the water provider, ECUA, (as well as county technical staff) the opportunity to fully evaluate the risk to the public water supply prior to the issuance of the Order, as required by Section 4-5.9(c)(3). The issuance of the Order without the full evaluation of risk to the public water supply, as required by the LDC, was arbitrary and capricious. It was also reckless and irresponsible.

11. The County was additionally arbitrary and capricious in its interpretation of the seven-year and 20-year time of travel contour requirements based upon overlays prepared by County staff instead of the verbiage of the Land Development Code, which refer to actual time of travel contours, as opposed to the arbitrary dates County staff choose to update their own maps.

12. Perhaps recognizing at least some of the infirmities in the developer’s submissions, the Order included conditions which were attached to it as Exhibit A. Although Exhibit A essentially requires the developer to complete a Phase II Environmental Site Assessment (hereinafter “Phase II ESA”) after-the-fact, it still fails to require the groundwater/wellhead impact report mandated by Section 4-5.9(d)(2), which County staff was not empowered to waive. Exhibit A also states that failure to adhere to that condition “could terminate and render null and void” the Order, as

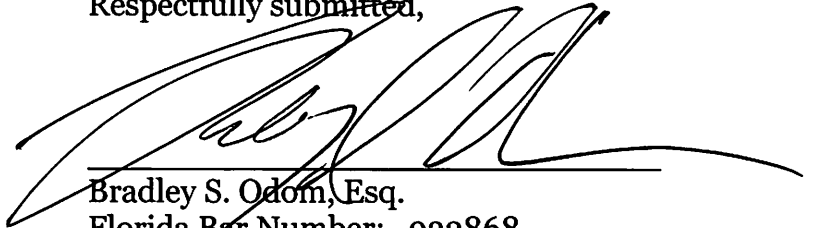
opposed to requiring its termination. Additionally, the Exhibit fails to require County technical staff to independently evaluate risk to the public water supply and denies ECUA, as the water provider, that same opportunity after the Phase II ESA is completed, as is contemplated by Section 4-5.9(c)(3). The official executing the Order lacked the authority to delegate County staff's duties to the developer, and he surely lacked the ability to delegate ECUA's right to evaluate risk to the public water supply to a third party. Moreover, his having done so was both arbitrary and capricious. Succinctly stated, the Order allows the Phase II ESA to be conducted after-the-fact and therefore denies ECUA the opportunity, as the water provider, to review and evaluate the risk to the public water supply before the issuance of any Site Plan Development Order.

13. The Order is also arbitrary and capricious in that it fails to address what will happen if the additional analyses required by Exhibit A fail to result in a conclusion that the installation of the sand chimney will not contribute to aquifer impact.

14. The remedy requested by ECUA is that the Order be rescinded and the application be denied until such time as the developer has completed its Phase II ESA and all other components of a groundwater/wellhead impact report have been prepared and submitted to the County, as required by Section 4-5.9(d)(2) so that both ECUA, as the water provider, and County technical staff may evaluate the risk to the public water supply before a decision is made as to whether to issue a Site Plan Development Order, as contemplated by Section 4-5.9(c)(3).

WHEREFORE the Emerald Coast Utilities Authority respectfully requests that the Site Plan Development Order issued on June 7, 2017 be rescinded/revoked due to the non-compliance with the requirements of the County's Land Development Code.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read 'Bradley S. Odom', is written over a horizontal line.

Bradley S. Odom, Esq.
Florida Bar Number: 932868
Richard D. Barlow, Esq.
Florida Bar Number: 0425176
ODOM & BARLOW, P.A.
1800 North "E" Street
Pensacola, Florida 32501
(850) 434-3527
Attorneys for ECUA



**SITE PLAN DEVELOPMENT ORDER
with Concurrency Certification**

Project: Ellyson Oaks
Location: 2975 E Johnson Ave
Development Review #: PSP170400056
Property Reference #s: 17-1S-30-1209-000-000
Attachments: Exhibit A

Future Land Use: Commercial
Zoning District: Mixed-Use Urban
Flood Zone: X

PROJECT DESCRIPTION

Construction of a multi-family residential development consisting of 9 buildings with 37 total units on a 3.87 acre parcel. Site improvements include an asphalt driveway with parking, a stormwater retention pond, and applicable landscaping.

Parking Spaces: 80
Potable Water: ECUA
Protected Trees to be removed: 254" inches

Handicap Parking Spaces: 4
Sanitary Sewer/Septic: Sewer
Mitigation Trees: 96.75" caliber inches

STANDARD PROJECT CONDITIONS

1. This Development Order with concurrency certification shall be effective for a period of 18 months from the date of approval. Site plan approval and concurrency shall expire and become null and void if a permit for the approved development has not been obtained from the Building Inspections Department (BID) within the effective period and no extension has been applied for. After issuance of such permit, site plan approval and concurrency shall only terminate upon permit expiration or revocation by the BID. The Board of Adjustment may grant one extension for a maximum of 12 months to the original effective period of the Development Order, but application for such extension must be submitted before termination of the initial 18-month period. If the Development Order expires or is revoked, allocated capacity will be withdrawn and made available to other applicants. If the applicant chooses to proceed with development of the project site, a new site plan application must be submitted for review, approval, and capacity allocations subject to Code provisions and Level of Service conditions at the time of the new application.
2. This Development Order alone does not authorize site development to commence. A valid Escambia County Building Permit must be obtained prior to any building construction. Site development as described on the approved site plan, including protected tree removal and grading, may occur under the authorization of the Building Permit. However, commencement of such activity prior to issuance of a Building Permit will require a separate **Pre-construction Site Work Permit**, or if no Building Permit is applicable will require a separate **Parking Lot Permit**, obtained from the Building Inspections Department, with

erosion control, tree protection, and all other provisions of the approved site plan fully applicable and enforced.

3. All specifications and requirements, expressed or implied by note or drawing, in the site development plans approved with this Development Order must be fulfilled.
 4. No development activities may commence in areas regulated by state or federal agencies unless all required state and federal permits, or proof of exemption, have been obtained and a copy provided to the County.
 5. Proof of application from the Emerald Coast Utilities Authority (ECUA) for connection to the sewage system, or from the Escambia County Health Department for an Onsite Sewage Treatment and Disposal System (OSTD), must be obtained prior to issuance of an Escambia County Building Permit.
 6. After issuance of this Development Order, it shall be unlawful to modify, amend, or otherwise deviate from the terms and conditions without first obtaining written authorization through the Development Review Committee (DRC) departments. Approval of such modifications shall be requested in writing and obtained prior to initiating construction of any requested change. The applicable review process for the proposed modification shall be determined based on the applicant's written description of such modifications. Escambia County may require submittal of a new or revised plan and impose additional requirements and/or conditions depending upon the extent of any proposed modifications. The applicant has a continuing obligation to abide by the approved plan. Initiating construction of plan modifications without written County approval shall automatically terminate and render null and void this Development Order, and shall be subject to penalties and/or increased fees specified by the BCC.
 7. A copy of this Development Order and the approved site development plans must be maintained and readily available on site once any construction activity has begun, including clearing and grading. The approved building construction plans must also be on site once any building construction has begun.
-

SPECIAL PROJECT CONDITIONS:

1. Prior to commencing site development, the conditions as outlined in the email by the Engineer of Record in Exhibit A will be implemented. Failure to adhere to outlined conditions in Exhibit A could terminate and render null and void this Development Order, and shall be subject to penalties and/or increased fees specified by the BCC.

Development Review Committee (DRC) Final Determination

Having completed development review of the **Ellyson Oaks**, site plan application referenced herein, in accordance with requirements of applicable Escambia County regulations and ordinances, the DRC makes the following final determination:

- Approve The development plan is approved. The applicant may proceed with the development subject to the project description and project conditions noted herein. Use other than that described, or conditions not satisfied, constitute a violation of this Development Order and render it void. Further, this approval does not constitute approval by any other agency.
- Deny The development plan is denied for the reasons noted below. The applicant may appeal the decision within 15 days from the date below to the Board of Adjustment (BOA) under the provisions of Section 2-1.4 of the Escambia County Land Development Code, and/or submit a new or revised site plan application for review.



6.7.17
Director, Development Services Department
Date

EXHIBIT A

From: ryan@selanddesign.com [mailto:ryan@selanddesign.com]
Sent: Tuesday, June 06, 2017 3:10 PM
To: 'Timothy (Tim) Haag' <tim.haag@ecua.fl.gov>
Cc: 'Tom Hammond' <tom@selanddesign.com>; Horace L Jones <HLJONES@co.escambia.fl.us>; Andrew D. Holmer <ADHOLMER@co.escambia.fl.us>; Charlie Gonzalez <CFGONZAL@co.escambia.fl.us>; Shannon D Pugh <SDPUGH@co.escambia.fl.us>; Timothy R. Day <TRDAY@co.escambia.fl.us>; 'Edward (Ned) McMath' <Ned.McMath@ecua.fl.gov>; EDHarp@hotmail.com; 'Tom Dawson' <Thomas.Dawson@ecua.fl.gov>; Daniel Corliss <daniel.corliss@ecua.fl.gov>; 'Brian Reid' <Brian.Reid@ecua.fl.gov>; Colby S. Brown <CSBROWN@co.escambia.fl.us>; 'Scott Hodges' <shodges.greystone@gmail.com>; 'Larry Schmaltz' <LSchmaltz@usanova.com>
Subject: RE: FW: WHPA GIS files

Tim,

We have reviewed the information and recommendations provided by your office and understand ECUA's concerns. As stated last week in the DRC meeting, neither our client or this office desire to negatively impact the quality of the aquifer in this area.

We have researched the alternate approach for stormwater treatment and attenuation as suggested by ECUA. Following discussions with county staff, it has been determined that permission for the project to connect to the existing county stormwater system located north of the development parcel will not be granted. Therefore, this option is not viable.

Following receipt of the above information, our office discussed the situation with our client and the project geotechnical/environmental engineers. Our client now proposes to conduct additional Phase II soil sampling and excavations to screen for buried debris as initially suggested by NOVA and subsequently requested by ECUA.

More specifically, NOVA will complete the following services at the project parcel:

- Install additional soil borings with sample collection and analysis specifically in the area of the proposed stormwater pond and sand chimney (these additional borings were included in NOVA's original Phase II ESA proposal recommendations).
- Excavation of soil test pits using a backhoe for determining the presence or absence of buried debris (this was included in NOVA's original Phase II ESA proposal recommendations).

- EXHIBIT A
- ANY CONTAMINATE THAT MAY POSE A HAZARD TO THE AQUIFER, TO INCLUDE, BUT NOT LIMITED TO PETROLEUM PRODUCTS.
- Collection of additional soil samples in the area of SB-6 (sampled during the Phase II ESA) in order to have a minimum of ten (10) samples in an area considered to be the "assessment unit" of SB-6. Samples will be analyzed for total arsenic. Assuming that the concentrations of those additional samples are less than the residential SCTL, NOVA will perform a 95% Upper Confidence Limit (UCL) statistical averaging calculation, pursuant to Chapter 62-780 of the Florida Administrative Code (FAC), paragraph 62-780.680(1)(b). Because the soils will ultimately be moved, mixed and redistributed, the statistical average is appropriate to determine that the average soil concentration is below the residential SCTL. This should be performed prior to a zoning or property change to residential use (this recommendation was part of NOVA's conclusions and recommendations in the Phase II ESA report).
 - Assuming that all of the analysis reveals concentrations below the Soil Cleanup Target Levels pursuant to Chapter 62-777 FAC, NOVA will be able to state that it is their professional opinion that the current state of the property will not contribute to aquifer impact even with the installation of a sand chimney in the stormwater pond.

Given the environmental information already collected from the project parcel, our project team feels comfortable that the above tasks, including the conclusion that a sand chimney will not contribute to aquifer impact, can be completed and the project can move forward as currently proposed. The additional services described above are to be conducted following Development Order approval and subsequent contractor mobilization to the site. This will eliminate dual mobilization fees as the test pits can be dug by the site contractor. Excavation of the sand chimney will not take place prior to receipt of the final Phase II ESA from NOVA.

We respectfully request that ECUA accept the described course of action. Once the additional Phase II services are underway, we will diligently provide the information acquired to your office and county staff as it is received.

Please let me know if you have any questions regarding any of the above or if I can provide additional information.

Ryan L. Sieg
Hammond Engineering, Inc.
3802 North S Street
Pensacola, FL 32505

EXHIBIT A

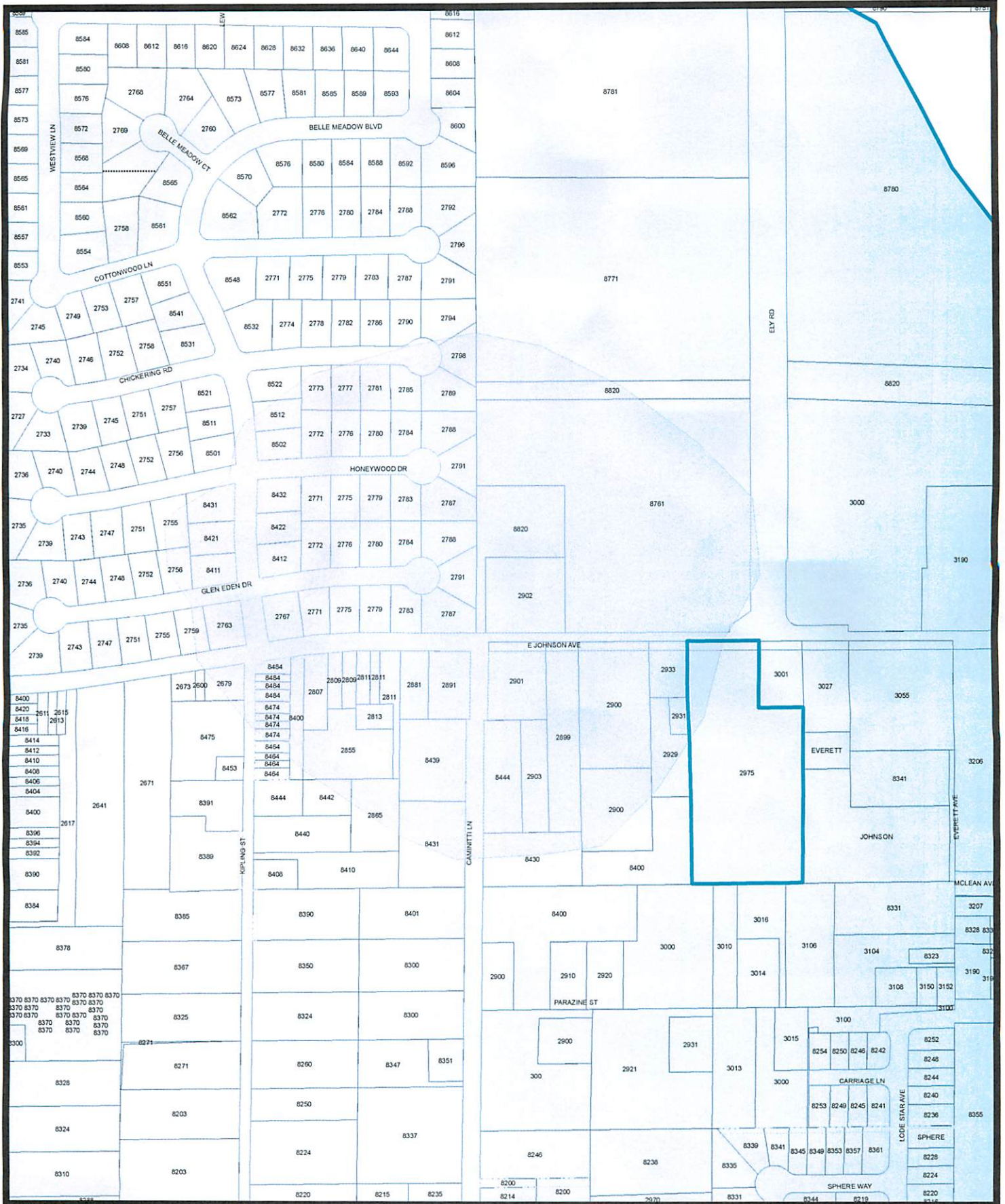
Ph 850-434-2603

Fax 850-434-2650

Cell 850-698-0203

HammondEngineeringInc.com

Ellyson Oaks




1 inch = 359 feet
Date: 6/5/2017

DISCLAIMER: The Emerald Coast Utilities Authority map/data is informational records of the approximate location of ECUA water and/or sewer facilities only. No representation is made as to its accuracy, and ECUA disclaims any and all liability with respect to any information shown. It is provided for information purposes only. **MAP INFO IS NOT TO BE USED ON DESIGN OR CONSTRUCTION PLANS OR ANY TYPE OF ENGINEERING SERVICES BASED ON INFORMATION DEPICTED HEREIN.** This map/data is not guaranteed accurate or suitable for any use other than that for which it was gathered. Any use of this information by any other organization for any other purpose and any conclusions





**SITE PLAN DEVELOPMENT ORDER
with Concurrency Certification**

Project: Ellyson Oaks
Location: 2975 E Johnson Ave
Development Review #: PSP170400056
Property Reference #s: 17-1S-30-1209-000-000
Attachments: Exhibit A

Future Land Use: Commercial
Zoning District: Mixed-Use Urban
Flood Zone: X

PROJECT DESCRIPTION

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Director, Development Services Department
Date 6-7-17

EXHIBIT A

From: ryan@selanddesign.com [mailto:ryan@selanddesign.com]

Sent: Tuesday, June 06, 2017 3:10 PM

To: 'Timothy (Tim) Haag' <tim.haag@ecua.fl.gov>

Cc: 'Tom Hammond' <tom@selanddesign.com>; Horace L Jones <HLJONES@co.escambia.fl.us>; Andrew D. Holmer <ADHOLMER@co.escambia.fl.us>; Charlie Gonzalez <CFGONZAL@co.escambia.fl.us>; Shannon D Pugh <SDPUGH@co.escambia.fl.us>; Timothy R. Day <TRDAY@co.escambia.fl.us>; 'Edward (Ned) McMath' <Ned.McMath@ecua.fl.gov>; EDHarp@hotmail.com; 'Tom Dawson' <Thomas.Dawson@ecua.fl.gov>; Daniel Corliss <daniel.corliss@ecua.fl.gov>; 'Brian Reid' <Brian.Reid@ecua.fl.gov>; Colby S. Brown <CSBROWN@co.escambia.fl.us>; 'Scott Hodges' <shodges.greystone@gmail.com>; 'Larry Schmaltz' <LSchmaltz@usanova.com>

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SEPERATE BUDGET.
FOR THE ENTIRE SITE

EXHIBIT A

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TO THE AQUIFER, TO INCLUDE, BUT NO
LIMITED TO
AND PETROLEUM PRODUCTS.

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Ryan L. Sieg

Hammond Engineering, Inc.

3802 North S Street

Pensacola, FL 32505

EXHIBIT A

Ph 850-434-2603

Fax 850-434-2650

Cell 850-698-0203

HammondEngineeringInc.com