



**BOARD OF ADJUSTMENT NUMBER 1
AGENDA**

November 21, 2023

Regular Meeting

4:00 p.m.

Central Annex Auditorium

22251 Palmer Street

Robertsdale, Alabama

Email-planning@baldwincountyal.gov

1. Call to Order
2. Roll Call
3. Approval of Previous Meeting Minutes (September 19, 2023, and October 17, 2023)
4. Announcements/Registration to Address the Board of Adjustment
5. Consideration of Applications and Requests

ITEMS:

a.) Case No. ZVA23-66, Hudson Property, 10228 Bayhaven Cir

Request: Approval of a Variance from Section 13.1.2 (b) and (d) of the Baldwin County Zoning Ordinance as it pertains to accessory structures.

Location: The subject property is located at 10228 Bayhaven Cir in Fairhope, AL in Planning District 26.

b.) Case No. ZVA23-68, Nemer Property, 23811 Grant Dr

Request: Approval of a Variance from Section 13.1.2 (b) of the Baldwin County Zoning Ordinance as it pertains to an accessory structure in the front yard.

Location: The subject property is located at 23811 Grant Dr in Loxley, AL in Planning District 12.

c.) Case No. ZVA23-76, Ankerson Property, 12550 County Road 1

Request: Approval of a Variance from Section 2.3.26.3 (g) and Section 10.4.4 of the Baldwin County Zoning Ordinance as it pertains to wetland buffer to build a single-family dwelling.

Location: The subject property is located 12550 County Road 1 in Fairhope, AL in Planning District 26.

d.) Case No. ZVA23-78, Garrett Property, 27033 Hall Rd

Request: Approval of a Variance from Section 4.2.5 of the Baldwin County Zoning Ordinance as it pertains to the front and rear yard setback requirements to allow for a single-family dwelling.

Location: The subject property is located at 27033 Hall Rd in Loxley, AL in Planning District 15.

Attachments: Within Report:

6. Old Business
7. New Business
8. Adjournment

To view maps/plats in higher resolution please visit the ‘Upcoming Items’ Planning and Zoning webpage”

<https://baldwincountyal.gov/departments/planning-zoning/meeting-agenda>

<p style="text-align: right;">Page 1</p> <p>AUDIO TRANSCRIPTION FOR BALDWIN COUNTY BOARD OF ADJUSTMENT NUMBER ONE. September 19, 2023 Board of Adjustment Meeting</p> <p>The following audio filed was transcribed by Lydia Egan on the 10th day of October, 2023.</p>	<p style="text-align: right;">Page 3</p> <p>1 MR. BRAGG: Second. 2 MR. ALLEN: All in favor of previous minutes 3 being passed say aye. 4 (All board members say aye.) 5 MR. ALLEN: All right. And do we have any 6 announcements? 7 MR. KING: Yes, sir, Mr. Chairman. I'll 8 deliver the preamble as we have been utilizing in 9 several meetings recently. And so Mr. Chairman, board 10 members, and so we have many citizens that may have been 11 -- this may be their first time attending one of these 12 meetings, at least at the county level. What we'll do 13 is go through a meeting preamble to explain how the 14 meetings works, the procedures for the meeting. 15 And so first of all, the, this board is -- 16 this board authority's only occurs in the areas marked 17 in yellow on the map you see on screen. So the Board of 18 Adjustment only has authority in the portions of Baldwin 19 County where the citizens have enacted zoning. The 20 white areas of the county are unzoned. The green areas 21 are within city limits. So we're dealing with the 22 yellow areas. 23 First of all, we ask everyone to please</p>
<p style="text-align: right;">Page 2</p> <p>1 MR. ALLEN: Can I get a roll call, please. 2 MS. SECRETARY: Mr. Guffy? 3 MR. GUFFY: Here. 4 MS. SECRETARY: Mr. Allen? 5 MR. ALLEN: Here. 6 MS. SECRETARY: Ms. Hope? 7 MS. HOPE: Here. 8 MS. SECRETARY: Mr. Bragg? 9 MR. BRAGG: Here. 10 MS. SECRETARY: Ms. Frost? 11 MS. FROST: Here. 12 MS. SECRETARY: Ms. Black? 13 MS. BLACK: Here. 14 MS. SECRETARY: Mr. Stejskal? 15 MR. STEJSKAL: Here. 16 MS. SECRETARY: Mr. Ward? 17 MR. WARD: Here. 18 MS. SECRETARY: Chairman, you have the 19 courtroom. 20 MR. ALLEN: Okay. Can I get a motion for 21 previous minutes? 22 MR. GUFFY: So moved. 23 MR. ALLEN: Okay. Can I get a second?</p>	<p style="text-align: right;">Page 4</p> <p>1 silence or turn off any of your phones or other devices 2 that may ring during the meeting. This board follows 3 Robert's rules of order. That is our parliamentary 4 procedure. And Mr. Allen is the chair and officiates 5 this meeting. And when citizens come to the podium in 6 the center of the room, make certain that all your 7 comments are addressed to the chair. 8 I will say very briefly here that this is 9 certainly not a complaint department for general topics. 10 But we advise any citizens that if you have other issues 11 or other matters for which planning and zoning needs to 12 address, by all means please email those to 13 planning@baldwin.gov. 14 We mentioned this before our board of 15 adjustment meetings because oftentimes, sometimes the 16 discussion may cross over into areas not relevant to 17 board of adjustment. So that's why he gives this 18 preamble message here. Any type of zoning issue, any 19 type of subdivision issue, certainly use that email 20 address. 21 So in terms of this board and what it does 22 the function of this board of adjustment is to consider 23 variances and appeals. Now, today we only have one item</p>

1 on the agenda which happens to be an appeal. Appeals
2 are much more rare as opposed to variances.

3 The meeting itself will operate as you see
4 on screen. Each case is presented by a Baldwin County
5 planning and zoning staff member. Mr. Brown will be
6 presenting today's case. That may take several minutes.

7 Then, once the -- once the staff member has
8 continued, has finished presenting the case, the board
9 may question the staff member for several minutes.
10 After the board is satisfied that they've questioned
11 staff member about the presentation, the chair will open
12 a public hearing and invite anyone that's registered to
13 speak.

14 And so everyone passed by a table at the at
15 the lobby of this meeting hall and were presented the
16 opportunity to register to speak. If you did not
17 registered to speak and do not wish to speak, we just
18 ask everyone to please refrain from shouting or speaking
19 aloud. If you change your mind and do wish to speak,
20 please go back to the lobby and fill out the forms.

21 Ms. Bates, who is sitting up here at the
22 front table, can take those forms and deliver them to
23 the chair if you desire to speak. During staff's

1 do before I start this case, we have a timer that we're
2 going to use for public comments today. We limit those
3 comments to three minutes. That's at the chair's
4 discretion how that's going to work is when it comes
5 time for public comments --

6 MR. ALLEN: Michael, could you speak up just
7 a little for us?

8 MR. BROWN: Oh, I'm sorry. When it comes
9 time for public comments, I'll place a timer on the
10 screen that will look something similar to that. Now,
11 to give everybody a quick example of what that's going
12 to sound like, I'd have a two second quick timer, and
13 this is what you'll hear when your three minutes is up.
14 So again, I'll put that timer on the screen when we open
15 for public comments.

16 All right. So as I said, this is case
17 AAD23-004. This is an appeal of an administrative
18 decision and the issuance of a notice of violation.
19 This is in planning district 8. The property is zoned
20 rural agricultural, and as you can see on the screen,
21 this is the parcel ID and the pin for the property.

22 This is approximately 8.5 acres. It's
23 located at 19800 Boothe Road which is approximately one

1 presentation, you will have some time to do that if you
2 reconsider and wish to address the board. And then this
3 is the date of our next meeting.

4 Mr. Chairman, a couple of additional
5 announcements to go along with the preamble here.
6 Normally, Ashley Campbell is with us personally in
7 attendance at these meetings. She could not be here
8 with us personally today, but because of the complicated
9 nature of the case before us today, Ashley is joining us
10 via Webex. So when we wish to ask Ashley to address the
11 board, we may have to help her and make sure she can
12 hear.

13 Also Mr. Joey Koptis with USDA is also
14 joining us with Webex. And so there's an additional
15 microphone on the podium to try to help them hear, but
16 we may have to work with them during the meeting so be
17 aware of that. And with that, Mr. Chairman, I'll turn
18 it back over to you to hear today's case.

19 MR. ALLEN: Okay. We can go ahead and move
20 forward with today's case.

21 MR. BROWN: So good afternoon board, members
22 of the public. My name is Robert Brown. I'll be
23 presenting case NAAD23-004. The one thing I'd like to

1 block east of Greeno Road and north of Twin Beech Road.
2 The owner is William and Danielle Bolton, and the
3 applicant in this case is William Bolton.

4 As you can see here from the locator map,
5 the property is located in Fairhope and, like I said,
6 it's one block, approximately, east of Greeno Road and
7 north of Twin Beech. Now, this property is surrounded
8 on three sides, the east, the west side, and the north
9 side by the city limits of Fairhope. And those are
10 subdivisions. It's the Song Grove subdivision to the
11 east and to the north, and then the Belle Chase
12 subdivision across the street to the west. South of the
13 property is county property zoned rural agriculture.

14 So the background and summary on this case
15 was planning and zoning received a complaint from a
16 citizen in Song Grove subdivision. We staff visited the
17 property and discovered that there was indeed land
18 disturbance activities that were occurring on the
19 property. So a stop work order was placed on the
20 property, and subsequently a notice of violation was
21 sent to the owner.

22 The appellant asserts that the disturbing
23 activities are related to agriculture. However, the

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1 appellant was unable to provide staff with a qualifying
 2 exemption provided by USDA/NRCS. In subsequent emails,
 3 the NRCS communicated to staff that the property is not
 4 cropland and is not participating in any USDA/NRCS
 5 programs that would allow it to be exempt from the
 6 provisions of the zoning ordinance.

7 So we're asking that there were no issues,
 8 there were no errors committed in issuing the NOV or the
 9 administrative decision, and we recommend that this
 10 case, the administrative be upheld and the appeal be
 11 denied. Now, in the subsequent slides we're going to
 12 dive into a little bit of the details of this, and there
 13 are some overlaps. This, agreeably, is several things
 14 going on.

15 The first thing I want to show you is the
 16 Baldwin County generalized wetlands map. And what you
 17 see cross-hatched there is off the parcel viewer from
 18 the revenue and that shows the potential wetlands.
 19 Those potential wetlands are coming from the northeast,
 20 transiting the property approximately to the southwest,
 21 and that's important. You'll see that over and over.
 22 You can see the property there is being wooded and
 23 adjoining to the Song Grove subdivision.

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1 this case is sub c which is agricultural activities. So
 2 agriculture activities is defined -- and I put that on
 3 the screen -- section 22.2. I won't read that in its
 4 entirety -- but agricultural purposes including farming,
 5 dairy, and pastures, etc. would be a qualifying
 6 exemption that the property owner would not have to get
 7 a land disturbance permit from Baldwin County to do
 8 those activities in those upland areas.

9 Now, we move on to the wetland areas, the
 10 potential wetland areas on the property. Section 10.4.4
 11 of the ordinance comes into play. 10.4.4 covers
 12 jurisdictional wetlands. And that has a setback, a
 13 stream wetland setback of approximately 30 feet. If
 14 there is a stream, it's top of the bank of the stream.
 15 If the stream's within a gully, it's the top of bank of
 16 the gully. So that again is if it is a jurisdictional
 17 wetland.

18 If it is not a jurisdictional wetland and it
 19 is an existing storm water management area, which we
 20 will cover in depth in a minute, that would include
 21 hydric soil areas, existing water features, ditches,
 22 etc. That comes with a 5-foot non-disturbed buffer.
 23 Now, you can do land disturbing activities

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1 So the applicability of the zoning ordinance
 2 to this particular piece of property. There are
 3 potential uplands on this property, as you can see in
 4 the northwest corner as well as in the southeast corner.
 5 And you can again see the potential wetlands that are
 6 transiting from the northeast to the southwest.

7 So in the upland areas, the ordinance that's
 8 applicable to them is 13.12.2 and 13.12.8. We'll
 9 discuss those in depth on the next slide. In the
 10 potential wetlands areas, the ordinance that applies to
 11 them comes out of section 10.4. That would be
 12 specifically section 10.4.4, 10.4.5, and 10.4.7. And
 13 again, we'll discuss those at length as well.

14 So in the upland areas, and again those are
 15 the two pockets in the northwest part of the property
 16 and in the southeast part of the property, 13.12 which
 17 discusses -- which covers land disturbance activities is
 18 required if you're disturbing more than 500 square feet,
 19 if you're doing land disturbance greater than 25 square
 20 feet within a wetland buffer or any disturbance no
 21 matter the size in an actual wetland.

22 Now, there are exemptions for that, and that
 23 comes in under 13.12.8. And the relevant exemption in

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1 in that if you apply for a permit, and you have a
 2 licensed engineer that provides storm water calculations
 3 and shows that they can replace it with a comparable
 4 storm water management system that will keep that water
 5 moving through and won't obstruct it.

6 Now, there are exemptions to both of those
 7 and that is 10.4.7, and the relevant exemption is sub e.
 8 And that says agricultural operations will be exempt
 9 from this section so long as all Food Security Act
 10 provisions administered by the USDA are being met.

11 Now, to expand on that just a little bit,
 12 there is a memorandum of understanding between the USDA,
 13 the NCRS, and the Corps of Engineers, that is the
 14 USDA -- it was signed April 5th of 2022, that
 15 memorandum. And basically, jointly, if you're -- if you
 16 are meeting the provisions of that Food Security Act,
 17 those wetland are protected through that joint agreement
 18 between those two agencies.

19 So we'll move on to the permitting process.
 20 So if you are trying to do land disturbance activities
 21 in that potential wetlands, the very first step is you
 22 would have a wetland assessment or delineation performed
 23 by a wetland professional. Staff can't perform that

1 delineation, and we can't determine those boundaries,
2 nor can the property owner. An independent third party
3 wetland delineator or, you know, specialist will come in
4 and do that.

5 The wetland boundaries will be flagged on
6 the site, and then a map will be created. That map that
7 was created by the wetland professional will then be
8 uploaded as part of the permit application, the required
9 buffers will be established based off the determinations
10 of what wetlands exist, if any, by that wetland
11 professional.

12 Now, if work is to be permitted inside of
13 that established buffer, then a variance, which we're
14 all familiar with, would be required or remediation
15 would be required to restore that area back to what it
16 was.

17 So just for a little background information,
18 this is the USGS map from 1944. And you can see the
19 approximate location of the property. And you can see
20 that in 1944 they show an existing storm water
21 conveyance. And again, it is showing the same running
22 from the northeast to the approximate southwest.

23 This is the USGS website with their national

1 Now, these are photos taken of the property
2 during the site visit, the initial site visit on July
3 27th. You can see the stop work was posted. That's in
4 the picture on the left. And the picture on the right,
5 you can see a trail going through the trees of what
6 appeared to be a stream, a ditch, something of that
7 nature.

8 On the next slide, you can see the stream
9 running through the property. Now, these pictures are
10 the same thing. One is just zoomed in a little more
11 than the other. So on the first picture on the left,
12 you can see that there is land disturbance activity
13 happening on the bank of that stream.

14 On the picture on the right, you can see
15 there is standing water on the bottom of that stream.
16 So that's what led us to issue the stop work because
17 that was what looked to be in violation of either 10.4.4
18 or 10.4.5, and that's why stop work was posted on the
19 property until a determination would be made.

20 A notice of violation was issued to the
21 property owner. It was mailed and sent by email, you
22 can see on August 8th, as you see on your screen. The
23 nature of the violation was performing work on a zoned

1 wetlands inventory map, and you can see the property
2 location there. And, again, you can also see that
3 stream running from the northeast to the approximate
4 southwest. So this is the plat for the Song Grove
5 subdivision. And as you look on this, you'll see
6 highlighted in green, you'll see the appellant's
7 property. And please note that is not part of the Song
8 Grove subdivision. It is merely adjacent to it.

9 Now, following in what I've been saying, the
10 northeast to the southwest, you can see in the common
11 areas highlighted in yellow on that plat, that existing
12 storm water management site. You can also see where
13 I've expanded that and line that up, the tension and
14 common areas of the Song Grove subdivision. That runs
15 onto the appellant's property.

16 Now, this is a Google street view of that
17 wetland detention pond off Whittier Street. We're
18 looking approximately east here at the pond. The
19 appellant's property is back behind that pond. And now
20 we're at the same location on Whittier street, and we're
21 looking east. And you can see that storm water
22 management channel draining to that pond through that
23 subdivision.

1 property without the required land disturbance, and the
2 cure for that violation was to complete a land
3 disturbance application in accordance with 13.12.2. And
4 I will explain that in just a minute. 13.12.2 is the
5 mechanism that we use to process land disturbance
6 activities in a wetland area under 10.4.4.

7 So the appeal that was entered into the
8 system and given to us by the appellant basically says
9 -- you can see I've zoomed it up -- "I purchased the
10 land and am preparing it for pasture. The county issued
11 a notice of violation, the copy attached. I have not
12 violated ordinances. My property is exempt from the
13 ordinances the county alleges I violated. See the
14 attached email chain for my reasons and the admission by
15 the county. I am not in violation."

16 The appellant's requested action is that the
17 board find that he has not violated any ordinances and
18 that he is not required to apply for or have a land
19 disturbance permit and order the county to withdraw the
20 notice of violation.

21 So the next four slides are going to
22 snippets from the appeal that was filed by Mr. Bolton.
23 The first snippet goes to one of the very first emails

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1 between the NRCS and the applicant. In this, the NRCS
 2 was trying to explain what is cropland that is exempt
 3 from the ordinance, what meets the provisions of the
 4 Food Security Act.
 5 Now, I did not highlight this. These are
 6 highlights that were in the appeal. These are taken
 7 directly from it. The last sentence in that says, "This
 8 is cropland that was annually tilled prior to 1985."
 9 Now, that sentence caused some confusion which we'll
 10 clear up in just a minute.
 11 That sentence is explanatory to the
 12 statement before that says, "Prior converted cropland is
 13 an exemption afforded by the Food Security Act of 1985.
 14 This is cropland that was annually tilled prior to
 15 1985."
 16 In a subsequent email, we tried to get some
 17 clarification from that, and you can see from NRCS, they
 18 state in a subsequent email that this land is not that.
 19 This land was not cropland that's been annually tilled
 20 to produce a commodity.
 21 We had another email that came in through
 22 the NRCS where we were trying to explain it again. And
 23 the NRCS again says his property is not cropland and

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1 therefore does not meet any provision.
 2 So the final email that I've included in
 3 here is from our director back to the property owner
 4 explaining that from the NRCS's standpoint, simply
 5 having a farm number does not trigger the protections
 6 from the exemptions from the Food Security Act and
 7 requesting, provide us an email from the NRCS stating
 8 that you are exempt.
 9 So this is a historical aerial photo from
 10 the University of Alabama archives. This is from 1974,
 11 and you can see in this the property is fairly wooded.
 12 And again, if you look up to the northeast corner, you
 13 can see that stream again transiting the property. This
 14 is the 1997 aerial showing that that property is still
 15 wooded, is not being used for cropland.
 16 The property owner got, enlisted Wildlife
 17 Solutions to come to the property and do an assessment
 18 of the property. This is their letter here. There's
 19 two snippets in the letter that I'm going to bring
 20 forward.
 21 The first snippet says typically in these
 22 situations, they'll provide the land owner with a map
 23 indicating the run of the drainage across their property

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1 by surveying points along the top of this bank. That
 2 again goes back to what I said earlier with the
 3 permitting requirements. They provide survey points and
 4 they provide a map, and that's what Mr. McCool here with
 5 Wildlife Solutions is talking about.
 6 They also go on to say that he doesn't feel
 7 this is jurisdictional wetland, but it does have an
 8 excess to what the Corps considers waters to the U.S.
 9 and thus subject to some regulation. And again that
 10 could either be 10.4.4 or it could be 10.4.5 storm water
 11 management, and that's a determination made by
 12 specialists, not staff.
 13 The last snippet out of that letter that I
 14 wanted to bring was, he said, "The second biggest factor
 15 for the property is that you said it would be used for
 16 livestock, particularly horses. That being the case,
 17 you'd be exempt from most regulations, but you'll need
 18 to register with the NRCS." So that again alludes back
 19 to that joint agreement between the USDA, NRCS, and the
 20 Army Corps of Engineers.
 21 So part of their protections, that's their
 22 water and natural resource protections memorandum, is
 23 what I talked about earlier. And what they do is they

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1 work with property owners. If they want to build a
 2 pond, they look at what they're doing on the property,
 3 and they help them build a pond sized to whatever
 4 livestock they need. If they have four head of cattle,
 5 they help them design a pond that would accommodate and
 6 not be oversized or undersized.
 7 That's why the protections are pulled away
 8 from the ordinance and given back to Corps of Engineers
 9 and to the NRCS. Because those protections shift from
 10 the county to that joint agreement.
 11 So the last email I'm going to present to
 12 you is an email that I got from NRCS from Joey Koptis
 13 who's here with us today via Webex, and he can expand
 14 upon this if you have questions for him. In his email
 15 he attached several vintages of aerial photography for
 16 that eight-acre tract.
 17 He also goes on to explain that after
 18 talking with the executive director for Baldwin County,
 19 they couldn't find any historical farm records on file
 20 with the NRCS and that there was no prior agriculture
 21 history on this parcel on file with their office. And
 22 traditionally, if there was a production history on this
 23 piece of property, there would be a record on file with

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1 their office.
 2 The snippet out of that is very telling.
 3 The NRCS basically says regardless of historical
 4 agriculture production on this parcel, there are no
 5 exemptions granted for wetland disturbance by our
 6 agency.
 7 So these are the aerial images that were
 8 sent by the NRCS. You can see on the left is an aerial
 9 image from 1955. On the right is an aerial image from
 10 1981. Then you can see 1996 on the left, 2001 on the
 11 right. These show the property as wooded. You can see
 12 on the left is 2005, on the right is 2009. And then
 13 we're getting into the current photography, which is
 14 2013 and 2021. You can see that this property is wooded
 15 and has been historically wooded.
 16 These are the relevant section out of the
 17 ordinance 10.4.4 which I've already discussed earlier.
 18 The only extra thing that's added onto to this is when a
 19 jurisdictional determination is deemed necessary due to
 20 a disagreement about the existence of wetlands, the
 21 planning director, in lieu of a jurisdictional
 22 determination by the Corps, can accept a second wetland
 23 or stream delineation prepared by a professional wetland

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1 delineator who is not affiliated with the first one.
 2 These are sections 10.4.5 and 10.4.7, the
 3 existing storm water management and the exemptions, the
 4 agriculture exemptions. We have received letters and
 5 emails. These are two letters, one letter, one email,
 6 from citizens that were concerned about this property.
 7 You have copies of these given to you as well as they
 8 are in the public realm.
 9 We have two letters from the Song Grove Home
 10 Owners Association and one from the Fairfield Place Home
 11 Owners Association. You have copies of those as well
 12 and those have been put out in a public folder on our
 13 website.
 14 This, again, is the summary and the
 15 recommendations. I'm not going to go through this
 16 again, but basically in all of this, staff feels there
 17 were no errors committed in issuing the notice of the
 18 violation or the administrative decision, and staff
 19 recommends for case AAD23-04 the administrative decision
 20 be upheld and the appeal be denied.
 21 And with that I'd be happy to answer any
 22 questions you might have or go back to any slides you'd
 23 like to see again.

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1 MR. ALLEN: Okay. What we're going to try
 2 to do here is that I see we have quite few people that
 3 would like to speak as well. So what we're going to do
 4 here is we're going to open it up for not the public
 5 hearing just yet, but I'm going to ahead and just let
 6 staff and the boards members if they have any questions
 7 to each other, take about maybe ten minutes for
 8 discussion for that.
 9 And then we will go ahead and maybe move to
 10 the public hearing. And then maybe take about an
 11 additional about fifteen minutes to let the applicant
 12 have questions for board members. And then from there,
 13 we'll go ahead and have comments from everyone else.
 14 The additional comments from everyone else,
 15 I ask that the board members don't necessarily have any
 16 questions for them, that all the questions would be
 17 reserved for the applicant, Mr. Bolton, when he gets
 18 ready to come up. Not just yet.
 19 So if we could, kind of, move forward like
 20 that, to try to have, you know, try to keep this thing
 21 on a time schedule here. So if there is any questions
 22 for staff that the board has, we can go ahead and
 23 address that now.

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1 Okay. So we don't have any questions for
 2 staff. So we can go ahead and open up the public
 3 hearing, and we can go ahead and ask Mr. Bolton to come
 4 if you have any questions for Mr. Bolton.
 5 MR. SPEEGLE: Mr. Bolton will speak --
 6 MR. ALLEN: Okay. Well --
 7 MR. SPEEGLE: If you don't mind, I'll go
 8 ahead.
 9 MR. ALLEN: Okay.
 10 MR. SPEEGLE: And --
 11 MR. ALLEN: And you --
 12 MR. SPEEGLE: Jerry Speegle.
 13 MR. ALLEN: Okay. I have your name here
 14 too.
 15 MR. SPEEGLE: These books. Let's see --
 16 two, four, six. Unfortunately, I thought there were
 17 only going to be five board members; so I apologize.
 18 MR. ALLEN: That's okay. And I ask the
 19 board members to try and keep their questions short.
 20 MR. SPEEGLE: As I said, I'm Jerry Speegle.
 21 I represent Mr. Bolton and Danielle, his wife. I've
 22 given you a binder, and I expect that you'll do just
 23 like everyone else including myself when you're handed

1 something to read, you'll start reading it. And you're
2 welcome to read the first few pages if you like before I
3 start speaking. I put a together a statement of our
4 case, but, Mr. Allen, whatever the board prefers.

5 This is -- there's certainly some factual
6 errors that we'll point out, but these ordinances are
7 very specific. And one of the issues that I'll address
8 is whether Baldwin County and the Corps has any
9 jurisdiction over this property right now because our
10 position is they don't.

11 From the recent Sackett case, which is
12 alluded to in the email stream which I attached to the
13 appeal which essentially says there's got to be
14 continuous running water -- and I think the statement is
15 -- let's see. It's got to be the waters of the U.S.,
16 which has to be for the Corps or the county, to have
17 jurisdiction is that -- and this Sackett case came out
18 and the EPA, well, really the Corps, just changed their
19 regulations to make it clear that only tributaries of
20 water, waters that are relatively permanent standing or
21 continuous flowing bodies of water and with a continuing
22 surface connection to those waters are subject to
23 federal jurisdiction.

1 There's a ditch on this property. There's
2 no stream. What you were shown on the pictures up there
3 is not on this property, if, in fact, there is a stream
4 out there. There's no stream on this property.

5 There's a ditch that was dug, you can see by
6 the affidavit we submitted which you can check, from a
7 gentleman whose family owned the property prior to 1985.
8 They dug a ditch. It's dry right now. Mr. Walton will
9 testify about that. Mr. Walton -- Mr. Bolton, excuse me
10 -- Mr. Bolton talked to Ashley Campbell who told him and
11 agreed that the ditch is dry.

12 This isn't any storm water management area.
13 This is wooded. It was -- if you look at the -- it went
14 pretty quickly, but we've attached as Exhibit 11, I
15 believe. This property was farmed prior to 1985. And
16 what Mr. Bolton wants to do is clear part of it, plant
17 it with grass, and put his horses on there and some
18 other livestock. And that's agricultural use.

19 Let me start at the beginning. The county
20 says that Mr. Bolton violated section 10.4.4. And I've
21 stated that in my statement of the case and you see it
22 so out there. And it says that the non-disturbed
23 setback for development from a jurisdictional wetland or

1 stream must be a minimum of 30 feet.
2 First of all, there's no development here.
3 He's just clear cutting the brush out, and he's going to
4 plant grass ultimately. But all he's done right now to
5 get this issue, the notice of violation issued, is he
6 cut out some of the brush. That's all that's happened
7 so far. Was the land the ground disturbed a little bit?
8 Sure it was. But there's, this is not a development.

9 10.4.4 in the previous version of the
10 ordinance had to do with subdivisions. The county has
11 changed this ordinance somewhat. But there's no
12 development in the sense there's nothing going to built
13 there, there's no structure, there's no house, no
14 parking lot, none of that.

15 And it says from a jurisdictional wetland or
16 stream. The -- if you look at the article 22 of the
17 land use ordinance, a jurisdictional wetland, which is
18 what it's referred to in 10.4.4, is a wetland area
19 that's regulated by the U.S. Army Corps of Engineers.

20 I don't think that Mr. Brown will dispute
21 that there's no part of this property that's subject to
22 the Corps of Engineers auspices now. There's not
23 continuous running water that goes to an ancillary water

1 body for navigable water of the U.S. It's just not.

2 That's what Sackett did. It said you guys
3 at EPA and the Corps have been telling people what they
4 can do with their property for years, and you can't do
5 that anymore because it doesn't have anything to do with
6 navigable waters.

7 And there's a ditch here. And there's no
8 free running water. It's dry right now. So to even get
9 to 10.4.4, there has to be a jurisdictional wetland.
10 There is none.

11 The next reference is to 10.4.5, existing
12 storm water management area. Once again, there's no
13 existing storm water management area here. There's --
14 on some property -- not here but in one of the
15 subdivisions, there's a detention pond. This ditch --
16 and Mr. Bolton will tell you about this -- that ditch
17 doesn't run into that detention pond. It's not built in
18 that. So there's no existing storm water management
19 area.

20 And in that statute, ordinance 10.4.5, it
21 says that there's -- let me look, actually, turn to it
22 so to give you the exact -- where development -- this is
23 10.4.5. Where development is proposed --

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1 MR. ALLEN: Which tab are you?
 2 MR. SPEEGLE: Pardon me?
 3 MR. ALLEN: Which tab are you?
 4 MR. SPEEGLE: Oh, I'm sorry. Exhibit --
 5 it's Exhibit 6 is -- our Exhibit 6 is the article 10
 6 which has the -- and it's probably about six, seven
 7 pages over. It's page 136 at the bottom right.
 8 It says, "Where development is proposed,
 9 that will result in the filling of existing storm water
 10 management area." There's no proposal here to fill in
 11 that ditch. I don't know why 10.4.5 would even apply.
 12 Mr. Bolton has no intention, and never has, and he
 13 hasn't filled in the ditch. And he has no intention of
 14 filling in the ditch. So 10.4.5 doesn't apply.
 15 The next thing that the department said is
 16 that 13.12.2 says you have to get a land disturbance
 17 permit. However, and they noted in their submission to
 18 the board, that 13.12.8c exempts this property if it's
 19 for agricultural purposes. And I'm not sure I included
 20 that. They did include it in their presentation.
 21 And to find the definition of agricultural
 22 purposes, it's in article 22. And it's our exhibit --
 23 let's see -- our exhibit -- let me see -- our Exhibit 5.

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1 So the extension under section 13 is for any
 2 agricultural use. And the ordinance defines
 3 agricultural. Agricultural use is the use of land for
 4 agricultural purposes including farming, dairy,
 5 pasturage, agriculture, horticulture, and animal
 6 poultry, husbandry.
 7 And Mr. Bolton's been consistent. He's
 8 clearing this brush to plant grass for his horses and
 9 maybe some other animals, but that's clearly
 10 agricultural. And section 13 provides an exemption, a
 11 clear exemption, from having to get a land disturbance
 12 permit for agriculture.
 13 Why? Because every time a farmer went out
 14 and tilled the ground, more than 500 square feet, they
 15 would have to come and get a land disturbance permit.
 16 There's no reason for them to do that. And that's why
 17 the ordinance, your ordinance in the county, says you
 18 don't. You're exempt from getting a land disturbance
 19 permit if it's for agricultural purposes.
 20 The -- you see on page 17 of the what was
 21 presented by the department, there's, it appears to show
 22 a stream here. I propose to you, there's no stream
 23 there. I'm not sure where this photo came from. But

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1 this stream, if there is one there, is not on
 2 Mr. Bolton's property.
 3 There was discussion about potential
 4 wetlands. Well, the reason the county and the Corps
 5 doesn't have jurisdiction of this property is for
 6 purposes of wetlands is because it doesn't qualify now
 7 after Sackett as a wetland because there's no continuous
 8 running water across it, but also there are no wetlands.
 9 And the department knows it because in their
 10 package is the letter from JJ McCool, who is a certified
 11 biologist. While there are some excerpts from his
 12 letter, what he says is there are no wetlands here.
 13 There's already been a wetlands delineation. There's
 14 nothing here to indicate there are wetlands.
 15 He does mention Sackett's case. And when
 16 Sackett comes out, there may be no jurisdiction over
 17 this anyway. But he's looked at the soils and the, the,
 18 the flora and there's, there's no wetlands there. So
 19 there are not potential wetlands. It's been determined
 20 there are no wetlands on this property.
 21 So simply put, when Mr. Brown sent the
 22 email, which we attached to the appeal, from August 11th
 23 saying, "We're willing to lift our stop work order for

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1 land disturbance development to agriculture operations
 2 more than 30 feet from the top of the stream channel,"
 3 -- there's no stream; there's a ditch -- "upending the
 4 forthcoming guidance from the USACE," which is United
 5 States Corps of Engineers, which is now come out.
 6 "However, because no formal delineation has
 7 been completed to map the jurisdictional and
 8 non-jurisdictional areas on the site," -- that's been
 9 done by the Corps. It's not jurisdictional wetlands and
 10 Mr. McCool said the same thing -- "you and Mr. McCool
 11 will continue to bear full responsibility for any land
 12 disturbance that occurs within the 30-foot buffer."
 13 I propose to you there is no 30-foot buffer
 14 because there are no jurisdictional wetlands. "And in
 15 either case," he says at the end, "this blue line stream
 16 is a storm water management feature protected by
 17 10.4.5." It may be protected, but it just says you
 18 can't fill it in. And Mr. Bolton hasn't filled it in,
 19 and he doesn't plan to fill it in.
 20 Don't know why there's still a notice of
 21 violation out there. The county doesn't have
 22 jurisdiction to, this is not a jurisdictional wetland.
 23 And as far as section 10.4.5, there's no fill there.

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1 And in article 13, there's clearly an exemption for
 2 agricultural use, which is all Mr. Bolton is doing.
 3 I'm glad to answer any questions, and I
 4 think Mr. Bolton can give you some more factual
 5 background because he's the one that's over there with
 6 the property. It's his property, and he knows what's
 7 going on the property.
 8 MR. BRAGG: Did you bring the Corps of
 9 Engineers delineation map of the wetlands in that area?
 10 I saw Mr. McCool, but he's --
 11 MR. SPEEGLE: Well, the Corps doesn't do
 12 that.
 13 MR. BRAGG: They do have maps of the
 14 wetlands.
 15 MR. SPEEGLE: Well, they do have it, but
 16 there's no map. And right now, after Sackett --
 17 MR. BRAGG: There is a map of Baldwin
 18 County.
 19 MR. SPEEGLE: They could have, but Sackett
 20 did away with all that. Those wetlands delineations are
 21 invalid now. I mean, we included as the new -- let me
 22 find it. Sorry. I just put all this together this
 23 morning. Should be more familiar.

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1 It's Exhibit 10. It's an excerpt from the
 2 Federal Register September 8, 2023 and discusses the
 3 Sackett decision. And then the actual changes in the
 4 regulations are on page -- let's see. I think the sixth
 5 page over. It changes the definition of waters of the
 6 U.S., as I said. Start, "It's got to be relatively
 7 continuous, permanent, or standing flowing bodies of
 8 water and with a continuous surface connection to these
 9 waters, which are navigable waters."
 10 So I'm not sure if that answers your
 11 question, but it doesn't matter what the, from my point
 12 of view, what Corps may have done in the past with
 13 wetlands delineation maps. They aren't valued anymore
 14 under their new definition. They haven't redone the
 15 maps.
 16 And Mr. McCool has, he's a certified
 17 biologist, and that's who goes out when there's a
 18 potential wetland and makes a determination of whether
 19 they're jurisdictional wetlands. And he made that
 20 determination and said there was none before the
 21 application even of Sackett.
 22 I know it's a whole lot of information to
 23 drop on you at once.

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1 MR. BRAGG: Not so much information. I
 2 think you're asking something we don't have the ability
 3 to change. You questioning whether Baldwin County as a
 4 planning district has the right to make the requirements
 5 that rule agricultural land and the Corps of Engineers,
 6 if you got somebody else, the environmentalist that said
 7 that it's not wetlands. I don't know where it puts us.
 8 MR. SPEEGLE: Well, my answer to that
 9 question is you've got a county department that has
 10 issued a violation, and it's dependent on there being
 11 jurisdictional wetlands. And nothing you've heard from
 12 the department this afternoon is a conclusion that there
 13 are wetlands.
 14 And you can read the Corps's, you know, new
 15 statement on its, in Federal Register, where they
 16 propose the new regulations. Under 10.4.4, unless
 17 they're jurisdictional wetlands, that's, that ordinance
 18 doesn't apply.
 19 And then 10.4.5, unless you're filling in
 20 the ditch, we're not saying that you, that's even --
 21 there's more to it than that. There's no development
 22 and so forth. But just simply, there's been no filling
 23 of the ditch which the department says is a free flowing

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1 stream. There's been no -- so 10.4.5, there's been no
 2 violation of that.
 3 So what we're saying is there's been no
 4 violation of 10.4.4, there's been no violation of
 5 10.4.5, and there's been no violation of section 13. So
 6 that is what the appeal is for, and I believe this board
 7 has the authority to reverse the decision of the
 8 department and say there's been no violation.
 9 MR. WARD: Has the Corps ever come out with
 10 their final statement of what they were gonna -- not the
 11 Supreme Court. I'm talking about the Corps of
 12 Engineers. Because the last I heard, the people, the
 13 Corps had never finally decided how they were going to
 14 handle all this stuff.
 15 MR. SPEEGLE: Well, that's our Exhibit 10.
 16 MR. BRAGG: It's a proposed --
 17 MR. SPEEGLE: It's a proposed regulation.
 18 They're changing --
 19 MR. BRAGG: But that's a long way from being
 20 regulation.
 21 MS. BLACK: Well, it's proposed. That's the
 22 part --
 23 MR. SPEEGLE: But Sackett says -- the reason

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1 they changed it the way they did is because Sackett says
 2 you don't have any jurisdiction over wetlands unless
 3 it's continuous flow of water into a navigable waterway.
 4 And you haven't heard any evidence today, that there's a
 5 stream on this property.
 6 MR. KING: Mr. Chairman, may I intervene?
 7 So board members, I'll try to be very brief here and
 8 just say that we certainly respect Mr. Speegle and
 9 appreciate his commentary here and understand, you know,
 10 he's representing his client.
 11 What I would caution the board here is to
 12 make certain that we don't go too far out of this
 13 board's authority. We're here to determine whether or
 14 not staff appropriately handled the zoning ordinance.
 15 In terms of the Sackett case and the Corps
 16 of Engineers, those are federal agencies. They're going
 17 to follow their procedures. And the question here is
 18 that you have a zoned piece of property that contains
 19 potential wetlands. That triggers zoned land
 20 disturbance permit unless there is some exemption that
 21 can be demonstrated. We were not able to demonstrate an
 22 exemption that would not require a zoned land
 23 disturbances permit.

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1 So the question here is did we as staff
 2 properly do our job by issuing an NOV? Thank you,
 3 Mr. Chairman.
 4 MR. SPEEGLE: And we say there's error. And
 5 if you look at the email from Mr. Brown, I think he
 6 pretty well admits this probably isn't going to be
 7 jurisdictional wetlands anymore. If it's not
 8 jurisdictional wetlands, 10.4.4 doesn't apply. It can't
 9 apply because it a reference to that. And the ordinance
 10 defines jurisdictional wetlands as those areas
 11 designated by the Corps.
 12 And while you do have an proposed change in
 13 regulation, they're making that change because Sackett
 14 said they had to, that their current regulation was
 15 unenforceable and void.
 16 MS. FROST: And your argument is strictly
 17 based on this proposal that has not yet been officially
 18 accepted.
 19 MR. SPEEGLE: No. It's Sackett. Sackett,
 20 the U.S. Supreme Court said that. And the Corps is only
 21 changing it because the U.S. Supreme Court ruled that
 22 their regulations were unconstitutional. They have to
 23 change it. And they have to change them the way they

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1 are here.
 2 MS. FROST: Okay. Thank you.
 3 MR. SPEEGLE: At least.
 4 MR. GUFFY: I've got another question for
 5 you.
 6 MR. SPEEGLE: Yes, sir.
 7 MR. GUFFY: In going back in this, the
 8 reason that Mr. Bolton did not apply for a land use
 9 permit, certificate, whatever you want to call it, was
 10 he considered it agricultural. And I'm just trying to
 11 understand the thought process.
 12 He owns the property. The property is zoned
 13 rural agricultural in planning district 8. So if his
 14 reason for not applying for a land use permit was he
 15 considered it agricultural? That's a question. Is that
 16 why he didn't apply for one?
 17 MR. SPEEGLE: One of the reasons, yes. One
 18 of the reasons. And Sackett had come out.
 19 MR. GUFFY: Well, Sackett doesn't have
 20 anything to do with land use in this case. But is it in
 21 the permit, but he did not apply for a land use permit.
 22 MR. SPEEGLE: Well, if you go under section
 23 or article 13, yes. There's an exemption for getting a

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1 still disturbance permit for agriculture, and that's all
 2 he's doing was for agricultural purposes.
 3 MR. GUFFY: So was there any agricultural
 4 activities on the property prior to this disturbance?
 5 MR. SPEEGLE: He's been growing timber
 6 there. It's assessed for, as timberland -- excuse me.
 7 Yes. Yeah. I assume they've harvested at different
 8 times, but Mr. Bolton just bought the property.
 9 But before that there was -- and we've got
 10 the, the affidavit of Mr. Kessler who said his family
 11 farmed it before '85 and after '85. It was farmland.
 12 It hasn't been farmland in the sense of growing crops
 13 for many years though. I don't think there's any
 14 dispute about that.
 15 MS. BLACK: I have a question. So will
 16 there be a structure placed on this property for the
 17 animals put on this property?
 18 MR. SPEEGLE: Well, you can ask Mr. Bolton
 19 that, but right now, he's just trying to get the brush
 20 cleared out, the privet, so forth, and the briar so he
 21 can plant some grass.
 22 MS. BLACK: Okay.
 23 MR. SPEEGLE: And what, I think what we need

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1 to look at is not what's planned particularly, it's on
 2 the date the violation was issued, what had been done on
 3 the property. I think that's the issue.
 4 If he decides to go build apartments, he's
 5 going to have to come do something else, potentially. I
 6 would say if he's building apartments, but he's not.
 7 That's not what he did when he got issued the notice of
 8 violation.
 9 Mr. Bolton's a professional engineer. He's
 10 licensed in Alabama. I mean, he's, he's not unfamiliar
 11 with the regulations. Excuse me?
 12 MS. HOPE: What did you just say he was?
 13 MR. SPEEGLE: He's a professional engineer.
 14 Yes. Yes. And, you know, it's up to the board and
 15 maybe your counsel to decide what your authority is, but
 16 I represented Daphne Board of Adjustment for probably 20
 17 years. And I believe you have, clearly have the
 18 authority to reverse a decision of an administrative
 19 officer if it's an error, and that's our position today.
 20 MR. BRAGG: Well, besides all the about the
 21 wetlands delineation, the requirements a 3.2 under rural
 22 agriculture. I don't understand why he didn't go
 23 through that process and could get everything done, the

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1 the ditch is some kind of stream, which it's not, he
 2 didn't fill it. So he didn't violate 10.4.5 either.
 3 And his stated purpose is to grow grass and put horses
 4 out there, and under article 13, there's a clear
 5 exemption for agriculture for pasturage and husbandry of
 6 animals. So it's a clear exemption.
 7 You can't require people to subject
 8 themselves to restrictions on their property imposed by
 9 a land use department when there's no requirement of the
 10 ordinance. It might be convenient for some people, but
 11 if you don't have to do it, then a citizen shouldn't
 12 have to do it.
 13 The department at this point is trying to
 14 restrict the use of land based on a wetlands, possibly
 15 wetlands, when the United States Supreme Court has said
 16 there's no jurisdictional wetland here. I mean, it's
 17 just clear as a bell.
 18 MS. FROST: Well, it's not really clear as a
 19 bell. So we have one side telling us it is, showing us
 20 maps, and we have you telling us one thing. So what
 21 we're here to do is to determine whether or not they
 22 follow the process that is in place, which I think my
 23 peer down here was mentioning if you go through the

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1 permit and process.
 2 MR. SPEEGLE: I can't answer that question.
 3 I mean, we're here because it's been a notice of
 4 violation under 4.4 --
 5 MR. BRAGG: Well --
 6 MR. SPEEGLE: On article 4 and article 13.
 7 MR. GUFFY: I would say that's one of the
 8 things, as I said on this board, that's the one thing
 9 that happens in the process of getting that land use
 10 permit is all the things you walk through, those things
 11 are looked at, and if there are no wetlands, things
 12 proceed.
 13 But there's a process in which you go
 14 through by requesting that permit that -- I understand
 15 Mr. Bolton's the owner of the property, but you still
 16 got to follow that process.
 17 MR. SPEEGLE: And our position is there's no
 18 requirement of the ordinance that Mr. Bolton get a soil
 19 disturbance permit. There's no requirement. And there
 20 are no wetlands. So you can't apply 10.4.4 because
 21 there are no jurisdictional wetlands.
 22 And there's been -- on the date that this
 23 violation was issued under 10.4.5, even if you assume

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1 process, there is a step in that to prove if there is or
 2 is not jurisdictional wetlands.
 3 MR. SPEEGLE: I propose to you that
 4 Mr. Brown will not tell you that there are
 5 jurisdictional wetlands on this property.
 6 MS. FROST: I understand that, but this
 7 isn't a court of law.
 8 MR. SPEEGLE: No. But I believe you didn't
 9 hear that statement by the department because I don't
 10 believe they would say it. Because I don't believe
 11 they've read Sackett.
 12 And yes, it is not a court of law. I agree.
 13 But you do sit in a quasi-judicial capacity under case
 14 law. And you are to determine the law, and you are to
 15 determine the facts. And based on that, there are no
 16 wetlands here.
 17 And the only evidence you have from anyone
 18 qualified to delineate a wetland is Mr. McCool who said
 19 it's not wetlands. Even under the old definition. He
 20 specifically says that in his letter. This is not
 21 wetlands. And when the Corps comes out and follows
 22 Sackett, that's going to even be worse. In other words,
 23 there certainly aren't going to be wetlands here.

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1 MS. BLACK: Okay. So staff, what triggered
 2 this whole thing, the -- just a disturbance in --
 3 MR. BROWN: Yes, ma'am. There was a
 4 complaint called in from a citizen in the Song Grove
 5 subdivision -- I'm sorry. There was a complaint called
 6 in from the Song Grove subdivision, a resident there,
 7 that the land disturbance activities were taking place
 8 on this property. At that time we didn't know who owned
 9 the property. We didn't know what the activities were.
 10 So when staff arrived on site, we saw there
 11 were definite land disturbance activities, there were
 12 some trees had been removed, and there was what appeared
 13 to be an ephemeral channel, a ditch, a stream, something
 14 on the property that looked like a conveyance of water.
 15 A stop work order was placed on the property, and that's
 16 what began this process.
 17 MS. BLACK: Okay. And so Mr. Bolton was
 18 then notified of what was going on, and all he would
 19 have had to do was come in and file this land
 20 disturbance paperwork, correct?
 21 MR. BROWN: Yes, ma'am. That would have
 22 been the start to the process --
 23 MS. BLACK: Okay.

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1 MR. BROWN: -- was to begin that
 2 application.
 3 MS. BLACK: And from there, it would have
 4 triggered you guys to get --
 5 MR. BROWN: We would have looked for a
 6 wetland delineation or a wetland assessment which would
 7 determine if wetlands were on the property. Also one of
 8 the things we've talked about is section 10.4.5 is
 9 non-jurisdictional wetlands. That's water features.
 10 That's ditches. Those are things that are meant to move
 11 water. They are not necessarily a wetland as per what
 12 everybody's discussing, a federal jurisdiction wetland.
 13 MS. BLACK: And if whoever said person would
 14 have said, "Yes, there is one," or "No. There is not
 15 one," we would have pressed on. Like, none of this
 16 would be going on. Like, if there was one, then he
 17 would have to conform to whatever this engineer said,
 18 correct?
 19 MR. BROWN: Yes, ma'am. That is correct.
 20 MS. BLACK: And if they said there wasn't
 21 one, then he's free to do whatever he wanted to do with
 22 his property.
 23 MR. BROWN: If a wetland professional said

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1 there was not a storm water conveyance, there were no
 2 wetlands, there was nothing on the property, then he
 3 would exempted. Yes, ma'am.
 4 MS. BLACK: Okay. And now we're here.
 5 MR. SPEEGLE: And that's what Mr. McCool
 6 said. There are no wetlands.
 7 MR. BROWN: But, Rob, we would still have to
 8 have a zoned land disturbance permit, at least
 9 initially.
 10 MS. BLACK: Yeah. So.
 11 MR. BROWN: Yes, sir. And that would have
 12 determined whether wetlands or storm water system or
 13 something was on that property. And it would have been
 14 documented, and we would seen the professional reports,
 15 what Mr. McCool was alluding to when he said he would
 16 provide a map.
 17 MR. KING: So Mr. Brown and Mr. Chairman, if
 18 I may, it may be possible, but would it be possible had
 19 the zoned land disturbance permit process been carried
 20 and the wetland delineation showed whatever it showed,
 21 Sackett case or no Sackett case, that process would show
 22 whatever it would show. And then an initial, initial
 23 land disturbance occurred.

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1 But is it possible that going forward, land
 2 disturbance was done, was performed, whatever setbacks,
 3 whatever they may be were abided by, it's possible going
 4 forward that's once an agricultural use, land use was
 5 established, it may be possible that going forward there
 6 would be exemptions that would not require a land
 7 disturbance permit.
 8 MR. BROWN: Yes, sir. That is correct.
 9 MR. SPEEGLE: It's on page 31 of the
 10 department submission, when they say, "This analysis and
 11 it's finding are based on the wetland indication, the
 12 plant composition, hydric soils, and hydrology in
 13 consideration of the factors. It's apparent the
 14 property does not meet this requisites. Therefore,
 15 delineation is not warranted."
 16 I mean, it isn't even close if there are
 17 wetlands on this property. And our position is this.
 18 You can't require -- and that's what the U.S. Supreme
 19 Court said -- you can't require a home owner to come in
 20 and jump through all these regulatory hoops when you
 21 don't have jurisdiction, when you don't have any
 22 authority to do that.
 23 Sure you might say well, could Mr. Bolton

1 come in and confirm this is agricultural? He told those
2 people that this was agricultural. That's all you have
3 to do. He doesn't have to go in and file a bunch of
4 applications, wait for 30 days or 60 days or 90 days for
5 approval to do what he wants to do with his property.

6 And that's what essentially the Supreme
7 Court said is the Corps of Engineers, Department of
8 Interior, EPA, you've got to stop restricting use of
9 land.

10 MR. BRAGG: I think the problem is you
11 talked about a planning district, that you didn't go
12 through the requirements though.

13 MR. SPEEGLE: Well --

14 MR. BRAGG: And unfortunately the people
15 around you all voted to make that district 8 and what
16 the requirements are.

17 MR. SPEEGLE: But you're exempt from article
18 13 if it's for land disturbance, if you're agricultural.
19 You don't have to apply for land disturbance permit
20 under --

21 MR. ALLEN: Mr. Speegle.

22 MR. SPEEGLE: Yeah.

23 MR. ALLEN: We're kind of running long here.

1 MR. BOLTON: My name is William Walter
2 Bolton. I represent my wife, my two children,
3 Wilhelmina Rose and Emma Blue. They're five and three.
4 My wife drives every day to Alberta to ride her horses.
5 She is a generational farmer. Her maiden name is Heil.
6 They were one of the founding farm families of Alberta.
7 They are generational farmers. Today we were collecting
8 the argentine bahia seed as one of our crops off our
9 land in Alberta.

10 So I am also a descendent of farmers from
11 Talladega and Clay County. I am also a former
12 paratrooper. I am also a service-disabled veteran. I
13 am also a professional engineer. So yes. I could done
14 the process. But the thing that you need to understand
15 is you have two clear exemptions that applied to me.

16 And I went through every one of the --
17 first, the notice of violation was issued to the
18 original owner of the property, the Kesslers. So it
19 wasn't originally issued to me. I clarified that. They
20 issued a new notice of violation to me. Okay? And then
21 I talked directly to Ashley Campbell, and the goal post
22 got moved every time.

23 First, she wanted me to establish that I was

1 So we want to just kind of keep time. I know Mr. Bolton
2 might have wanted to say something, maybe wanted to come
3 up. Maybe we had a few boards members that have some
4 questions for him off.

5 MR. SPEEGLE: Certainly.

6 MR. ALLEN: And so if we could just have
7 Mr. Bolton to go ahead and come up. And I just ask that
8 the board members try to keep your questions short if
9 you have any questions for Mr. Bolton. Go ahead
10 Mr. Bolton.

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1 a farmer; so I did that. Told her to look at the
2 Facebook page, drive out to Alberta, look at the 30
3 horses out there, look at what goes on everyday with my
4 wife teaching horse lessons, and us growing bahia.
5 Okay?

6 Second, she then moved the goal post and
7 said that I had to have an FSA farm number. So she
8 thought that that would start a long process. I had
9 that the next day. Our farm number for this parcel is
10 FSA6667. That is our farm service agency number. Okay?
11 Then she said that we had to meet the Food
12 Security Act of 1987. I then pointed out to Ms.
13 Campbell that that was a misprint. It's actually the
14 Food Security Act of 1985. That was put into place for
15 farmers that were taking federal money so that the
16 federal government could protect wetlands and erosion
17 across the U.S. Okay?

18 I cannot possibly be in violation of the
19 Food Security Act of 1985 because I haven't taken any
20 money from the USDA. I was on the phone with
21 Christopher Louis just two days ago, and he admitted
22 that I can't be in violation. And by the way, there was
23 a exemption inside that as well for drainage. Inside

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1 the Food Security Act of 1985, there's an exception or
 2 exemption for farm drainage, and that's what this was.
 3 Mr. Kessler came -- I didn't know
 4 Mr. Kessler. He came of his own volition, called my
 5 office, said, "What are you doing with the property?" I
 6 said "I want to restore pasture. I want to put my
 7 horses on there so my wife and my children don't have to
 8 drive 44 miles round trip to ride their horses. That's
 9 why we bought the property."
 10 He said, "Good. Because it used to be a
 11 farm. My grandfather bought it in 1950. My sister put
 12 this ditch in because the people of Song Grove
 13 complained about drainage." And that was after 1985.
 14 It's in the affidavit. Okay?
 15 So number one, the land disturbance permit
 16 -- I'm a professional engineer. I can write all day
 17 long. I can do a soil and erosion plan. It's not
 18 required by your ordinance. I'm exempt as a farmer from
 19 a land disturbance permit. Number two, I'm also exempt
 20 because I do not violate the Food Security Act of 1987.
 21 So this property was farmed prior to 198 --
 22 1985. You have an affidavit from Mr. Kessler. You can
 23 also just look at the property and the picture that the

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1 planning zoning gave you from 1955. Almost all the
 2 property is clear. My employee Harry Bush rode his,
 3 when he was a child, he rode his three-wheeler and then
 4 his four-wheeler on this property because it was a farm.
 5 All right?
 6 All we're trying to do is clear the
 7 underbrush so we can get some sunlight, so we can plant
 8 some grass. I didn't even clear a acre. We pushed some
 9 privet hedge up to a bunch, so we could get a place to
 10 turn around because it was so heavily crowded underbrush
 11 and low story and under story trees. There's trees and
 12 bushes that are poisonous for horses. Okay? I have to
 13 remove all those. That's part of the plan. Right?
 14 But we never -- we did four hours of work,
 15 and we had to shut down. My employee left because it
 16 was 100-plus degrees. And we had a stop work less than
 17 a hour later. All I'm asking for is for you to follow
 18 the rules which are there's two clear exemptions. And
 19 by the way, the goal post moved every time.
 20 MR. ALLEN: Mr. Bolton.
 21 MR. BOLTON: Yes?
 22 MR. ALLEN: I think there may be some
 23 questions for you by --

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1 MR. BOLTON: Okay. I'm good.
 2 MR. ALLEN: -- board members; so let's just
 3 go ahead and --
 4 MR. BOLTON: Yes, sir.
 5 MR. ALLEN: Go ahead. Let the board members
 6 ask. Go ahead.
 7 MS. BLACK: Okay. So district 8 was zoned
 8 for reasons of overbuilding. And we wanted to kind of
 9 corral and get a sense of process in place. And so that
 10 took a long time to do, but it was done.
 11 MR. BOLTON: Yes, ma'am.
 12 MS. BLACK: And I understand that you own
 13 your property because I too own in property in that
 14 area, and I want to do what I want to do with my
 15 property also. But what I need to understand is, what
 16 is it? 35 bucks? How -- to -- when you were notified,
 17 was it a point to be proved?
 18 I just want to understand why you couldn't
 19 have just said this is ridiculous. Let me go down. Let
 20 you guys do your job. Guess what? I win because
 21 there's no, there's no stream here. Or I lose. I have
 22 to do what's right. Something so simple, and we're to
 23 this point where there's a lawyer involved. And I

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1 understand. But at the same time this is --
 2 MR. BOLTON: Yes, ma'am.
 3 MS. BLACK: -- a little bit more than what I
 4 think it should be.
 5 MR. BOLTON: I can answer your question.
 6 MS. BLACK: Okay.
 7 MR. BOLTON: Number one, wetland delineation
 8 is \$6,000. It's not required. I don't have to provide
 9 it according to your ordinance. Number two, the staff
 10 has been disingenuous from the beginning of the process.
 11 Right? First, I was told I had to have a farm number to
 12 prove I was a farmer. I provided that.
 13 Then Ashley Campbell changed the goal post
 14 and said I had to meet the Food Security Act of 1987.
 15 By the way, there's no such thing. They didn't tell me
 16 that. I had to do all the research to find out that
 17 they had misprinted the Food Security Act.
 18 Then I have been in constant communication
 19 with USDA. They sent an email that I thought was done.
 20 Right? The email is crystal clear. It says this is
 21 cropland that was farmed prior to 1985. It's right
 22 there in black and white. The staff went back to that
 23 individual, had them change and wordsmith the next email

1 to make it sound like the farm had never been a farm.
 2 What they were saying was no one that ever
 3 owned that property, took money from the USDA. That's
 4 what they're saying. If you never take money from the
 5 USDA, then you're not in the system. Okay? These are
 6 small -- I'm here because of the small farmers.
 7 I'm here because my friend, Cody Kichler,
 8 who has a small, herd of cattle, right, that's fighting
 9 the drought right now, and I don't want him to have to
 10 go through this to go out and dig a pond on his land to
 11 water his cattle. Right? That's why I'm here.
 12 I'm not here because I couldn't have done a
 13 soil -- I'm a professional engineer. I've been
 14 practicing in Alabama over 20 years. Right? So that's
 15 not why I'm here. I'm here because you have a set of
 16 rules.
 17 I'm an old army guy. I love rules, right,
 18 because they're for everybody. It doesn't matter if
 19 you're, who you are, if you're an engineer or if you're
 20 a chiropractor or you're a farmer, they apply equally.
 21 And you're rules have two exceptions to land
 22 disturbance and wetlands. And all I'm asking you to do
 23 is uphold your own rule. If they want to change the

1 much. I'm sorry I couldn't be there today. I've had a
 2 trip planned for a while for work up in Muscle Shoals,
 3 but I would like to point out a couple things.
 4 First of all, when I first talked to
 5 Mr. Bolton, he informed me at first that he was going to
 6 do a farm field for grass for horses. Then he told me
 7 he was going to put a pond in for catfish. And then he
 8 informed me, he may even dig a dirt pit. And all of
 9 this was on the phone verbally. But those were the
 10 different changes.
 11 We have never received a site plan or any
 12 permit application to know exactly what is going to take
 13 place on this property. The process of the land
 14 disturbance permit allows us to make the decision of
 15 which ordinances are applicable.
 16 When we receive a complaint on any site, we
 17 go out, code enforcement, Rob Brown and Vince Reiner,
 18 and they investigate the site. And then if there is a
 19 disturbance in an area that is regulated, we send out an
 20 NOV. And that's exactly what happened. And Mr. Bolton
 21 and I have been in communication quite a bit, and the
 22 goal posts have never changed.
 23 Our exemption states "Agricultural

1 ordinance later, fine, but hold me accountable to the
 2 rules that are there.
 3 We did not -- I only cleared about three
 4 quarters of an acre. All right? I didn't even push any
 5 big trees down. This is stuff that was four inches, six
 6 inches, right? And so we don't even have enough
 7 sunlight now to grow grass. And I stopped. And it's
 8 been a delay. It's been emails. It's been back and
 9 forth.
 10 You don't -- listen. You don't want all
 11 these farmers coming in here every time they want to
 12 plow a field that's been dormant for twenty years.
 13 MR. ALLEN: Mr. Bolton, I think --
 14 MR. KING: Mr. Chairman, if you'll allow,
 15 Ms. Campbell has texted me. She'd like to respond to
 16 some of the statements.
 17 MR. ALLEN: Yes. Go ahead.
 18 MR. BROWN: And Mr. Koptis may also like to
 19 respond, as well. But if we could start with Ashley.
 20 Ashley, do a mic check before you start.
 21 MS. CAMPBELL: Okay. Can you hear me?
 22 MR. ALLEN: We got you.
 23 MS. CAMPBELL: All right. Thank you so

1 operations that shall be exempt from this section so
 2 long as the Food Security Act provisions of 1987," --
 3 which was an accidental oversight. I did have NRCS
 4 review this for us, but -- "administered by the USDA are
 5 being met." Not in violation. He has to meet those
 6 requirements.
 7 We require the local NRCS to provide us
 8 documentation, or he has to get documentation from them
 9 to state that he meets the Food Security Act. Thus far,
 10 we have not received anything.
 11 Mr. Bolton immediately submitted a farm
 12 number. Farm numbers are not meeting the Food Security
 13 Act. You have to have something from the local agency
 14 verifying it. And as of this day we do not have
 15 anything in hand that would allow this exemption to be
 16 met. Therefore, Mr. Bolton needs to apply for a land
 17 disturbance permit so we can verify if the wetlands are
 18 jurisdictional.
 19 He said he was going to fill in the ditch to
 20 build the grass fields, but we don't know what he's
 21 going to do. So that's the whole process. And zoned
 22 area, our ordinances were created to help protect the
 23 properties, the natural resource, and the adjacent land

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1 owners.
 2 10.4.4 is jurisdictional wetlands. 10.4.5
 3 is storm water management areas which includes ditches
 4 and any grady ponds or any non-jurisdictional wetlands.
 5 The process, he hasn't met the exemption. Therefore, we
 6 need a land disturbance permit submitted to determine
 7 which section of the ordinance is applicable.
 8 This is the normal process. We do it
 9 throughout the county with every complaint we receive.
 10 Rob has done a fabulous job of documenting it. I would
 11 like to mention one thing. I think the attorney
 12 mentioned that there was no development. Our definition
 13 for development basically states that any -- I'll read
 14 it directly from it.
 15 "The construction, reconstruction, repair,
 16 demolition, conversion, structural alteration,
 17 relocation, removal, or enlargement of any building or
 18 structure, any extension, utility, construction of
 19 streets, any construction of drainage structures, any
 20 mine excavation, land fill, or land disturbance or any
 21 change in use or alteration of the extension of the use
 22 of the land." So development does include land
 23 disturbance.

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1 But another -- the main point is we have not
 2 received anything from the local NRCS office stating
 3 that they meet the Food Security Act. And Joey Koptis
 4 is online to answer any questions regarding that. That
 5 is the process to meet the exemption of 10.4.4 or
 6 10.4.5. That has not been met.
 7 MR. BOLTON: So I'd like to just point out,
 8 I'd just like to point out on this particular issue, I'd
 9 like to point out that Christopher Louis himself said
 10 that the letter that she is requesting is not something
 11 they issue. We have an email -- I have an email and I
 12 have an affidavit in that packet that Christopher Louis
 13 with USDA issued -- the documentation that Mr. Speegle
 14 gave you. I'm just telling you.
 15 MR. ALLEN: On what page is the affidavit?
 16 MR. BOLTON: Which exhibit is it?
 17 MR. SPEEGLE: Mr. Bolton's affidavit is
 18 Exhibit 1 if that's what you're looking for, but I'm not
 19 sure.
 20 MR. BOLTON: But Ms. Campbell's being
 21 disingenuous again. I didn't even -- listen. I didn't
 22 even know what an FSA number was until she asked me for
 23 it. Okay?

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1 MR. ALLEN: Okay. Well --
 2 MR. BOLTON: So again, your staff has made
 3 me jump through all these hoops. There's two exceptions
 4 to the rules, the two rules that they said I violated.
 5 Again, do you want farmers coming here every time they
 6 need to clear a piece of land that's been dormant for a
 7 year, two years, ten years, twenty years. This -- I
 8 bought this property because it was properly zoned for
 9 what we wanted to do.
 10 MR. ALLEN: Mr. Bolton, let's let Mr. --
 11 let's let Ms. Campbell respond to that, and then I think
 12 we need to, kind of, move forward here.
 13 MR. BOLTON: Yes, sir.
 14 MR. ALLEN: And then --
 15 MR. SPEEGLE: Mr. Allen, I'll make a quick
 16 comment. The USDA --
 17 MR. KING: Mr. Speegle, please go to the
 18 podium, please.
 19 MR. SPEEGLE: Oh I'm sorry.
 20 MR. KING: Yes, sir. The recording won't be
 21 able to pick you up.
 22 MR. SPEEGLE: I'm sorry. This whole thing
 23 about the exemption of the USDA, it's a bit of a red

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1 herring. You, you can't -- 10.4.4 requires a
 2 jurisdictional wetland. You don't need to get into the
 3 exemption. You can't enforce 10.4.4 because there are
 4 no jurisdictional wetlands. And you can't enforce
 5 10.4.5 because there's no fill of a drainage ditch.
 6 The administrative decision, the notice of
 7 violation, you have to look at what happened. That's
 8 the time. It's not what's going to happen six months
 9 from now because if Mr. Bolton goes out there and
 10 violates the ordinance later, they can give a violation
 11 for that. But you can't issue a violation saying you've
 12 disturbed land when you haven't. And he was out there
 13 for four hours. So I'll --
 14 MR. ALLEN: Ms. Campbell, did you want to
 15 respond to that?
 16 MS. CAMPBELL: I would just like to respond
 17 to the fact that he received documentation. We've had
 18 several other complaints come in regarding activities.
 19 We were unaware if they were associated with farms or
 20 not. We have received them. We contacted Joey Koptis
 21 and the local agency, and they responded via letter and
 22 also conservation management plans which are plans which
 23 they create for the farmer.

1 So this is not the first one we've had. If,
2 if the farm is recognized and the local office provides
3 documentation through Mr. Bolton or directly to us, we
4 read it, consider it, and if the exemption is warranted,
5 it does.

6 At this time we do not have documentation
7 from the local NRCS and local USDA office. And like I
8 said, Joey Koptis is on. We do not have sufficient data
9 or sufficient documentation to allow that exemption to
10 be considered.

11 Mr. Bolton did inform me he was going to
12 fill the ditch in when we first communicated. He also
13 said he was going to dig a pond and grow catfish or dig
14 a dirt pit, which we don't regulate dirt pits so that
15 would be a whole new agency.

16 But this process allows us to make the
17 determinations. The permit application allows us to
18 protect natural resources and protect adjacent
19 properties. So at the moment we do not have
20 documentation that clearly states that this is exempt
21 from 10.4.4 and 10.4.5. And we were notified that he
22 was going to fill the ditch in the initial conversation.

23 MR. BOLTON: That's absolutely false. I'm

1 impoundment for wildlife habitat, they have to go
2 through a process of paperwork.

3 So the first thing is is there's no farm
4 number on that property. The ladies up in the FSA
5 office, they pull that property up on their little map
6 system and assign a farm number to it. And, of course,
7 Mr. Bolton has that number as 6667. That number was
8 issued back in August. I did some extensive research
9 looking through the old hard copy conservation plans and
10 everything, and I couldn't find anything that related to
11 that, to the history of that piece of property.

12 That being said, there is properties in the
13 county that have no records with our office, but if it's
14 typically a row crop operation or cattle farmers that,
15 you know, do that for a living, so to speak, there's
16 some records usually with our office.

17 So if a land owner comes in and signs up for
18 conservation assistance with our programs, there's a
19 series of paperwork that's initiated. And that, that
20 kind of gets the ball rolling for us to send a soil
21 scientist out to do a wetland determination on that
22 piece of property.

23 Now, our wetland rules are a little bit

1 just telling you.

2 MR. ALLEN: Mr. -- I'm sorry, Mr. Bolton. I
3 think that we have Mr. Koptis on the line too that also
4 wanted to make a comment.

5 MR. KING: Joey, can you hear us?

6 MR. KOPTIS: Can you hear me?

7 MR. ALLEN: Yes. We can hear you now. Go
8 ahead.

9 MR. KOPTIS: Yes. I can hear you. My
10 signal's a little weak so. My name is Joey Koptis.
11 I've be been the district conservationist at the NRCS
12 office in Bay Minette since 2007. Last August, I took a
13 new position with the soil survey office in Loxley. But
14 I'm still kind of wearing the hat for that office there.
15 They recently hired a new DC to replace me maybe three
16 weeks ago. Christopher Louis has been in the county,
17 I'd say November's a year. So he's fairly new, but, you
18 know, he's doing a good job.

19 So just a little bit of, kind of, history on
20 how the Food Security Act stuff works is any row crop or
21 production farmer in the county that is receiving any
22 type of USDA benefits, whether it be money to plant a
23 cover crop or put up crop fencing or put in a shallow

1 different than the, than the Clean Water Act that the
2 Corps of Engineers follow. Basically, it doesn't have
3 to be a jurisdictional wetland, per se. If it's got
4 hydric soil indicators and wetland vegetation, then
5 we're going to consider that a wetland for USDA farm
6 bill purposes.

7 So on this piece of property, I think
8 there's some minimal paperwork that's been filled out.
9 This has not been put in the queue yet to initiate that
10 wetland determination from our agency. And I know, you
11 know, they've -- there was a private individual that
12 looked at this property. But we have resource
13 scientists on staff that that is their duties to go out
14 and make these determinations.

15 So as far as, as far as the exemptions are
16 concerned, you know, NRCS is not a regulatory agency.
17 We basically, our producers know what our rules are. We
18 typically don't have any trouble with violations there
19 because they know what's at stake and what it could cost
20 them, you know, in their operations. If they have, you
21 know, cotton base or, you know, some other type of
22 subsidies built on that property. Even crop insurance,
23 for example, the RMA, the Risk Management Agency, pays

1 about 75 percent of our crop insurance premium for us.
 2 So our rules are a little different.
 3 So I think what the county has done is tried
 4 to look to NRCS and say, Hey, this guy is down here
 5 digging this pond out or putting in a new pond or
 6 something. Is he in compliance, you know? Is he doing,
 7 is he following BMPs that NRCS would recommended? And
 8 that kind of thing.
 9 So I think that, you know, that's kind of
 10 how that's worked in the past. Because I've had
 11 conversations with Mr. Brown and Ashley Campbell, and,
 12 you know, we talk pretty regular on this stuff. So
 13 there is, however, some exemptions for certain
 14 practices, and I gave three examples in an email a while
 15 back.
 16 So if -- just say, for instance, if a
 17 producer has a stream or creek or wetland running
 18 through their property, they may have an upland pasture
 19 on each side. We do a practice that's called a stream
 20 cross, and it's really basic.
 21 But we will go in and design a cross for
 22 those cattle to get from one side of that that pasture
 23 to another. We do require that they fence any wetlands

1 out that's determined by the soil scientist, and the
 2 cattle are only allowed to cross that that given
 3 location there.
 4 I would say, probably, the other two that's
 5 been popular in the county over the years is livestock
 6 watering ponds. We do design those commiserate with the
 7 size of the operation. That being said, you know, if a
 8 producer has five head of cattle, we would not be
 9 designing a forty acre pond for that operation. And
 10 that those ponds have to be fenced out, and they have
 11 been accessed by the cattle with a fenced off area with
 12 a watering ramp is what we call that. So that's the
 13 other one.
 14 And the third example I'd say is probably as
 15 common is a irrigation reservoir. And I would say most
 16 producers now that's irrigating in the county put in
 17 water wells. There is still some irrigation ponds being
 18 used. But that's three common examples.
 19 Our agency sits down once a year with the
 20 Fish and Wildlife Service, the Corps of Engineers, and
 21 we go over our construction standards for these
 22 practices, making sure that we're not, you know,
 23 violating any wetlands rules or stepping on the other

1 regulatory agency's feet. So we have that field level
 2 agreement with our partner agencies for conservation.
 3 The Food Security Act wetland rules
 4 basically that was passed December 23rd of 1958 were put
 5 in place because Congress was realizing on a national
 6 level the amount of wetlands that were being, they were
 7 being ditched and drained and lost. And those are very
 8 important resources for, you know, for aquifers and
 9 stuff; so that's kind of how the Food Security Act was
 10 born. And in a nut shell, basically it prevents a
 11 farmer from going in and ditching a wetland.
 12 I know you've probably heard the term "grady
 13 pond" which is basically an isolated depressional
 14 wetland usually occurring in a row crop field that has
 15 no outlet. Those were all allowed to be drained prior
 16 1985 when this Food Security Act passed.
 17 So we, we do not, you know, we don't run out
 18 and police things, but, you know, if there's a producer
 19 that there's complaints on, then we have to -- can you
 20 guys still hear me? Hello?
 21 MR. BRAGG: You're breaking up a little bit.
 22 The gentleman is breaking up a little bit.
 23 MR. KOPTIS: I'm sorry about that. Anyway,

1 basically, I guess what I'm saying is the Food Security
 2 Act rules are a little different -- let me -- I'm going
 3 to move around a little bit.
 4 MR. KING: Mr. Chairman, maybe we can ask
 5 Mr. Koptis to make his concluding statement in case we
 6 lose the signal.
 7 MR. ALLEN: Okay. I know that some board
 8 members maybe still have a few questions for Ms.
 9 Campbell. I think Ms. Frost had a question for
 10 Ms. Campbell.
 11 MS. FROST: Yes. Ashley, my question
 12 through all of this is am I understanding this clearly
 13 that if Mr. Bolton had proof of meeting the requirements
 14 of the exemption from, I guess, the local NRCS, that he
 15 would be, he could submit that information and we could
 16 move forward with having the stop work and, I guess, the
 17 violation removed?
 18 MS. CAMPBELL: You're correct. If proper
 19 documentation had been received, yes. And the -- like
 20 Joey explained, when we requested the documentation, I
 21 believe Mr. Bolton went up to the agency, and they
 22 issued him a farm service which Mr. Koptis explained is
 23 the first part of the process.

1 And -- but we still have not received any
2 documentation that fully states that, that he can have
3 the Clean Water Act exemptions for the jurisdictional
4 and the grady areas and the stream without having to
5 contact the Corps of Engineers.

6 So basically all he is -- applying for Food
7 Security Act provisions and meeting them allows you to
8 have special conditions with the Clean Water Act. And I
9 think Joey, Joey could definitely describe that program
10 better. That's why we rely on our local agency to
11 provide us the documentation. Then we determine if
12 they're exempt.

13 And like I said, in the past I've had
14 several cases where that did apply, that was applicable
15 and Joey was able to submit a letter or a conservation
16 plan and then that, no permits were required at that
17 time. But at this time we have not received proper
18 documentation to determine if the exemption exists
19 through the NRCS local office.

20 MS. FROST: Okay. And the other information
21 that he got from, I guess, he got from the local agency,
22 the farm number or what not. Are there issues if that
23 property has not been used as such for quite some time?

1 MS. CAMPBELL: So I guess it did not have an
2 existing farm number because Mr. -- I guess, the
3 previous owner did not work with the NRCS agency. I
4 know Mr. Bolton went up there to get a number and start
5 the process to provide documentation. But we have not
6 received sufficient documentation to prove the exemption
7 is met.

8 Therefore, we're requesting a zoning land
9 disturbance application be submitted to determine if the
10 buffers are applicable. That is when we review the
11 wetland assessment. We determine if we need a full
12 blown wetland delineation. And it is a little
13 complicated with the Supreme Court case of the waters of
14 United States.

15 Alabama is enlisted in the 27 states that
16 are not going to be following the 2023 definition for
17 waters of the United States. We're going to be required
18 to follow the 2015; so we are still waiting on direction
19 from the Mobile Corps districts with some of the
20 different updates to the definition. So that component
21 of it, the jurisdictional component of it, is still not
22 totally decided for Alabama and Baldwin County at this
23 moment.

1 MS. FROST: Okay. Thank you.

2 MR. ALLEN: Do we have any other questions
3 from any other board members?

4 Okay. Mr. Speegle and Mr. Bolton, were you
5 done? I can give you an additional three minutes.

6 Okay. If that's the case, I'm going to go
7 ahead, I believe I'll reopen up the public hearing. I'm
8 going to go ahead and open up the public hearing now.
9 And we have a few people that would like to speak.

10 Mr. Chad Yarborough, we ask that you keep
11 your comments to three minutes, sir.

12 CHAD YARBOROUGH: All right. Good evening.
13 My name is Chad Yarborough. I'm the Fairfield Place HOA
14 president. Google maps shows a -- I've got numerous
15 complaints and questions from residence -- but Google
16 maps shows a creek that runs both from north to south
17 that runs behind several of our neighbors' home as well
18 as others in Fairfield. I know that creek is in
19 existence because it runs behind my house.

20 USGS website on 6/28/2018 has got an article
21 that states that streams and creeks can run above and
22 below ground, and storm water run off is one of the
23 things that we're concerned about.

1 Also, as the gentleman stated, we are in a
2 drought. Rainfall totals this year are lower which
3 could and most likely would be why it's not so spongy
4 and wet down in there, and the reason for potential.
5 But on behalf of Fairfield Place Home Owners
6 Association, we would like to see it not go forward.
7 Thank you.

8 MR. ALLEN: Is there a Mr. Mike Finley?

9 MIKE FINLEY: I'm going to try to be a
10 little short. Can you hear me? Sorry about that. Let
11 me put this thing up here a little bit. I'll try not to
12 be as long as they were.

13 But -- so a couple of things Mr. Bolton
14 mentioned. Lot in common. Okay? Got kids. And -- can
15 you hear me? Okay. We have a lot in common, Mr. Bolton
16 and us and the community. So, you know, kids. We all
17 got kids. We all got everything. This is 57 lots in
18 Song Grove. We probably got a hundred and -- I don't
19 know. I'm estimating -- a hundred kids under the age of
20 10 to 12 in that neighborhood, three of them being mine.

21 And we play -- this is our homes. We've had
22 this land here in Song Grove and bought the property on
23 a piece of paper as dirt. Okay? My father-in-law owned

1 six or seven lots in there in the beginning as dirt.
 2 We're, we're the original ones and still there. I know
 3 this land very well.
 4 So when you talk about storm water run off,
 5 these things, all I'm asking and all Song Grove's asking
 6 is for what we elected y'all to do -- I can't talk in
 7 this thing y'all. I need something different -- is what
 8 we elected you to do. Okay? And just deny it and let
 9 ADEM, FEMA, whoever take it from here.
 10 You've done your job. I'm proud of what
 11 you've done. Okay? I'm proud of what the agency's done
 12 and what we've elected y'all to do. Okay? For them to
 13 tell you that you have no jurisdiction, then what are
 14 you even doing up here? Okay? Y'all, y'all are our
 15 voice. Okay? I'm going to make mine heard, and I'm
 16 speaking for a lot of people. Okay? So if you need
 17 something signed, if you need me to get you whatever you
 18 need, I can do it. All right?
 19 But I can tell you this. The storm water --
 20 I'm too tall for this thing -- the storm water run off
 21 is the problem. Okay? And the -- so my property alone,
 22 FEMA has changed the flood zone. I never had to
 23 purchase flood insurance on my property since 2007 until

1 sorry.
 2 MR. ALLEN: -- time here.
 3 MIKE FINLEY: Okay. Well, they got an hour
 4 and twenty minutes. I thought I'd get a few more
 5 minutes.
 6 MR. ALLEN: Well, they were the applicant,
 7 so we gave them a little extra time. But yeah. We did
 8 it --
 9 MIKE FINLEY: All right.
 10 MR. ALLEN: -- with them too.
 11 MIKE FINLEY: All we're asking you to do is
 12 deny it. Job's done. We all go home. Let ADEM and
 13 everybody else figure it out. Okay?
 14 MR. ALLEN: Yes, sir. We do thank you.
 15 There is just one more person: Mr. Vincent. If you
 16 would come on up.
 17 VINCENT NOLETTO: I'm going to have to lower
 18 it for me. All right. I'm Vincent Noletto. I'm here
 19 with my wife Joanie as concerned home owners in Song
 20 Grove and also as the president of the Song Grove Home
 21 Owners Association.
 22 We have, I think, ignored today that this is
 23 a storm water conveyance system that runs through our

1 about three or four years ago. I'd have to get with
 2 Andy Malone to see the exact date that he put it on my
 3 policy. But now I have to purchase flood insurance.
 4 And it's partly because of when they
 5 extended Boothe Road, you know, some of the engineers
 6 that did that, I don't think it was designed properly as
 7 it was because that's when it all started. And if any
 8 of you have been down what I'm talking about -- I know
 9 Ms. Black has. She lives in our area.
 10 So, you know, I know this area and this
 11 land. It wasn't farmland. Look at the timeline. Okay?
 12 Just take a look at the timeline. Take the pictures.
 13 All right? And I'm just going to reference a few things
 14 here that I wrote down.
 15 Farm drainage. Okay? It's not. My kids
 16 can take you back there and show you where the storm
 17 water goes. Okay? My 8-year-old pulled the snakes out
 18 of that ditch and brought them home with it. Clean
 19 Water Act, all this stuff, that's what, that's what its
 20 for. Okay? So just -- all we're asking here is --
 21 well, I did want to say some quotes. I did like --
 22 MR. ALLEN: Mr. Finley, we're going over --
 23 MIKE FINLEY: Oh, okay. I'm sorry. I'm

1 property. We got two ditches, and they want to say
 2 they're dry. Well, maybe in a drought in the summertime
 3 they're dry, but you ought to drive through there
 4 sometimes when we have heavy rain storms.
 5 You will see both ditches that flow into our
 6 pond filled to the point of overflowing. You will see
 7 the overflow ditch that comes out of our pond onto his
 8 property filled to the point of overflowing. And then
 9 it goes down to Fairfield where they've got to deal with
 10 the downstream water.
 11 One thing that really struck me from Ms.
 12 Campbell, and I believe her when she said this, was one
 13 of the things he was talking about doing is filling in
 14 that ditch. Well, I'm here to tell you, if that's
 15 something he ever does, we're going to have problems in
 16 our subdivision because the water's going to back up to
 17 us.
 18 We've got more than Michael's house that is
 19 now in a flood zone because they abut those ditches.
 20 These are some things we really have to be concerned
 21 about. These are some things that we think you really
 22 need to take into account when you consider all of this.
 23 Once again, it was a wonderful presentation.

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1 I think they have shown that they have dotted all their
 2 i's and crossed all their t's. And that all you need to
 3 do at this point is make this gentleman go through what
 4 he is supposed to go through. Let him meet all the
 5 requirements, and then we'll see what happens from
 6 there. Because what we do not need is for that property
 7 to be used for something else then maybe some horses to
 8 graze.

9 And what's he going to do? Leave his horses
 10 there with no buildings, no structures to take care of
 11 them? He's just going to have a vacant lot or a lot
 12 with a bunch of horses and farmland animals on it? Is
 13 that really going to happen? I don't know.

14 But in any event, we thank you for your time
 15 and hope that you do the right thing and that you make
 16 him go through the process that he is supposed to go
 17 through. Thank you.

18 MR. ALLEN: Did the board members have any
 19 additional questions for staff?

20 Okay. I'm go to go ahead here and close out
 21 the public hearing. And if we don't have any additional
 22 questions for staff, we will go ahead and try to move
 23 for a motion. Go ahead.

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1 staff's recommendation to deny -- I'm sorry.
 2 MR. ALLEN: Go ahead.
 3 MS. SECRETARY: I forgot Ms. Hope.
 4 Ms. Hope?
 5 MS. HOPE: Yes.
 6 MS. SECRETARY: Yes. Okay. Motion passed.
 7 MR. ALLEN: All right. Do we have any old
 8 business?
 9 MR. KING: Mr. Chairman, I think this is
 10 appropriate for an old business item, and I'm just going
 11 to take this opportunity very briefly here, that anyone
 12 watching or any citizens participating in this meeting
 13 understand that if you live in a zoned area of Baldwin
 14 County, if you're not sure what is required before you
 15 do any activities, whether it be building a house,
 16 expanding a house, installing an accessory structure, or
 17 any land disturbance whatsoever, know that our staff at
 18 Baldwin County planning and zoning, there is a, there is
 19 a process for clarifying what is required; and that's
 20 called a zoning verification.
 21 That zoning verification process is
 22 available online through citizen serve where, one, you
 23 make certain -- you ask us is it zoned? How it's zoned?

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1 MR. STEJSKAL: I make the motion to uphold
 2 the staff's recommendation and deny the appeal.

3 MR. ALLEN: Do I have a second?
 4 MS. FROST: I will second.
 5 MR. ALLEN: Call the roll.
 6 MS. SECRETARY: Mr. Guffy?
 7 MR. GUFFY: Yes.
 8 MS. SECRETARY: Yes to go with staff's
 9 recommendation?

10 MR. GUFFY: Yes.
 11 MS. SECRETARY: Mr. Allen?
 12 MR. ALLEN: No.
 13 MS. SECRETARY: Mr. Bragg?
 14 MR. BRAGG: Yes.
 15 MS. SECRETARY: Ms. Frost?
 16 MS. FROST: Yes.
 17 MS. SECRETARY: Ms. Black?
 18 MS. BLACK: Yes.
 19 MS. SECRETARY: Mr. Stejskal?
 20 MR. STEJSKAL: Yes.
 21 MS. SECRETARY: Mr. Ward?
 22 MR. WARD: Yes.
 23 MS. SECRETARY: Motion passed to go with

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1 What does that mean? And here's what I want to do, what
 2 would be required? So that is -- we answer dozens of
 3 those inquiries every month. Sometimes it's
 4 overwhelming how many we get.
 5 But know before you do anything in a zoned
 6 area if you're not sure, there's a means of not only
 7 requesting clarification, but getting it in writing. We
 8 have a record of that saved within citizen serve.
 9 So, Mr. Chairman, I appreciate the
 10 opportunity to bring that up and hope that anyone who
 11 hears this will know there is a way to possibly avoid
 12 these types of difficulties by getting these questions
 13 answered up front. Thank you, Mr. Chairman. Thank you,
 14 board members for being here today. And thank you for
 15 your patient with staff on a complicated case.
 16 MR. ALLEN: And I guess we don't have any
 17 new business, do we?
 18 MR. KING: I don't. No, sir.
 19 MR. ALLEN: All right. And with that we are
 20 adjourned.
 21
 22
 23

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AUDIO TRANSCRIPTION FOR BALDWIN COUNTY BOARD OF
ADJUSTMENT NUMBER ONE.

September 19, 2023 Board of Adjustment Meeting

The following audio filed was transcribed by Lydia Egan
on the 10th day of October, 2023.

1 MR. ALLEN: Can I get a roll call, please.

2 MS. SECRETARY: Mr. Guffy?

3 MR. GUFFY: Here.

4 MS. SECRETARY: Mr. Allen?

5 MR. ALLEN: Here.

6 MS. SECRETARY: Ms. Hope?

7 MS. HOPE: Here.

8 MS. SECRETARY: Mr. Bragg?

9 MR. BRAGG: Here.

10 MS. SECRETARY: Ms. Frost?

11 MS. FROST: Here.

12 MS. SECRETARY: Ms. Black?

13 MS. BLACK: Here.

14 MS. SECRETARY: Mr. Stejskal?

15 MR. STEJSKAL: Here.

16 MS. SECRETARY: Mr. Ward?

17 MR. WARD: Here.

18 MS. SECRETARY: Chairman, you have the
19 courtroom.

20 MR. ALLEN: Okay. Can I get a motion for
21 previous minutes?

22 MR. GUFFY: So moved.

23 MR. ALLEN: Okay. Can I get a second?

1 MR. BRAGG: Second.

2 MR. ALLEN: All in favor of previous minutes
3 being passed say aye.

4 (All board members say aye.)

5 MR. ALLEN: All right. And do we have any
6 announcements?

7 MR. KING: Yes, sir, Mr. Chairman. I'll
8 deliver the preamble as we have been utilizing in
9 several meetings recently. And so Mr. Chairman, board
10 members, and so we have many citizens that may have been
11 -- this may be their first time attending one of these
12 meetings, at least at the county level. What we'll do
13 is go through a meeting preamble to explain how the
14 meetings works, the procedures for the meeting.

15 And so first of all, the, this board is --
16 this board authority's only occurs in the areas marked
17 in yellow on the map you see on screen. So the Board of
18 Adjustment only has authority in the portions of Baldwin
19 County where the citizens have enacted zoning. The
20 white areas of the county are unzoned. The green areas
21 are within city limits. So we're dealing with the
22 yellow areas.

23 First of all, we ask everyone to please

1 silence or turn off any of your phones or other devices
2 that may ring during the meeting. This board follows
3 Robert's rules of order. That is our parliamentary
4 procedure. And Mr. Allen is the chair and officiates
5 this meeting. And when citizens come to the podium in
6 the center of the room, make certain that all your
7 comments are addressed to the chair.

8 I will say very briefly here that this is
9 certainly not a complaint department for general topics.
10 But we advise any citizens that if you have other issues
11 or other matters for which planning and zoning needs to
12 address, by all means please email those to
13 planning@baldwin.gov.

14 We mentioned this before our board of
15 adjustment meetings because oftentimes, sometimes the
16 discussion may cross over into areas not relevant to
17 board of adjustment. So that's why he gives this
18 preamble message here. Any type of zoning issue, any
19 type of subdivision issue, certainly use that email
20 address.

21 So in terms of this board and what it does
22 the function of this board of adjustment is to consider
23 variances and appeals. Now, today we only have one item

1 on the agenda which happens to be an appeal. Appeals
2 are much more rare as opposed to variances.

3 The meeting itself will operate as you see
4 on screen. Each case is presented by a Baldwin County
5 planning and zoning staff member. Mr. Brown will be
6 presenting today's case. That may take several minutes.

7 Then, once the -- once the staff member has
8 continued, has finished presenting the case, the board
9 may question the staff member for several minutes.

10 After the board is satisfied that they've questioned
11 staff member about the presentation, the chair will open
12 a public hearing and invite anyone that's registered to
13 speak.

14 And so everyone passed by a table at the at
15 the lobby of this meeting hall and were presented the
16 opportunity to register to speak. If you did not
17 registered to speak and do not wish to speak, we just
18 ask everyone to please refrain from shouting or speaking
19 aloud. If you change your mind and do wish to speak,
20 please go back to the lobby and fill out the forms.

21 Ms. Bates, who is sitting up here at the
22 front table, can take those forms and deliver them to
23 the chair if you desire to speak. During staff's

1 presentation, you will have some time to do that if you
2 reconsider and wish to address the board. And then this
3 is the date of our next meeting.

4 Mr. Chairman, a couple of additional
5 announcements to go along with the preamble here.
6 Normally, Ashley Campbell is with us personally in
7 attendance at these meetings. She could not be here
8 with us personally today, but because of the complicated
9 nature of the case before us today, Ashley is joining us
10 via Webex. So when we wish to ask Ashley to address the
11 board, we may have to help her and make sure she can
12 hear.

13 Also Mr. Joey Koptis with USDA is also
14 joining us with Webex. And so there's an additional
15 microphone on the podium to try to help them hear, but
16 we may have to work with them during the meeting so be
17 aware of that. And with that, Mr. Chairman, I'll turn
18 it back over to you to hear today's case.

19 MR. ALLEN: Okay. We can go ahead and move
20 forward with today's case.

21 MR. BROWN: So good afternoon board, members
22 of the public. My name is Robert Brown. I'll be
23 presenting case NAAD23-004. The one thing I'd like to

1 do before I start this case, we have a timer that we're
2 going to use for public comments today. We limit those
3 comments to three minutes. That's at the chair's
4 discretion how that's going to work is when it comes
5 time for public comments --

6 MR. ALLEN: Michael, could you speak up just
7 a little for us?

8 MR. BROWN: Oh, I'm sorry. When it comes
9 time for public comments, I'll place a timer on the
10 screen that will look something similar to that. Now,
11 to give everybody a quick example of what that's going
12 to sound like, I'd have a two second quick timer, and
13 this is what you'll hear when your three minutes is up.
14 So again, I'll put that timer on the screen when we open
15 for public comments.

16 All right. So as I said, this is case
17 AAD23-004. This is an appeal of an administrative
18 decision and the issuance of a notice of violation.
19 This is in planning district 8. The property is zoned
20 rural agricultural, and as you can see on the screen,
21 this is the parcel ID and the pin for the property.

22 This is approximately 8.5 acres. It's
23 located at 19800 Boothe Road which is approximately one

1 block east of Greeno Road and north of Twin Beech Road.
2 The owner is William and Danielle Bolton, and the
3 applicant in this case is William Bolton.

4 As you can see here from the locator map,
5 the property is located in Fairhope and, like I said,
6 it's one block, approximately, east of Greeno Road and
7 north of Twin Beech. Now, this property is surrounded
8 on three sides, the east, the west side, and the north
9 side by the city limits of Fairhope. And those are
10 subdivisions. It's the Song Grove subdivision to the
11 east and to the north, and then the Belle Chase
12 subdivision across the street to the west. South of the
13 property is county property zoned rural agriculture.

14 So the background and summary on this case
15 was planning and zoning received a complaint from a
16 citizen in Song Grove subdivision. We staff visited the
17 property and discovered that there was indeed land
18 disturbance activities that were occurring on the
19 property. So a stop work order was placed on the
20 property, and subsequently a notice of violation was
21 sent to the owner.

22 The appellant asserts that the disturbing
23 activities are related to agriculture. However, the

1 appellant was unable to provide staff with a qualifying
2 exemption provided by USDA/NRCS. In subsequent emails,
3 the NRCS communicated to staff that the property is not
4 cropland and is not participating in any USDA/NRCS
5 programs that would allow it to be exempt from the
6 provisions of the zoning ordinance.

7 So we're asking that there were no issues,
8 there were no errors committed in issuing the NOV or the
9 administrative decision, and we recommend that this
10 case, the administrative be upheld and the appeal be
11 denied. Now, in the subsequent slides we're going to
12 dive into a little bit of the details of this, and there
13 are some overlaps. This, agreeably, is several things
14 going on.

15 The first thing I want to show you is the
16 Baldwin County generalized wetlands map. And what you
17 see cross-hatched there is off the parcel viewer from
18 the revenue and that shows the potential wetlands.
19 Those potential wetlands are coming from the northeast,
20 transiting the property approximately to the southwest,
21 and that's important. You'll see that over and over.
22 You can see the property there is being wooded and
23 adjoining to the Song Grove subdivision.

1 So the applicability of the zoning ordinance
2 to this particular piece of property. There are
3 potential uplands on this property, as you can see in
4 the northwest corner as well as in the southeast corner.
5 And you can again see the potential wetlands that are
6 transiting from the northeast to the southwest.

7 So in the upland areas, the ordinance that's
8 applicable to them is 13.12.2 and 13.12.8. We'll
9 discuss those in depth on the next slide. In the
10 potential wetlands areas, the ordinance that applies to
11 them comes out of section 10.4. That would be
12 specifically section 10.4.4, 10.4.5, and 10.4.7. And
13 again, we'll discuss those at length as well.

14 So in the upland areas, and again those are
15 the two pockets in the northwest part of the property
16 and in the southeast part of the property, 13.12 which
17 discusses -- which covers land disturbance activities is
18 required if you're disturbing more than 500 square feet,
19 if you're doing land disturbance greater than 25 square
20 feet within a wetland buffer or any disturbance no
21 matter the size in an actual wetland.

22 Now, there are exemptions for that, and that
23 comes in under 13.12.8. And the relevant exemption in

1 this case is sub c which is agricultural activities. So
2 agriculture activities is defined -- and I put that on
3 the screen -- section 22.2. I won't read that in its
4 entirety -- but agricultural purposes including farming,
5 dairy, and pastures, etc. would be a qualifying
6 exemption that the property owner would not have to get
7 a land disturbance permit from Baldwin County to do
8 those activities in those upland areas.

9 Now, we move on to the wetland areas, the
10 potential wetland areas on the property. Section 10.4.4
11 of the ordinance comes into play. 10.4.4 covers
12 jurisdictional wetlands. And that has a setback, a
13 stream wetland setback of approximately 30 feet. If
14 there is a stream, it's top of the bank of the stream.
15 If the stream's within a gully, it's the top of bank of
16 the gully. So that again is if it is a jurisdictional
17 wetland.

18 If it is not a jurisdictional wetland and it
19 is an existing storm water management area, which we
20 will cover in depth in a minute, that would include
21 hydric soil areas, existing water features, ditches,
22 etc. That comes with a 5-foot non-disturbed buffer.

23 Now, you can do land disturbing activities

1 in that if you apply for a permit, and you have a
2 licensed engineer that provides storm water calculations
3 and shows that they can replace it with a comparable
4 storm water management system that will keep that water
5 moving through and won't obstruct it.

6 Now, there are exemptions to both of those
7 and that is 10.4.7, and the relevant exemption is sub e.
8 And that says agricultural operations will be exempt
9 from this section so long as all Food Security Act
10 provisions administered by the USDA are being met.

11 Now, to expand on that just a little bit,
12 there is a memorandum of understanding between the USDA,
13 the NCRS, and the Corps of Engineers, that is the
14 USDA -- it was signed April 5th of 2022, that
15 memorandum. And basically, jointly, if you're -- if you
16 are meeting the provisions of that Food Security Act,
17 those wetland are protected through that joint agreement
18 between those two agencies.

19 So we'll move on to the permitting process.
20 So if you are trying to do land disturbance activities
21 in that potential wetlands, the very first step is you
22 would have a wetland assessment or delineation performed
23 by a wetland professional. Staff can't perform that

1 delineation, and we can't determine those boundaries,
2 nor can the property owner. An independent third party
3 wetland delineator or, you know, specialist will come in
4 and do that.

5 The wetland boundaries will be flagged on
6 the site, and then a map will be created. That map that
7 was created by the wetland professional will then be
8 uploaded as part of the permit application, the required
9 buffers will be established based off the determinations
10 of what wetlands exist, if any, by that wetland
11 professional.

12 Now, if work is to be permitted inside of
13 that established buffer, then a variance, which we're
14 all familiar with, would be required or remediation
15 would be required to restore that area back to what it
16 was.

17 So just for a little background information,
18 this is the USGS map from 1944. And you can see the
19 approximate location of the property. And you can see
20 that in 1944 they show an existing storm water
21 conveyance. And again, it is showing the same running
22 from the northeast to the approximate southwest.

23 This is the USGS website with their national

1 wetlands inventory map, and you can see the property
2 location there. And, again, you can also see that
3 stream running from the northeast to the approximate
4 southwest. So this is the plat for the Song Grove
5 subdivision. And as you look on this, you'll see
6 highlighted in green, you'll see the appellant's
7 property. And please note that is not part of the Song
8 Grove subdivision. It is merely adjacent to it.

9 Now, following in what I've been saying, the
10 northeast to the southwest, you can see in the common
11 areas highlighted in yellow on that plat, that existing
12 storm water management site. You can also see where
13 I've expanded that and line that up, the tension and
14 common areas of the Song Grove subdivision. That runs
15 onto the appellant's property.

16 Now, this is a Google street view of that
17 wetland detention pond off Whittier Street. We're
18 looking approximately east here at the pond. The
19 appellant's property is back behind that pond. And now
20 we're at the same location on Whittier street, and we're
21 looking east. And you can see that storm water
22 management channel draining to that pond through that
23 subdivision.

1 Now, these are photos taken of the property
2 during the site visit, the initial site visit on July
3 27th. You can see the stop work was posted. That's in
4 the picture on the left. And the picture on the right,
5 you can see a trail going through the trees of what
6 appeared to be a stream, a ditch, something of that
7 nature.

8 On the next slide, you can see the stream
9 running through the property. Now, these pictures are
10 the same thing. One is just zoomed in a little more
11 than the other. So on the first picture on the left,
12 you can see that there is land disturbance activity
13 happening on the bank of that stream.

14 On the picture on the right, you can see
15 there is standing water on the bottom of that stream.
16 So that's what led us to issue the stop work because
17 that was what looked to be in violation of either 10.4.4
18 or 10.4.5, and that's why stop work was posted on the
19 property until a determination would be made.

20 A notice of violation was issued to the
21 property owner. It was mailed and sent by email, you
22 can see on August 8th, as you see on your screen. The
23 nature of the violation was performing work on a zoned

1 property without the required land disturbance, and the
2 cure for that violation was to complete a land
3 disturbance application in accordance with 13.12.2. And
4 I will explain that in just a minute. 13.12.2 is the
5 mechanism that we use to process land disturbance
6 activities in a wetland area under 10.4.4.

7 So the appeal that was entered into the
8 system and given to us by the appellant basically says
9 -- you can see I've zoomed it up -- "I purchased the
10 land and am preparing it for pasture. The county issued
11 a notice of violation, the copy attached. I have not
12 violated ordinances. My property is exempt from the
13 ordinances the county alleges I violated. See the
14 attached email chain for my reasons and the admission by
15 the county. I am not in violation."

16 The appellant's requested action is that the
17 board find that he has not violated any ordinances and
18 that he is not required to apply for or have a land
19 disturbance permit and order the county to withdraw the
20 notice of violation.

21 So the next four slides are going to
22 snippets from the appeal that was filed by Mr. Bolton.
23 The first snippet goes to one of the very first emails

1 between the NRCS and the applicant. In this, the NRCS
2 was trying to explain what is cropland that is exempt
3 from the ordinance, what meets the provisions of the
4 Food Security Act.

5 Now, I did not highlight this. These are
6 highlights that were in the appeal. These are taken
7 directly from it. The last sentence in that says, "This
8 is cropland that was annually tilled prior to 1985."
9 Now, that sentence caused some confusion which we'll
10 clear up in just a minute.

11 That sentence is explanatory to the
12 statement before that says, "Prior converted cropland is
13 an exemption afforded by the Food Security Act of 1985.
14 This is cropland that was annually tilled prior to
15 1985."

16 In a subsequent email, we tried to get some
17 clarification from that, and you can see from NRCS, they
18 state in a subsequent email that this land is not that.
19 This land was not cropland that's been annually tilled
20 to produce a commodity.

21 We had another email that came in through
22 the NRCS where we were trying to explain it again. And
23 the NRCS again says his property is not cropland and

1 therefore does not meet any provision.

2 So the final email that I've included in
3 here is from our director back to the property owner
4 explaining that from the NRCS's standpoint, simply
5 having a farm number does not trigger the protections
6 from the exemptions from the Food Security Act and
7 requesting, provide us an email from the NRCS stating
8 that you are exempt.

9 So this is a historical aerial photo from
10 the University of Alabama archives. This is from 1974,
11 and you can see in this the property is fairly wooded.
12 And again, if you look up to the northeast corner, you
13 can see that stream again transiting the property. This
14 is the 1997 aerial showing that that property is still
15 wooded, is not being used for cropland.

16 The property owner got, enlisted Wildlife
17 Solutions to come to the property and do an assessment
18 of the property. This is their letter here. There's
19 two snippets in the letter that I'm going to bring
20 forward.

21 The first snippet says typically in these
22 situations, they'll provide the land owner with a map
23 indicating the run of the drainage across their property

1 by surveying points along the top of this bank. That
2 again goes back to what I said earlier with the
3 permitting requirements. They provide survey points and
4 they provide a map, and that's what Mr. McCool here with
5 Wildlife Solutions is talking about.

6 They also go on to say that he doesn't feel
7 this is jurisdictional wetland, but it does have an
8 excess to what the Corps considers waters to the U.S.
9 and thus subject to some regulation. And again that
10 could either be 10.4.4 or it could be 10.4.5 storm water
11 management, and that's a determination made by
12 specialists, not staff.

13 The last snippet out of that letter that I
14 wanted to bring was, he said, "The second biggest factor
15 for the property is that you said it would be used for
16 livestock, particularly horses. That being the case,
17 you'd be exempt from most regulations, but you'll need
18 to register with the NRCS." So that again alludes back
19 to that joint agreement between the USDA, NRCS, and the
20 Army Corps of Engineers.

21 So part of their protections, that's their
22 water and natural resource protections memorandum, is
23 what I talked about earlier. And what they do is they

1 work with property owners. If they want to build a
2 pond, they look at what they're doing on the property,
3 and they help them build a pond sized to whatever
4 livestock they need. If they have four head of cattle,
5 they help them design a pond that would accommodate and
6 not be oversized or undersized.

7 That's why the protections are pulled away
8 from the ordinance and given back to Corps of Engineers
9 and to the NRCS. Because those protections shift from
10 the county to that joint agreement.

11 So the last email I'm going to present to
12 you is an email that I got from NRCS from Joey Koptis
13 who's here with us today via Webex, and he can expand
14 upon this if you have questions for him. In his email
15 he attached several vintages of aerial photography for
16 that eight-acre tract.

17 He also goes on to explain that after
18 talking with the executive director for Baldwin County,
19 they couldn't find any historical farm records on file
20 with the NRCS and that there was no prior agriculture
21 history on this parcel on file with their office. And
22 traditionally, if there was a production history on this
23 piece of property, there would be a record on file with

1 their office.

2 The snippet out of that is very telling.

3 The NRCS basically says regardless of historical
4 agriculture production on this parcel, there are no
5 exemptions granted for wetland disturbance by our
6 agency.

7 So these are the aerial images that were
8 sent by the NRCS. You can see on the left is an aerial
9 image from 1955. On the right is an aerial image from
10 1981. Then you can see 1996 on the left, 2001 on the
11 right. These show the property as wooded. You can see
12 on the left is 2005, on the right is 2009. And then
13 we're getting into the current photography, which is
14 2013 and 2021. You can see that this property is wooded
15 and has been historically wooded.

16 These are the relevant section out of the
17 ordinance 10.4.4 which I've already discussed earlier.
18 The only extra thing that's added onto to this is when a
19 jurisdictional determination is deemed necessary due to
20 a disagreement about the existence of wetlands, the
21 planning director, in lieu of a jurisdictional
22 determination by the Corps, can accept a second wetland
23 or stream delineation prepared by a professional wetland

1 delineator who is not affiliated with the first one.

2 These are sections 10.4.5 and 10.4.7, the
3 existing storm water management and the exemptions, the
4 agriculture exemptions. We have received letters and
5 emails. These are two letters, one letter, one email,
6 from citizens that were concerned about this property.
7 You have copies of these given to you as well as they
8 are in the public realm.

9 We have two letters from the Song Grove Home
10 Owners Association and one from the Fairfield Place Home
11 Owners Association. You have copies of those as well
12 and those have been put out in a public folder on our
13 website.

14 This, again, is the summary and the
15 recommendations. I'm not going to go through this
16 again, but basically in all of this, staff feels there
17 were no errors committed in issuing the notice of the
18 violation or the administrative decision, and staff
19 recommends for case AAD23-04 the administrative decision
20 be upheld and the appeal be denied.

21 And with that I'd be happy to answer any
22 questions you might have or go back to any slides you'd
23 like to see again.

1 MR. ALLEN: Okay. What we're going to try
2 to do here is that I see we have quite few people that
3 would like to speak as well. So what we're going to do
4 here is we're going to open it up for not the public
5 hearing just yet, but I'm going to ahead and just let
6 staff and the boards members if they have any questions
7 to each other, take about maybe ten minutes for
8 discussion for that.

9 And then we will go ahead and maybe move to
10 the public hearing. And then maybe take about an
11 additional about fifteen minutes to let the applicant
12 have questions for board members. And then from there,
13 we'll go ahead and have comments from everyone else.

14 The additional comments from everyone else,
15 I ask that the board members don't necessarily have any
16 questions for them, that all the questions would be
17 reserved for the applicant, Mr. Bolton, when he gets
18 ready to come up. Not just yet.

19 So if we could, kind of, move forward like
20 that, to try to have, you know, try to keep this thing
21 on a time schedule here. So if there is any questions
22 for staff that the board has, we can go ahead and
23 address that now.

1 Okay. So we don't have any questions for
2 staff. So we can go ahead and open up the public
3 hearing, and we can go ahead and ask Mr. Bolton to come
4 if you have any questions for Mr. Bolton.

5 MR. SPEEGLE: Mr. Bolton will speak --

6 MR. ALLEN: Okay. Well --

7 MR. SPEEGLE: If you don't mind, I'll go
8 ahead.

9 MR. ALLEN: Okay.

10 MR. SPEEGLE: And --

11 MR. ALLEN: And you --

12 MR. SPEEGLE: Jerry Speegle.

13 MR. ALLEN: Okay. I have your name here
14 too.

15 MR. SPEEGLE: These books. Let's see --
16 two, four, six. Unfortunately, I thought there were
17 only going to be five board members; so I apologize.

18 MR. ALLEN: That's okay. And I ask the
19 board members to try and keep their questions short.

20 MR. SPEEGLE: As I said, I'm Jerry Speegle.
21 I represent Mr. Bolton and Danielle, his wife. I've
22 given you a binder, and I expect that you'll do just
23 like everyone else including myself when you're handed

1 something to read, you'll start reading it. And you're
2 welcome to read the first few pages if you like before I
3 start speaking. I put a together a statement of our
4 case, but, Mr. Allen, whatever the board prefers.

5 This is -- there's certainly some factual
6 errors that we'll point out, but these ordinances are
7 very specific. And one of the issues that I'll address
8 is whether Baldwin County and the Corps has any
9 jurisdiction over this property right now because our
10 position is they don't.

11 From the recent Sackett case, which is
12 alluded to in the email stream which I attached to the
13 appeal which essentially says there's got to be
14 continuous running water -- and I think the statement is
15 -- let's see. It's got to be the waters of the U.S.,
16 which has to be for the Corps or the county, to have
17 jurisdiction is that -- and this Sackett case came out
18 and the EPA, well, really the Corps, just changed their
19 regulations to make it clear that only tributaries of
20 water, waters that are relatively permanent standing or
21 continuous flowing bodies of water and with a continuing
22 surface connection to those waters are subject to
23 federal jurisdiction.

1 There's a ditch on this property. There's
2 no stream. What you were shown on the pictures up there
3 is not on this property, if, in fact, there is a stream
4 out there. There's no stream on this property.

5 There's a ditch that was dug, you can see by
6 the affidavit we submitted which you can check, from a
7 gentleman whose family owned the property prior to 1985.
8 They dug a ditch. It's dry right now. Mr. Walton will
9 testify about that. Mr. Walton -- Mr. Bolton, excuse me
10 -- Mr. Bolton talked to Ashley Campbell who told him and
11 agreed that the ditch is dry.

12 This isn't any storm water management area.
13 This is wooded. It was -- if you look at the -- it went
14 pretty quickly, but we've attached as Exhibit 11, I
15 believe. This property was farmed prior to 1985. And
16 what Mr. Bolton wants to do is clear part of it, plant
17 it with grass, and put his horses on there and some
18 other livestock. And that's agricultural use.

19 Let me start at the beginning. The county
20 says that Mr. Bolton violated section 10.4.4. And I've
21 stated that in my statement of the case and you see it
22 so out there. And it says that the non-disturbed
23 setback for development from a jurisdictional wetland or

1 stream must be a minimum of 30 feet.

2 First of all, there's no development here.

3 He's just clear cutting the brush out, and he's going to

4 plant grass ultimately. But all he's done right now to

5 get this issue, the notice of violation issued, is he

6 cut out some of the brush. That's all that's happened

7 so far. Was the land the ground disturbed a little bit?

8 Sure it was. But there's, this is not a development.

9 10.4.4 in the previous version of the

10 ordinance had to do with subdivisions. The county has

11 changed this ordinance somewhat. But there's no

12 development in the sense there's nothing going to built

13 there, there's no structure, there's no house, no

14 parking lot, none of that.

15 And it says from a jurisdictional wetland or

16 stream. The -- if you look at the article 22 of the

17 land use ordinance, a jurisdictional wetland, which is

18 what it's referred to in 10.4.4, is a wetland area

19 that's regulated by the U.S. Army Corps of Engineers.

20 I don't think that Mr. Brown will dispute

21 that there's no part of this property that's subject to

22 the Corps of Engineers auspices now. There's not

23 continuous running water that goes to an ancillary water

1 body for navigable water of the U.S. It's just not.

2 That's what Sackett did. It said you guys
3 at EPA and the Corps have been telling people what they
4 can do with their property for years, and you can't do
5 that anymore because it doesn't have anything to do with
6 navigable waters.

7 And there's a ditch here. And there's no
8 free running water. It's dry right now. So to even get
9 to 10.4.4, there has to be a jurisdictional wetland.
10 There is none.

11 The next reference is to 10.4.5, existing
12 storm water management area. Once again, there's no
13 existing storm water management area here. There's --
14 on some property -- not here but in one of the
15 subdivisions, there's a detention pond. This ditch --
16 and Mr. Bolton will tell you about this -- that ditch
17 doesn't run into that detention pond. It's not built in
18 that. So there's no existing storm water management
19 area.

20 And in that statute, ordinance 10.4.5, it
21 says that there's -- let me look, actually, turn to it
22 so to give you the exact -- where development -- this is
23 10.4.5. Where development is proposed --

1 MR. ALLEN: Which tab are you?

2 MR. SPEEGLE: Pardon me?

3 MR. ALLEN: Which tab are you?

4 MR. SPEEGLE: Oh, I'm sorry. Exhibit --
5 it's Exhibit 6 is -- our Exhibit 6 is the article 10
6 which has the -- and it's probably about six, seven
7 pages over. It's page 136 at the bottom right.

8 It says, "Where development is proposed,
9 that will result in the filling of existing storm water
10 management area." There's no proposal here to fill in
11 that ditch. I don't know why 10.4.5 would even apply.
12 Mr. Bolton has no intention, and never has, and he
13 hasn't filled in the ditch. And he has no intention of
14 filling in the ditch. So 10.4.5 doesn't apply.

15 The next thing that the department said is
16 that 13.12.2 says you have to get a land disturbance
17 permit. However, and they noted in their submission to
18 the board, that 13.12.8c exempts this property if it's
19 for agricultural purposes. And I'm not sure I included
20 that. They did include it in their presentation.

21 And to find the definition of agricultural
22 purposes, it's in article 22. And it's our exhibit --
23 let's see -- our exhibit -- let me see -- our Exhibit 5.

1 So the extension under section 13 is for any
2 agricultural use. And the ordinance defines
3 agricultural. Agricultural use is the use of land for
4 agricultural purposes including farming, dairy,
5 pasturage, agriculture, horticulture, and animal
6 poultry, husbandry.

7 And Mr. Bolton's been consistent. He's
8 clearing this brush to plant grass for his horses and
9 maybe some other animals, but that's clearly
10 agricultural. And section 13 provides an exemption, a
11 clear exemption, from having to get a land disturbance
12 permit for agriculture.

13 Why? Because every time a farmer went out
14 and tilled the ground, more than 500 square feet, they
15 would have to come and get a land disturbance permit.
16 There's no reason for them to do that. And that's why
17 the ordinance, your ordinance in the county, says you
18 don't. You're exempt from getting a land disturbance
19 permit if it's for agricultural purposes.

20 The -- you see on page 17 of the what was
21 presented by the department, there's, it appears to show
22 a stream here. I propose to you, there's no stream
23 there. I'm not sure where this photo came from. But

1 this stream, if there is one there, is not on
2 Mr. Bolton's property.

3 There was discussion about potential
4 wetlands. Well, the reason the county and the Corps
5 doesn't have jurisdiction of this property is for
6 purposes of wetlands is because it doesn't qualify now
7 after Sackett as a wetland because there's no continuous
8 running water across it, but also there are no wetlands.

9 And the department knows it because in their
10 package is the letter from JJ McCool, who is a certified
11 biologist. While there are some excerpts from his
12 letter, what he says is there are no wetlands here.
13 There's already been a wetlands delineation. There's
14 nothing here to indicate there are wetlands.

15 He does mention Sackett's case. And when
16 Sackett comes out, there may be no jurisdiction over
17 this anyway. But he's looked at the soils and the, the,
18 the flora and there's, there's no wetlands there. So
19 there are not potential wetlands. It's been determined
20 there are no wetlands on this property.

21 So simply put, when Mr. Brown sent the
22 email, which we attached to the appeal, from August 11th
23 saying, "We're willing to lift our stop work order for

1 land disturbance development to agriculture operations
2 more than 30 feet from the top of the stream channel,"
3 -- there's no stream; there's a ditch -- "upending the
4 forthcoming guidance from the USACE," which is United
5 States Corps of Engineers, which is now come out.

6 "However, because no formal delineation has
7 been completed to map the jurisdictional and
8 non-jurisdictional areas on the site," -- that's been
9 done by the Corps. It's not jurisdictional wetlands and
10 Mr. McCool said the same thing -- "you and Mr. McCool
11 will continue to bear full responsibility for any land
12 disturbance that occurs within the 30-foot buffer."

13 I propose to you there is no 30-foot buffer
14 because there are no jurisdictional wetlands. "And in
15 either case," he says at the end, "this blue line stream
16 is a storm water management feature protected by
17 10.4.5." It may be protected, but it just says you
18 can't fill it in. And Mr. Bolton hasn't filled it in,
19 and he doesn't plan to fill it in.

20 Don't know why there's still a notice of
21 violation out there. The county doesn't have
22 jurisdiction to, this is not a jurisdictional wetland.
23 And as far as section 10.4.5, there's no fill there.

1 And in article 13, there's clearly an exemption for
2 agricultural use, which is all Mr. Bolton is doing.

3 I'm glad to answer any questions, and I
4 think Mr. Bolton can give you some more factual
5 background because he's the one that's over there with
6 the property. It's his property, and he knows what's
7 going on the property.

8 MR. BRAGG: Did you bring the Corps of
9 Engineers delineation map of the wetlands in that area?
10 I saw Mr. McCool, but he's --

11 MR. SPEEGLE: Well, the Corps doesn't do
12 that.

13 MR. BRAGG: They do have maps of the
14 wetlands.

15 MR. SPEEGLE: Well, they do have it, but
16 there's no map. And right now, after Sackett --

17 MR. BRAGG: There is a map of Baldwin
18 County.

19 MR. SPEEGLE: They could have, but Sackett
20 did away with all that. Those wetlands delineations are
21 invalid now. I mean, we included as the new -- let me
22 find it. Sorry. I just put all this together this
23 morning. Should be more familiar.

1 It's Exhibit 10. It's an excerpt from the
2 Federal Register September 8, 2023 and discusses the
3 Sackett decision. And then the actual changes in the
4 regulations are on page -- let's see. I think the sixth
5 page over. It changes the definition of waters of the
6 U.S., as I said. Start, "It's got to be relatively
7 continuous, permanent, or standing flowing bodies of
8 water and with a continuous surface connection to these
9 waters, which are navigable waters."

10 So I'm not sure if that answers your
11 question, but it doesn't matter what the, from my point
12 of view, what Corps may have done in the past with
13 wetlands delineation maps. They aren't valued anymore
14 under their new definition. They haven't redone the
15 maps.

16 And Mr. McCool has, he's a certified
17 biologist, and that's who goes out when there's a
18 potential wetland and makes a determination of whether
19 they're jurisdictional wetlands. And he made that
20 determination and said there was none before the
21 application even of Sackett.

22 I know it's a whole lot of information to
23 drop on you at once.

1 MR. BRAGG: Not so much information. I
2 think you're asking something we don't have the ability
3 to change. You questioning whether Baldwin County as a
4 planning district has the right to make the requirements
5 that rule agricultural land and the Corps of Engineers,
6 if you got somebody else, the environmentalist that said
7 that it's not wetlands. I don't know where it puts us.

8 MR. SPEEGLE: Well, my answer to that
9 question is you've got a county department that has
10 issued a violation, and it's dependent on there being
11 jurisdictional wetlands. And nothing you've heard from
12 the department this afternoon is a conclusion that there
13 are wetlands.

14 And you can read the Corps's, you know, new
15 statement on its, in Federal Register, where they
16 propose the new regulations. Under 10.4.4, unless
17 they're jurisdictional wetlands, that's, that ordinance
18 doesn't apply.

19 And then 10.4.5, unless you're filling in
20 the ditch, we're not saying that you, that's even --
21 there's more to it than that. There's no development
22 and so forth. But just simply, there's been no filling
23 of the ditch which the department says is a free flowing

1 stream. There's been no -- so 10.4.5, there's been no
2 violation of that.

3 So what we're saying is there's been no
4 violation of 10.4.4, there's been no violation of
5 10.4.5, and there's been no violation of section 13. So
6 that is what the appeal is for, and I believe this board
7 has the authority to reverse the decision of the
8 department and say there's been no violation.

9 MR. WARD: Has the Corps ever come out with
10 their final statement of what they were gonna -- not the
11 Supreme Court. I'm talking about the Corps of
12 Engineers. Because the last I heard, the people, the
13 Corps had never finally decided how they were going to
14 handle all this stuff.

15 MR. SPEEGLE: Well, that's our Exhibit 10.

16 MR. BRAGG: It's a proposed --

17 MR. SPEEGLE: It's a proposed regulation.
18 They're changing --

19 MR. BRAGG: But that's a long way from being
20 regulation.

21 MS. BLACK: Well, it's proposed. That's the
22 part --

23 MR. SPEEGLE: But Sackett says -- the reason

1 they changed it the way they did is because Sackett says
2 you don't have any jurisdiction over wetlands unless
3 it's continuous flow of water into a navigable waterway.
4 And you haven't heard any evidence today, that there's a
5 stream on this property.

6 MR. KING: Mr. Chairman, may I intervene?
7 So board members, I'll try to be very brief here and
8 just say that we certainly respect Mr. Speegle and
9 appreciate his commentary here and understand, you know,
10 he's representing his client.

11 What I would caution the board here is to
12 make certain that we don't go too far out of this
13 board's authority. We're here to determine whether or
14 not staff appropriately handled the zoning ordinance.

15 In terms of the Sackett case and the Corps
16 of Engineers, those are federal agencies. They're going
17 to follow their procedures. And the question here is
18 that you have a zoned piece of property that contains
19 potential wetlands. That triggers zoned land
20 disturbance permit unless there is some exemption that
21 can be demonstrated. We were not able to demonstrate an
22 exemption that would not require a zoned land
23 disturbances permit.

1 So the question here is did we as staff
2 properly do our job by issuing an NOV? Thank you,
3 Mr. Chairman.

4 MR. SPEEGLE: And we say there's error. And
5 if you look at the email from Mr. Brown, I think he
6 pretty well admits this probably isn't going to be
7 jurisdictional wetlands anymore. If it's not
8 jurisdictional wetlands, 10.4.4 doesn't apply. It can't
9 apply because it a reference to that. And the ordinance
10 defines jurisdictional wetlands as those areas
11 designated by the Corps.

12 And while you do have an proposed change in
13 regulation, they're making that change because Sackett
14 said they had to, that their current regulation was
15 unenforceable and void.

16 MS. FROST: And your argument is strictly
17 based on this proposal that has not yet been officially
18 accepted.

19 MR. SPEEGLE: No. It's Sackett. Sackett,
20 the U.S. Supreme Court said that. And the Corps is only
21 changing it because the U.S. Supreme Court ruled that
22 their regulations were unconstitutional. They have to
23 change it. And they have to change them the way they

1 are here.

2 MS. FROST: Okay. Thank you.

3 MR. SPEEGLE: At least.

4 MR. GUFFY: I've got another question for
5 you.

6 MR. SPEEGLE: Yes, sir.

7 MR. GUFFY: In going back in this, the
8 reason that Mr. Bolton did not apply for a land use
9 permit, certificate, whatever you want to call it, was
10 he considered it agricultural. And I'm just trying to
11 understand the thought process.

12 He owns the property. The property is zoned
13 rural agricultural in planning district 8. So if his
14 reason for not applying for a land use permit was he
15 considered it agricultural? That's a question. Is that
16 why he didn't apply for one?

17 MR. SPEEGLE: One of the reasons, yes. One
18 of the reasons. And Sackett had come out.

19 MR. GUFFY: Well, Sackett doesn't have
20 anything to do with land use in this case. But is it in
21 the permit, but he did not apply for a land use permit.

22 MR. SPEEGLE: Well, if you go under section
23 or article 13, yes. There's an exemption for getting a

1 still disturbance permit for agriculture, and that's all
2 he's doing was for agricultural purposes.

3 MR. GUFFY: So was there any agricultural
4 activities on the property prior to this disturbance?

5 MR. SPEEGLE: He's been growing timber
6 there. It's assessed for, as timberland -- excuse me.
7 Yes. Yeah. I assume they've harvested at different
8 times, but Mr. Bolton just bought the property.

9 But before that there was -- and we've got
10 the, the affidavit of Mr. Kessler who said his family
11 farmed it before '85 and after '85. It was farmland.
12 It hasn't been farmland in the sense of growing crops
13 for many years though. I don't think there's any
14 dispute about that.

15 MS. BLACK: I have a question. So will
16 there be a structure placed on this property for the
17 animals put on this property?

18 MR. SPEEGLE: Well, you can ask Mr. Bolton
19 that, but right now, he's just trying to get the brush
20 cleared out, the privet, so forth, and the briar so he
21 can plant some grass.

22 MS. BLACK: Okay.

23 MR. SPEEGLE: And what, I think what we need

1 to look at is not what's planned particularly, it's on
2 the date the violation was issued, what had been done on
3 the property. I think that's the issue.

4 If he decides to go build apartments, he's
5 going to have to come do something else, potentially. I
6 would say if he's building apartments, but he's not.
7 That's not what he did when he got issued the notice of
8 violation.

9 Mr. Bolton's a professional engineer. He's
10 licensed in Alabama. I mean, he's, he's not unfamiliar
11 with the regulations. Excuse me?

12 MS. HOPE: What did you just say he was?

13 MR. SPEEGLE: He's a professional engineer.
14 Yes. Yes. And, you know, it's up to the board and
15 maybe your counsel to decide what your authority is, but
16 I represented Daphne Board of Adjustment for probably 20
17 years. And I believe you have, clearly have the
18 authority to reverse a decision of an administrative
19 officer if it's an error, and that's our position today.

20 MR. BRAGG: Well, besides all the about the
21 wetlands delineation, the requirements a 3.2 under rural
22 agriculture. I don't understand why he didn't go
23 through that process and could get everything done, the

1 permit and process.

2 MR. SPEEGLE: I can't answer that question.
3 I mean, we're here because it's been a notice of
4 violation under 4.4 --

5 MR. BRAGG: Well --

6 MR. SPEEGLE: On article 4 and article 13.

7 MR. GUFFY: I would say that's one of the
8 things, as I said on this board, that's the one thing
9 that happens in the process of getting that land use
10 permit is all the things you walk through, those things
11 are looked at, and if there are no wetlands, things
12 proceed.

13 But there's a process in which you go
14 through by requesting that permit that -- I understand
15 Mr. Bolton's the owner of the property, but you still
16 got to follow that process.

17 MR. SPEEGLE: And our position is there's no
18 requirement of the ordinance that Mr. Bolton get a soil
19 disturbance permit. There's no requirement. And there
20 are no wetlands. So you can't apply 10.4.4 because
21 there are no jurisdictional wetlands.

22 And there's been -- on the date that this
23 violation was issued under 10.4.5, even if you assume

1 the ditch is some kind of stream, which it's not, he
2 didn't fill it. So he didn't violate 10.4.5 either.
3 And his stated purpose is to grow grass and put horses
4 out there, and under article 13, there's a clear
5 exemption for agriculture for pasturage and husbandry of
6 animals. So it's a clear exemption.

7 You can't require people to subject
8 themselves to restrictions on their property imposed by
9 a land use department when there's no requirement of the
10 ordinance. It might be convenient for some people, but
11 if you don't have to do it, then a citizen shouldn't
12 have to do it.

13 The department at this point is trying to
14 restrict the use of land based on a wetlands, possibly
15 wetlands, when the United States Supreme Court has said
16 there's no jurisdictional wetland here. I mean, it's
17 just clear as a bell.

18 MS. FROST: Well, it's not really clear as a
19 bell. So we have one side telling us it is, showing us
20 maps, and we have you telling us one thing. So what
21 we're here to do is to determine whether or not they
22 follow the process that is in place, which I think my
23 peer down here was mentioning if you go through the

1 process, there is a step in that to prove if there is or
2 is not jurisdictional wetlands.

3 MR. SPEEGLE: I propose to you that
4 Mr. Brown will not tell you that there are
5 jurisdictional wetlands on this property.

6 MS. FROST: I understand that, but this
7 isn't a court of law.

8 MR. SPEEGLE: No. But I believe you didn't
9 hear that statement by the department because I don't
10 believe they would say it. Because I don't believe
11 they've read Sackett.

12 And yes, it is not a court of law. I agree.
13 But you do sit in a quasi-judicial capacity under case
14 law. And you are to determine the law, and you are to
15 determine the facts. And based on that, there are no
16 wetlands here.

17 And the only evidence you have from anyone
18 qualified to delineate a wetland is Mr. McCool who said
19 it's not wetlands. Even under the old definition. He
20 specifically says that in his letter. This is not
21 wetlands. And when the Corps comes out and follows
22 Sackett, that's going to even be worse. In other words,
23 there certainly aren't going to be wetlands here.

1 MS. BLACK: Okay. So staff, what triggered
2 this whole thing, the -- just a disturbance in --

3 MR. BROWN: Yes, ma'am. There was a
4 complaint called in from a citizen in the Song Grove
5 subdivision -- I'm sorry. There was a complaint called
6 in from the Song Grove subdivision, a resident there,
7 that the land disturbance activities were taking place
8 on this property. At that time we didn't know who owned
9 the property. We didn't know what the activities were.

10 So when staff arrived on site, we saw there
11 were definite land disturbance activities, there were
12 some trees had been removed, and there was what appeared
13 to be an ephemeral channel, a ditch, a stream, something
14 on the property that looked like a conveyance of water.
15 A stop work order was placed on the property, and that's
16 what began this process.

17 MS. BLACK: Okay. And so Mr. Bolton was
18 then notified of what was going on, and all he would
19 have had to do was come in and file this land
20 disturbance paperwork, correct?

21 MR. BROWN: Yes, ma'am. That would have
22 been the start to the process --

23 MS. BLACK: Okay.

1 MR. BROWN: -- was to begin that
2 application.

3 MS. BLACK: And from there, it would have
4 triggered you guys to get --

5 MR. BROWN: We would have looked for a
6 wetland delineation or a wetland assessment which would
7 determine if wetlands were on the property. Also one of
8 the things we've talked about is section 10.4.5 is
9 non-jurisdictional wetlands. That's water features.
10 That's ditches. Those are things that are meant to move
11 water. They are not necessarily a wetland as per what
12 everybody's discussing, a federal jurisdiction wetland.

13 MS. BLACK: And if whoever said person would
14 have said, "Yes, there is one," or "No. There is not
15 one," we would have pressed on. Like, none of this
16 would be going on. Like, if there was one, then he
17 would have to conform to whatever this engineer said,
18 correct?

19 MR. BROWN: Yes, ma'am. That is correct.

20 MS. BLACK: And if they said there wasn't
21 one, then he's free to do whatever he wanted to do with
22 his property.

23 MR. BROWN: If a wetland professional said

1 there was not a storm water conveyance, there were no
2 wetlands, there was nothing on the property, then he
3 would exempted. Yes, ma'am.

4 MS. BLACK: Okay. And now we're here.

5 MR. SPEEGLE: And that's what Mr. McCool
6 said. There are no wetlands.

7 MR. BROWN: But, Rob, we would still have to
8 have a zoned land disturbance permit, at least
9 initially.

10 MS. BLACK: Yeah. So.

11 MR. BROWN: Yes, sir. And that would have
12 determined whether wetlands or storm water system or
13 something was on that property. And it would have been
14 documented, and we would seen the professional reports,
15 what Mr. McCool was alluding to when he said he would
16 provide a map.

17 MR. KING: So Mr. Brown and Mr. Chairman, if
18 I may, it may be possible, but would it be possible had
19 the zoned land disturbance permit process been carried
20 and the wetland delineation showed whatever it showed,
21 Sackett case or no Sackett case, that process would show
22 whatever it would show. And then an initial, initial
23 land disturbance occurred.

1 But is it possible that going forward, land
2 disturbance was done, was performed, whatever setbacks,
3 whatever they may be were abided by, it's possible going
4 forward that's once an agricultural use, land use was
5 established, it may be possible that going forward there
6 would be exemptions that would not require a land
7 disturbance permit.

8 MR. BROWN: Yes, sir. That is correct.

9 MR. SPEEGLE: It's on page 31 of the
10 department submission, when they say, "This analysis and
11 it's finding are based on the wetland indication, the
12 plant composition, hydric soils, and hydrology in
13 consideration of the factors. It's apparent the
14 property does not meet this requisites. Therefore,
15 delineation is not warranted."

16 I mean, it isn't even close if there are
17 wetlands on this property. And our position is this.
18 You can't require -- and that's what the U.S. Supreme
19 Court said -- you can't require a home owner to come in
20 and jump through all these regulatory hoops when you
21 don't have jurisdiction, when you don't have any
22 authority to do that.

23 Sure you might say well, could Mr. Bolton

1 come in and confirm this is agricultural? He told those
2 people that this was agricultural. That's all you have
3 to do. He doesn't have to go in and file a bunch of
4 applications, wait for 30 days or 60 days or 90 days for
5 approval to do what he wants to do with his property.

6 And that's what essentially the Supreme
7 Court said is the Corps of Engineers, Department of
8 Interior, EPA, you've got to stop restricting use of
9 land.

10 MR. BRAGG: I think the problem is you
11 talked about a planning district, that you didn't go
12 through the requirements though.

13 MR. SPEEGLE: Well --

14 MR. BRAGG: And unfortunately the people
15 around you all voted to make that district 8 and what
16 the requirements are.

17 MR. SPEEGLE: But you're exempt from article
18 13 if it's for land disturbance, if you're agricultural.
19 You don't have to apply for land disturbance permit
20 under --

21 MR. ALLEN: Mr. Speegle.

22 MR. SPEEGLE: Yeah.

23 MR. ALLEN: We're kind of running long here.

1 So we want to just kind of keep time. I know Mr. Bolton
2 might have wanted to say something, maybe wanted to come
3 up. Maybe we had a few boards members that have some
4 questions for him off.

5 MR. SPEEGLE: Certainly.

6 MR. ALLEN: And so if we could just have
7 Mr. Bolton to go ahead and come up. And I just ask that
8 the board members try to keep your questions short if
9 you have any questions for Mr. Bolton. Go ahead
10 Mr. Bolton.

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1 MR. BOLTON: My name is William Walter
2 Bolton. I represent my wife, my two children,
3 Wilhelmina Rose and Emma Blue. They're five and three.
4 My wife drives every day to Alberta to ride her horses.
5 She is a generational farmer. Her maiden name is Heil.
6 They were one of the founding farm families of Alberta.
7 They are generational farmers. Today we were collecting
8 the argentine bahia seed as one of our crops off our
9 land in Alberta.

10 So I am also a descendent of farmers from
11 Talladega and Clay County. I am also a former
12 paratrooper. I am also a service-disabled veteran. I
13 am also a professional engineer. So yes. I could done
14 the process. But the thing that you need to understand
15 is you have two clear exemptions that applied to me.

16 And I went through every one of the --
17 first, the notice of violation was issued to the
18 original owner of the property, the Kesslers. So it
19 wasn't originally issued to me. I clarified that. They
20 issued a new notice of violation to me. Okay? And then
21 I talked directly to Ashley Campbell, and the goal post
22 got moved every time.

23 First, she wanted me to establish that I was

1 a farmer; so I did that. Told her to look at the
2 Facebook page, drive out to Alberta, look at the 30
3 horses out there, look at what goes on everyday with my
4 wife teaching horse lessons, and us growing bahia.
5 Okay?

6 Second, she then moved the goal post and
7 said that I had to have an FSA farm number. So she
8 thought that that would start a long process. I had
9 that the next day. Our farm number for this parcel is
10 FSA6667. That is our farm service agency number. Okay?

11 Then she said that we had to meet the Food
12 Security Act of 1987. I then pointed out to Ms.
13 Campbell that that was a misprint. It's actually the
14 Food Security Act of 1985. That was put into place for
15 farmers that were taking federal money so that the
16 federal government could protect wetlands and erosion
17 across the U.S. Okay?

18 I cannot possibly be in violation of the
19 Food Security Act of 1985 because I haven't taken any
20 money from the USDA. I was on the phone with
21 Christopher Louis just two days ago, and he admitted
22 that I can't be in violation. And by the way, there was
23 a exemption inside that as well for drainage. Inside

1 the Food Security Act of 1985, there's an exception or
2 exemption for farm drainage, and that's what this was.

3 Mr. Kessler came -- I didn't know

4 Mr. Kessler. He came of his own volition, called my
5 office, said, "What are you doing with the property?" I
6 said "I want to restore pasture. I want to put my
7 horses on there so my wife and my children don't have to
8 drive 44 miles round trip to ride their horses. That's
9 why we bought the property."

10 He said, "Good. Because it used to be a
11 farm. My grandfather bought it in 1950. My sister put
12 this ditch in because the people of Song Grove
13 complained about drainage." And that was after 1985.
14 It's in the affidavit. Okay?

15 So number one, the land disturbance permit
16 -- I'm a professional engineer. I can write all day
17 long. I can do a soil and erosion plan. It's not
18 required by your ordinance. I'm exempt as a farmer from
19 a land disturbance permit. Number two, I'm also exempt
20 because I do not violate the Food Security Act of 1987.

21 So this property was farmed prior to 198 --
22 1985. You have an affidavit from Mr. Kessler. You can
23 also just look at the property and the picture that the

1 planning zoning gave you from 1955. Almost all the
2 property is clear. My employee Harry Bush rode his,
3 when he was a child, he rode his three-wheeler and then
4 his four-wheeler on this property because it was a farm.
5 All right?

6 All we're trying to do is clear the
7 underbrush so we can get some sunlight, so we can plant
8 some grass. I didn't even clear a acre. We pushed some
9 privet hedge up to a bunch, so we could get a place to
10 turn around because it was so heavily crowded underbrush
11 and low story and under story trees. There's trees and
12 bushes that are poisonous for horses. Okay? I have to
13 remove all those. That's part of the plan. Right?

14 But we never -- we did four hours of work,
15 and we had to shut down. My employee left because it
16 was 100-plus degrees. And we had a stop work less than
17 a hour later. All I'm asking for is for you to follow
18 the rules which are there's two clear exemptions. And
19 by the way, the goal post moved every time.

20 MR. ALLEN: Mr. Bolton.

21 MR. BOLTON: Yes?

22 MR. ALLEN: I think there may be some
23 questions for you by --

1 MR. BOLTON: Okay. I'm good.

2 MR. ALLEN: -- board members; so let's just
3 go ahead and --

4 MR. BOLTON: Yes, sir.

5 MR. ALLEN: Go ahead. Let the board members
6 ask. Go ahead.

7 MS. BLACK: Okay. So district 8 was zoned
8 for reasons of overbuilding. And we wanted to kind of
9 corral and get a sense of process in place. And so that
10 took a long time to do, but it was done.

11 MR. BOLTON: Yes, ma'am.

12 MS. BLACK: And I understand that you own
13 your property because I too own in property in that
14 area, and I want to do what I want to do with my
15 property also. But what I need to understand is, what
16 is it? 35 bucks? How -- to -- when you were notified,
17 was it a point to be proved?

18 I just want to understand why you couldn't
19 have just said this is ridiculous. Let me go down. Let
20 you guys do your job. Guess what? I win because
21 there's no, there's no stream here. Or I lose. I have
22 to do what's right. Something so simple, and we're to
23 this point where there's a lawyer involved. And I

1 understand. But at the same time this is --

2 MR. BOLTON: Yes, ma'am.

3 MS. BLACK: -- a little bit more than what I
4 think it should be.

5 MR. BOLTON: I can answer your question.

6 MS. BLACK: Okay.

7 MR. BOLTON: Number one, wetland delineation
8 is \$6,000. It's not required. I don't have to provide
9 it according to your ordinance. Number two, the staff
10 has been disingenuous from the beginning of the process.
11 Right? First, I was told I had to have a farm number to
12 prove I was a farmer. I provided that.

13 Then Ashley Campbell changed the goal post
14 and said I had to meet the Food Security Act of 1987.
15 By the way, there's no such thing. They didn't tell me
16 that. I had to do all the research to find out that
17 they had misprinted the Food Security Act.

18 Then I have been in constant communication
19 with USDA. They sent an email that I thought was done.
20 Right? The email is crystal clear. It says this is
21 cropland that was farmed prior to 1985. It's right
22 there in black and white. The staff went back to that
23 individual, had them change and wordsmith the next email

1 to make it sound like the farm had never been a farm.

2 What they were saying was no one that ever
3 owned that property, took money from the USDA. That's
4 what they're saying. If you never take money from the
5 USDA, then you're not in the system. Okay? These are
6 small -- I'm here because of the small farmers.

7 I'm here because my friend, Cody Kichler,
8 who has a small, herd of cattle, right, that's fighting
9 the drought right now, and I don't want him to have to
10 go through this to go out and dig a pond on his land to
11 water his cattle. Right? That's why I'm here.

12 I'm not here because I couldn't have done a
13 soil -- I'm a professional engineer. I've been
14 practicing in Alabama over 20 years. Right? So that's
15 not why I'm here. I'm here because you have a set of
16 rules.

17 I'm an old army guy. I love rules, right,
18 because they're for everybody. It doesn't matter if
19 you're, who you are, if you're an engineer or if you're
20 a chiropractor or you're a farmer, they apply equally.

21 And you're rules have two exceptions to land
22 disturbance and wetlands. And all I'm asking you to do
23 is uphold your own rule. If they want to change the

1 ordinance later, fine, but hold me accountable to the
2 rules that are there.

3 We did not -- I only cleared about three
4 quarters of an acre. All right? I didn't even push any
5 big trees down. This is stuff that was four inches, six
6 inches, right? And so we don't even have enough
7 sunlight now to grow grass. And I stopped. And it's
8 been a delay. It's been emails. It's been back and
9 forth.

10 You don't -- listen. You don't want all
11 these farmers coming in here every time they want to
12 plow a field that's been dormant for twenty years.

13 MR. ALLEN: Mr. Bolton, I think --

14 MR. KING: Mr. Chairman, if you'll allow,
15 Ms. Campbell has texted me. She'd like to respond to
16 some of the statements.

17 MR. ALLEN: Yes. Go ahead.

18 MR. BROWN: And Mr. Koptis may also like to
19 respond, as well. But if we could start with Ashley.
20 Ashley, do a mic check before you start.

21 MS. CAMPBELL: Okay. Can you hear me?

22 MR. ALLEN: We got you.

23 MS. CAMPBELL: All right. Thank you so

1 much. I'm sorry I couldn't be there today. I've had a
2 trip planned for a while for work up in Muscle Shoals,
3 but I would like to point out a couple things.

4 First of all, when I first talked to
5 Mr. Bolton, he informed me at first that he was going to
6 do a farm field for grass for horses. Then he told me
7 he was going to put a pond in for catfish. And then he
8 informed me, he may even dig a dirt pit. And all of
9 this was on the phone verbally. But those were the
10 different changes.

11 We have never received a site plan or any
12 permit application to know exactly what is going to take
13 place on this property. The process of the land
14 disturbance permit allows us to make the decision of
15 which ordinances are applicable.

16 When we receive a complaint on any site, we
17 go out, code enforcement, Rob Brown and Vince Reiner,
18 and they investigate the site. And then if there is a
19 disturbance in an area that is regulated, we send out an
20 NOV. And that's exactly what happened. And Mr. Bolton
21 and I have been in communication quite a bit, and the
22 goal posts have never changed.

23 Our exemption states "Agricultural

1 operations that shall be exempt from this section so
2 long as the Food Security Act provisions of 1987," --
3 which was an accidental oversight. I did have NRCS
4 review this for us, but -- "administered by the USDA are
5 being met." Not in violation. He has to meet those
6 requirements.

7 We require the local NRCS to provide us
8 documentation, or he has to get documentation from them
9 to state that he meets the Food Security Act. Thus far,
10 we have not received anything.

11 Mr. Bolton immediately submitted a farm
12 number. Farm numbers are not meeting the Food Security
13 Act. You have to have something from the local agency
14 verifying it. And as of this day we do not have
15 anything in hand that would allow this exemption to be
16 met. Therefore, Mr. Bolton needs to apply for a land
17 disturbance permit so we can verify if the wetlands are
18 jurisdictional.

19 He said he was going to fill in the ditch to
20 build the grass fields, but we don't know what he's
21 going to do. So that's the whole process. And zoned
22 area, our ordinances were created to help protect the
23 properties, the natural resource, and the adjacent land

1 owners.

2 10.4.4 is jurisdictional wetlands. 10.4.5
3 is storm water management areas which includes ditches
4 and any grady ponds or any non-jurisdictional wetlands.
5 The process, he hasn't met the exemption. Therefore, we
6 need a land disturbance permit submitted to determine
7 which section of the ordinance is applicable.

8 This is the normal process. We do it
9 throughout the county with every complaint we receive.
10 Rob has done a fabulous job of documenting it. I would
11 like to mention one thing. I think the attorney
12 mentioned that there was no development. Our definition
13 for development basically states that any -- I'll read
14 it directly from it.

15 "The construction, reconstruction, repair,
16 demolition, conversion, structural alteration,
17 relocation, removal, or enlargement of any building or
18 structure, any extension, utility, construction of
19 streets, any construction of drainage structures, any
20 mine excavation, land fill, or land disturbance or any
21 change in use or alteration of the extension of the use
22 of the land." So development does include land
23 disturbance.

1 But another -- the main point is we have not
2 received anything from the local NRCS office stating
3 that they meet the Food Security Act. And Joey Koptis
4 is online to answer any questions regarding that. That
5 is the process to meet the exemption of 10.4.4 or
6 10.4.5. That has not been met.

7 MR. BOLTON: So I'd like to just point out,
8 I'd just like to point out on this particular issue, I'd
9 like to point out that Christopher Louis himself said
10 that the letter that she is requesting is not something
11 they issue. We have an email -- I have an email and I
12 have an affidavit in that packet that Christopher Louis
13 with USDA issued -- the documentation that Mr. Speegle
14 gave you. I'm just telling you.

15 MR. ALLEN: On what page is the affidavit?

16 MR. BOLTON: Which exhibit is it?

17 MR. SPEEGLE: Mr. Bolton's affidavit is
18 Exhibit 1 if that's what you're looking for, but I'm not
19 sure.

20 MR. BOLTON: But Ms. Campbell's being
21 disingenuous again. I didn't even -- listen. I didn't
22 even know what an FSA number was until she asked me for
23 it. Okay?

1 MR. ALLEN: Okay. Well --

2 MR. BOLTON: So again, your staff has made
3 me jump through all these hoops. There's two exceptions
4 to the rules, the two rules that they said I violated.
5 Again, do you want farmers coming here every time they
6 need to clear a piece of land that's been dormant for a
7 year, two years, ten years, twenty years. This -- I
8 bought this property because it was properly zoned for
9 what we wanted to do.

10 MR. ALLEN: Mr. Bolton, let's let Mr. --
11 let's let Ms. Campbell respond to that, and then I think
12 we need to, kind of, move forward here.

13 MR. BOLTON: Yes, sir.

14 MR. ALLEN: And then --

15 MR. SPEEGLE: Mr. Allen, I'll make a quick
16 comment. The USDA --

17 MR. KING: Mr. Speegle, please go to the
18 podium, please.

19 MR. SPEEGLE: Oh I'm sorry.

20 MR. KING: Yes, sir. The recording won't be
21 able to pick you up.

22 MR. SPEEGLE: I'm sorry. This whole thing
23 about the exemption of the USDA, it's a bit of a red

1 herring. You, you can't -- 10.4.4 requires a
2 jurisdictional wetland. You don't need to get into the
3 exemption. You can't enforce 10.4.4 because there are
4 no jurisdictional wetlands. And you can't enforce
5 10.4.5 because there's no fill of a drainage ditch.

6 The administrative decision, the notice of
7 violation, you have to look at what happened. That's
8 the time. It's not what's going to happen six months
9 from now because if Mr. Bolton goes out there and
10 violates the ordinance later, they can give a violation
11 for that. But you can't issue a violation saying you've
12 disturbed land when you haven't. And he was out there
13 for four hours. So I'll --

14 MR. ALLEN: Ms. Campbell, did you want to
15 respond to that?

16 MS. CAMPBELL: I would just like to respond
17 to the fact that he received documentation. We've had
18 several other complaints come in regarding activities.
19 We were unaware if they were associated with farms or
20 not. We have received them. We contacted Joey Koptis
21 and the local agency, and they responded via letter and
22 also conservation management plans which are plans which
23 they create for the farmer.

1 So this is not the first one we've had. If,
2 if the farm is recognized and the local office provides
3 documentation through Mr. Bolton or directly to us, we
4 read it, consider it, and if the exemption is warranted,
5 it does.

6 At this time we do not have documentation
7 from the local NRCS and local USDA office. And like I
8 said, Joey Koptis is on. We do not have sufficient data
9 or sufficient documentation to allow that exemption to
10 be considered.

11 Mr. Bolton did inform me he was going to
12 fill the ditch in when we first communicated. He also
13 said he was going to dig a pond and grow catfish or dig
14 a dirt pit, which we don't regulate dirt pits so that
15 would be a whole new agency.

16 But this process allows us to make the
17 determinations. The permit application allows us to
18 protect natural resources and protect adjacent
19 properties. So at the moment we do not have
20 documentation that clearly states that this is exempt
21 from 10.4.4 and 10.4.5. And we were notified that he
22 was going to fill the ditch in the initial conversation.

23 MR. BOLTON: That's absolutely false. I'm

1 just telling you.

2 MR. ALLEN: Mr. -- I'm sorry, Mr. Bolton. I
3 think that we have Mr. Koptis on the line too that also
4 wanted to make a comment.

5 MR. KING: Joey, can you hear us?

6 MR. KOPTIS: Can you hear me?

7 MR. ALLEN: Yes. We can hear you now. Go
8 ahead.

9 MR. KOPTIS: Yes. I can hear you. My
10 signal's a little weak so. My name is Joey Koptis.
11 I've be been the district conservationist at the NRCS
12 office in Bay Minette since 2007. Last August, I took a
13 new position with the soil survey office in Loxley. But
14 I'm still kind of wearing the hat for that office there.
15 They recently hired a new DC to replace me maybe three
16 weeks ago. Christopher Louis has been in the county,
17 I'd say November's a year. So he's fairly new, but, you
18 know, he's doing a good job.

19 So just a little bit of, kind of, history on
20 how the Food Security Act stuff works is any row crop or
21 production farmer in the county that is receiving any
22 type of USDA benefits, whether it be money to plant a
23 cover crop or put up crop fencing or put in a shallow

1 impoundment for wildlife habitat, they have to go
2 through a process of paperwork.

3 So the first thing is is there's no farm
4 number on that property. The ladies up in the FSA
5 office, they pull that property up on their little map
6 system and assign a farm number to it. And, of course,
7 Mr. Bolton has that number as 6667. That number was
8 issued back in August. I did some extensive research
9 looking through the old hard copy conservation plans and
10 everything, and I couldn't find anything that related to
11 that, to the history of that piece of property.

12 That being said, there is properties in the
13 county that have no records with our office, but if it's
14 typically a row crop operation or cattle farmers that,
15 you know, do that for a living, so to speak, there's
16 some records usually with our office.

17 So if a land owner comes in and signs up for
18 conservation assistance with our programs, there's a
19 series of paperwork that's initiated. And that, that
20 kind of gets the ball rolling for us to send a soil
21 scientist out to do a wetland determination on that
22 piece of property.

23 Now, our wetland rules are a little bit

1 different than the, than the Clean Water Act that the
2 Corps of Engineers follow. Basically, it doesn't have
3 to be a jurisdictional wetland, per se. If it's got
4 hydric soil indicators and wetland vegetation, then
5 we're going to consider that a wetland for USDA farm
6 bill purposes.

7 So on this piece of property, I think
8 there's some minimal paperwork that's been filled out.
9 This has not been put in the queue yet to initiate that
10 wetland determination from our agency. And I know, you
11 know, they've -- there was a private individual that
12 looked at this property. But we have resource
13 scientists on staff that that is their duties to go out
14 and make these determinations.

15 So as far as, as far as the exemptions are
16 concerned, you know, NRCS is not a regulatory agency.
17 We basically, our producers know what our rules are. We
18 typically don't have any trouble with violations there
19 because they know what's at stake and what it could cost
20 them, you know, in their operations. If they have, you
21 know, cotton base or, you know, some other type of
22 subsidies built on that property. Even crop insurance,
23 for example, the RMA, the Risk Management Agency, pays

1 about 75 percent of our crop insurance premium for us.

2 So our rules are a little different.

3 So I think what the county has done is tried
4 to look to NRCS and say, Hey, this guy is down here
5 digging this pond out or putting in a new pond or
6 something. Is he in compliance, you know? Is he doing,
7 is he following BMPs that NRCS would recommended? And
8 that kind of thing.

9 So I think that, you know, that's kind of
10 how that's worked in the past. Because I've had
11 conversations with Mr. Brown and Ashley Campbell, and,
12 you know, we talk pretty regular on this stuff. So
13 there is, however, some exemptions for certain
14 practices, and I gave three examples in an email a while
15 back.

16 So if -- just say, for instance, if a
17 producer has a stream or creek or wetland running
18 through their property, they may have an upland pasture
19 on each side. We do a practice that's called a stream
20 cross, and it's really basic.

21 But we will go in and design a cross for
22 those cattle to get from one side of that that pasture
23 to another. We do require that they fence any wetlands

1 out that's determined by the soil scientist, and the
2 cattle are only allowed to cross that that given
3 location there.

4 I would say, probably, the other two that's
5 been popular in the county over the years is livestock
6 watering ponds. We do design those commiserate with the
7 size of the operation. That being said, you know, if a
8 producer has five head of cattle, we would not be
9 designing a forty acre pond for that operation. And
10 that those ponds have to be fenced out, and they have
11 been accessed by the cattle with a fenced off area with
12 a watering ramp is what we call that. So that's the
13 other one.

14 And the third example I'd say is probably as
15 common is a irrigation reservoir. And I would say most
16 producers now that's irrigating in the county put in
17 water wells. There is still some irrigation ponds being
18 used. But that's three common examples.

19 Our agency sits down once a year with the
20 Fish and Wildlife Service, the Corps of Engineers, and
21 we go over our construction standards for these
22 practices, making sure that we're not, you know,
23 violating any wetlands rules or stepping on the other

1 regulatory agency's feet. So we have that field level
2 agreement with our partner agencies for conservation.

3 The Food Security Act wetland rules
4 basically that was passed December 23rd of 1958 were put
5 in place because Congress was realizing on a national
6 level the amount of wetlands that were being, they were
7 being ditched and drained and lost. And those are very
8 important resources for, you know, for aquifers and
9 stuff; so that's kind of how the Food Security Act was
10 born. And in a nut shell, basically it prevents a
11 farmer from going in and ditching a wetland.

12 I know you've probably heard the term "grady
13 pond" which is basically an isolated depression
14 wetland usually occurring in a row crop field that has
15 no outlet. Those were all allowed to be drained prior
16 1985 when this Food Security Act passed.

17 So we, we do not, you know, we don't run out
18 and police things, but, you know, if there's a producer
19 that there's complaints on, then we have to -- can you
20 guys still hear me? Hello?

21 MR. BRAGG: You're breaking up a little bit.
22 The gentleman is breaking up a little bit.

23 MR. KOPTIS: I'm sorry about that. Anyway,

1 basically, I guess what I'm saying is the Food Security
2 Act rules are a little different -- let me -- I'm going
3 to move around a little bit.

4 MR. KING: Mr. Chairman, maybe we can ask
5 Mr. Koptis to make his concluding statement in case we
6 lose the signal.

7 MR. ALLEN: Okay. I know that some board
8 members maybe still have a few questions for Ms.
9 Campbell. I think Ms. Frost had a question for
10 Ms. Campbell.

11 MS. FROST: Yes. Ashley, my question
12 through all of this is am I understanding this clearly
13 that if Mr. Bolton had proof of meeting the requirements
14 of the exemption from, I guess, the local NRCS, that he
15 would be, he could submit that information and we could
16 move forward with having the stop work and, I guess, the
17 violation removed?

18 MS. CAMPBELL: You're correct. If proper
19 documentation had been received, yes. And the -- like
20 Joey explained, when we requested the documentation, I
21 believe Mr. Bolton went up to the agency, and they
22 issued him a farm service which Mr. Koptis explained is
23 the first part of the process.

1 And -- but we still have not received any
2 documentation that fully states that, that he can have
3 the Clean Water Act exemptions for the jurisdictional
4 and the grady areas and the stream without having to
5 contact the Corps of Engineers.

6 So basically all he is -- applying for Food
7 Security Act provisions and meeting them allows you to
8 have special conditions with the Clean Water Act. And I
9 think Joey, Joey could definitely describe that program
10 better. That's why we rely on our local agency to
11 provide us the documentation. Then we determine if
12 they're exempt.

13 And like I said, in the past I've had
14 several cases where that did apply, that was applicable
15 and Joey was able to submit a letter or a conservation
16 plan and then that, no permits were required at that
17 time. But at this time we have not received proper
18 documentation to determine if the exemption exists
19 through the NRCS local office.

20 MS. FROST: Okay. And the other information
21 that he got from, I guess, he got from the local agency,
22 the farm number or what not. Are there issues if that
23 property has not been used as such for quite some time?

1 MS. CAMPBELL: So I guess it did not have an
2 existing farm number because Mr. -- I guess, the
3 previous owner did not work with the NRCS agency. I
4 know Mr. Bolton went up there to get a number and start
5 the process to provide documentation. But we have not
6 received sufficient documentation to prove the exemption
7 is met.

8 Therefore, we're requesting a zoning land
9 disturbance application be submitted to determine if the
10 buffers are applicable. That is when we review the
11 wetland assessment. We determine if we need a full
12 blown wetland delineation. And it is a little
13 complicated with the Supreme Court case of the waters of
14 United States.

15 Alabama is enlisted in the 27 states that
16 are not going to be following the 2023 definition for
17 waters of the United States. We're going to be required
18 to follow the 2015; so we are still waiting on direction
19 from the Mobile Corps districts with some of the
20 different updates to the definition. So that component
21 of it, the jurisdictional component of it, is still not
22 totally decided for Alabama and Baldwin County at this
23 moment.

1 MS. FROST: Okay. Thank you.

2 MR. ALLEN: Do we have any other questions
3 from any other board members?

4 Okay. Mr. Speegle and Mr. Bolton, were you
5 done? I can give you an additional three minutes.

6 Okay. If that's the case, I'm going to go
7 ahead, I believe I'll reopen up the public hearing. I'm
8 going to go ahead and open up the public hearing now.
9 And we have a few people that would like to speak.

10 Mr. Chad Yarborough, we ask that you keep
11 your comments to three minutes, sir.

12 CHAD YARBOROUGH: All right. Good evening.
13 My name is Chad Yarborough. I'm the Fairfield Place HOA
14 president. Google maps shows a -- I've got numerous
15 complaints and questions from residence -- but Google
16 maps shows a creek that runs both from north to south
17 that runs behind several of our neighbors' home as well
18 as others in Fairfield. I know that creek is in
19 existence because it runs behind my house.

20 USGS website on 6/28/2018 has got an article
21 that states that streams and creeks can run above and
22 below ground, and storm water run off is one of the
23 things that we're concerned about.

1 Also, as the gentleman stated, we are in a
2 drought. Rainfall totals this year are lower which
3 could and most likely would be why it's not so spongy
4 and wet down in there, and the reason for potential.
5 But on behalf of Fairfield Place Home Owners
6 Association, we would like to see it not go forward.
7 Thank you.

8 MR. ALLEN: Is there a Mr. Mike Finley?

9 MIKE FINLEY: I'm going to try to be a
10 little short. Can you hear me? Sorry about that. Let
11 me put this thing up here a little bit. I'll try not to
12 be as long as they were.

13 But -- so a couple of things Mr. Bolton
14 mentioned. Lot in common. Okay? Got kids. And -- can
15 you hear me? Okay. We have a lot in common, Mr. Bolton
16 and us and the community. So, you know, kids. We all
17 got kids. We all got everything. This is 57 lots in
18 Song Grove. We probably got a hundred and -- I don't
19 know. I'm estimating -- a hundred kids under the age of
20 10 to 12 in that neighborhood, three of them being mine.

21 And we play -- this is our homes. We've had
22 this land here in Song Grove and bought the property on
23 a piece of paper as dirt. Okay? My father-in-law owned

1 six or seven lots in there in the beginning as dirt.
2 We're, we're the original ones and still there. I know
3 this land very well.

4 So when you talk about storm water run off,
5 these things, all I'm asking and all Song Grove's asking
6 is for what we elected y'all to do -- I can't talk in
7 this thing y'all. I need something different -- is what
8 we elected you to do. Okay? And just deny it and let
9 ADEM, FEMA, whoever take it from here.

10 You've done your job. I'm proud of what
11 you've done. Okay? I'm proud of what the agency's done
12 and what we've elected y'all to do. Okay? For them to
13 tell you that you have no jurisdiction, then what are
14 you even doing up here? Okay? Y'all, y'all are our
15 voice. Okay? I'm going to make mine heard, and I'm
16 speaking for a lot of people. Okay? So if you need
17 something signed, if you need me to get you whatever you
18 need, I can do it. All right?

19 But I can tell you this. The storm water --
20 I'm too tall for this thing -- the storm water run off
21 is the problem. Okay? And the -- so my property alone,
22 FEMA has changed the flood zone. I never had to
23 purchase flood insurance on my property since 2007 until

1 about three or four years ago. I'd have to get with
2 Andy Malone to see the exact date that he put it on my
3 policy. But now I have to purchase flood insurance.

4 And it's partly because of when they
5 extended Boothe Road, you know, some of the engineers
6 that did that, I don't think it was designed properly as
7 it was because that's when it all started. And if any
8 of you have been down what I'm talking about -- I know
9 Ms. Black has. She lives in our area.

10 So, you know, I know this area and this
11 land. It wasn't farmland. Look at the timeline. Okay?
12 Just take a look at the timeline. Take the pictures.
13 All right? And I'm just going to reference a few things
14 here that I wrote down.

15 Farm drainage. Okay? It's not. My kids
16 can take you back there and show you where the storm
17 water goes. Okay? My 8-year-old pulled the snakes out
18 of that ditch and brought them home with it. Clean
19 Water Act, all this stuff, that's what, that's what its
20 for. Okay? So just -- all we're asking here is --
21 well, I did want to say some quotes. I did like --

22 MR. ALLEN: Mr. Finley, we're going over --

23 MIKE FINLEY: Oh, okay. I'm sorry. I'm

1 sorry.

2 MR. ALLEN: -- time here.

3 MIKE FINLEY: Okay. Well, they got an hour
4 and twenty minutes. I thought I'd get a few more
5 minutes.

6 MR. ALLEN: Well, they were the applicant,
7 so we gave them a little extra time. But yeah. We did
8 it --

9 MIKE FINLEY: All right.

10 MR. ALLEN: -- with them too.

11 MIKE FINLEY: All we're asking you to do is
12 deny it. Job's done. We all go home. Let ADEM and
13 everybody else figure it out. Okay?

14 MR. ALLEN: Yes, sir. We do thank you.
15 There is just one more person: Mr. Vincent. If you
16 would come on up.

17 VINCENT NOLETTO: I'm going to have to lower
18 it for me. All right. I'm Vincent Noletto. I'm here
19 with my wife Joanie as concerned home owners in Song
20 Grove and also as the president of the Song Grove Home
21 Owners Association.

22 We have, I think, ignored today that this is
23 a storm water conveyance system that runs through our

1 property. We got two ditches, and they want to say
2 they're dry. Well, maybe in a drought in the summertime
3 they're dry, but you ought to drive through there
4 sometimes when we have heavy rain storms.

5 You will see both ditches that flow into our
6 pond filled to the point of overflowing. You will see
7 the overflow ditch that comes out of our pond onto his
8 property filled to the point of overflowing. And then
9 it goes down to Fairfield where they've got to deal with
10 the downstream water.

11 One thing that really struck me from Ms.
12 Campbell, and I believe her when she said this, was one
13 of the things he was talking about doing is filling in
14 that ditch. Well, I'm here to tell you, if that's
15 something he ever does, we're going to have problems in
16 our subdivision because the water's going to back up to
17 us.

18 We've got more than Michael's house that is
19 now in a flood zone because they abut those ditches.
20 These are some things we really have to be concerned
21 about. These are some things that we think you really
22 need to take into account when you consider all of this.

23 Once again, it was a wonderful presentation.

1 I think they have shown that they have dotted all their
2 i's and crossed all their t's. And that all you need to
3 do at this point is make this gentleman go through what
4 he is supposed to go through. Let him meet all the
5 requirements, and then we'll see what happens from
6 there. Because what we do not need is for that property
7 to be used for something else then maybe some horses to
8 graze.

9 And what's he going to do? Leave his horses
10 there with no buildings, no structures to take care of
11 them? He's just going to have a vacant lot or a lot
12 with a bunch of horses and farmland animals on it? Is
13 that really going to happen? I don't know.

14 But in any event, we thank you for your time
15 and hope that you do the right thing and that you make
16 him go through the process that he is supposed to go
17 through. Thank you.

18 MR. ALLEN: Did the board members have any
19 additional questions for staff?

20 Okay. I'm go to go ahead here and close out
21 the public hearing. And if we don't have any additional
22 questions for staff, we will go ahead and try to move
23 for a motion. Go ahead.

1 MR. STEJSKAL: I make the motion to uphold
2 the staff's recommendation and deny the appeal.

3 MR. ALLEN: Do I have a second?

4 MS. FROST: I will second.

5 MR. ALLEN: Call the roll.

6 MS. SECRETARY: Mr. Guffy?

7 MR. GUFFY: Yes.

8 MS. SECRETARY: Yes to go with staff's
9 recommendation?

10 MR. GUFFY: Yes.

11 MS. SECRETARY: Mr. Allen?

12 MR. ALLEN: No.

13 MS. SECRETARY: Mr. Bragg?

14 MR. BRAGG: Yes.

15 MS. SECRETARY: Ms. Frost?

16 MS. FROST: Yes.

17 MS. SECRETARY: Ms. Black?

18 MS. BLACK: Yes.

19 MS. SECRETARY: Mr. Stejskal?

20 MR. STEJSKAL: Yes.

21 MS. SECRETARY: Mr. Ward?

22 MR. WARD: Yes.

23 MS. SECRETARY: Motion passed to go with

1 staff's recommendation to deny -- I'm sorry.

2 MR. ALLEN: Go ahead.

3 MS. SECRETARY: I forgot Ms. Hope.

4 Ms. Hope?

5 MS. HOPE: Yes.

6 MS. SECRETARY: Yes. Okay. Motion passed.

7 MR. ALLEN: All right. Do we have any old
8 business?

9 MR. KING: Mr. Chairman, I think this is
10 appropriate for an old business item, and I'm just going
11 to take this opportunity very briefly here, that anyone
12 watching or any citizens participating in this meeting
13 understand that if you live in a zoned area of Baldwin
14 County, if you're not sure what is required before you
15 do any activities, whether it be building a house,
16 expanding a house, installing an accessory structure, or
17 any land disturbance whatsoever, know that our staff at
18 Baldwin County planning and zoning, there is a, there is
19 a process for clarifying what is required; and that's
20 called a zoning verification.

21 That zoning verification process is
22 available online through citizen serve where, one, you
23 make certain -- you ask us is it zoned? How it's zoned?

1 What does that mean? And here's what I want to do, what
2 would be required? So that is -- we answer dozens of
3 those inquiries every month. Sometimes it's
4 overwhelming how many we get.

5 But know before you do anything in a zoned
6 area if you're not sure, there's a means of not only
7 requesting clarification, but getting it in writing. We
8 have a record of that saved within citizen serve.

9 So, Mr. Chairman, I appreciate the
10 opportunity to bring that up and hope that anyone who
11 hears this will know there is a way to possibly avoid
12 these types of difficulties by getting these questions
13 answered up front. Thank you, Mr. Chairman. Thank you,
14 board members for being here today. And thank you for
15 your patient with staff on a complicated case.

16 MR. ALLEN: And I guess we don't have any
17 new business, do we?

18 MR. KING: I don't. No, sir.

19 MR. ALLEN: All right. And with that we are
20 adjourned.

21
22
23

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**Baldwin County Planning and Zoning
Board of Adjustment Number 1
Regular Meeting Minutes
Tuesday October 17, 2023**

I. Call To Order

The Board of Adjustment Number one met in a regular session on August 15, 2023, at 4:00 p.m., in the Baldwin County Central Annex Auditorium.

II. Roll Call

The meeting was called to order by Jamal Allen, Chair. Members present included: James Guffy, Norman Bragg, Leslie Stejskal, Tracy Frost, Mary Shannon Hope, Rosellen Coggin. Staff members present were Crystal Bates, Planning Technician II, Buford King, Deputy Planning Director.

III. Approval of Minutes

IV. Consideration of Applications and Request

a.) ZVA23-61 Wynn Property

Mrs. Crystal Bates presented the applicant's request for variance ZVA23-61 from Section 4.2.5 as it pertains to minimum front yard setback requirements.

Chairman called the applicant Mr. Jimmy Wynn to the podium to speak on his project he explained the reasoning why the incorrect house was built with the incorrect setbacks. Chairman asked if anyone else is present that would like to speak.

Board member Norman Bragg made a motion to approve staff's recommendation to Deny case ZVA23-61 and seconded by Leslie Stejskal the motion pass to Deny a 7 to 7 vote.

V. Old Business- Approved the BOA 1 Meeting Calendar for 2024.

VI. New Business

VII. Adjournment

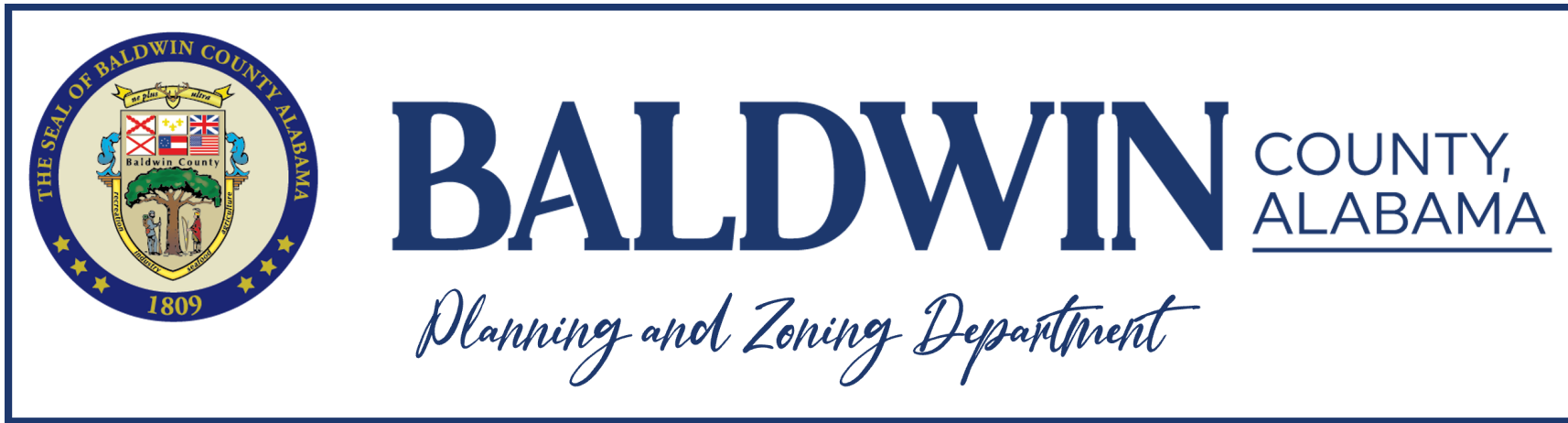
The meeting adjourned at 4:37 p.m.

Respectfully Submitted,

Crystal Bates, Planning Technician

I hereby certify that the above minutes are true, correct and approved this _____ day of _____, 2023.

Jamal Allen, Chairman



BALDWIN COUNTY BOARD OF ADJUSTMENT #1

REGULAR MEETING

NOVEMBER 21, 2023

BALDWIN COUNTY CENTRAL ANNEX I

ROBERTSDALE, AL

ZVA23-66 HUDSON PROPERTY

VARIANCE REQUEST

Lead Staff: Crystal Bates Planning Technician II

Parcel#: 05-56-07-38-0-000-019.000

PIN: 45435

Planning District: 26

Zoning: RSF-2, Residential Single Family

Lot size: 90' x 235'

Physical Address: 10228 Bayhaven Cir

Applicant: Matthew Hudson

Owner: Matthew Hudson



ZVA23-66 HUDSON PROPERTY

VARIANCE REQUEST SUMMARY AND RECOMMENDATION

Lead Staff: Crystal Bates Planning Technician II

The applicant is requesting a variance from *Section 13.1.2 (b) and (d)* of the *Baldwin County Zoning Ordinance* as it pertains to accessory structures being on a lot by itself without a primary dwelling.

The applicant is requesting to allow for an accessory structure to remain in place without alterations. If approved the variance will allow an accessory structure on a parcel without primary dwelling.

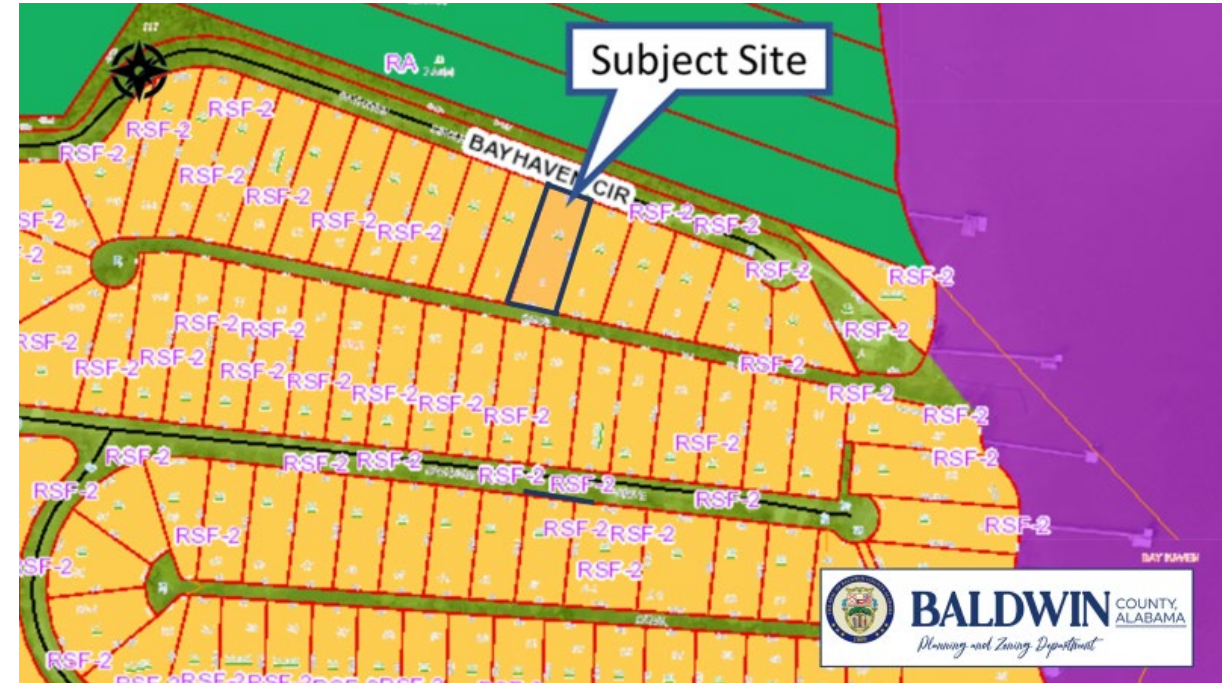
Staff cannot establish a hardship on the subject property and therefore recommends **DENIAL** unless information to the contrary is revealed at the public hearing.



Site Map



Locator Map



	Adjacent Zoning	Adjacent Land Use
North	RSF-2, Residential Single-Family District	Residential
South	RSF-2, Residential Single-Family District	Residential
East	RSF-2, Residential Single-Family District	Vacant
West	RSF-2, Residential Single Family	Residential

Property Images

Nov 3, 2023 at 1:37:49 PM
200° S

Subject Property



VARIANCE
PROPOSED
FOR THIS PROPERTY
ZVA23-000066
Baldwin County Planning &
Zoning Department
(910) 660-1600 / (251) 393-4600
(251) 972-8000



Subject Property

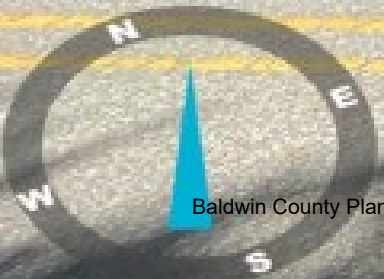


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197° S



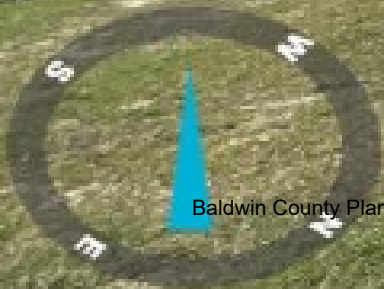
Nov. 3, 2023 at 1:37:15 PM
24° NE

Adjoining Property
to The North



Nov 3, 2023 at 1:40:20 PM
233° SW

Adjoining Property
to The West

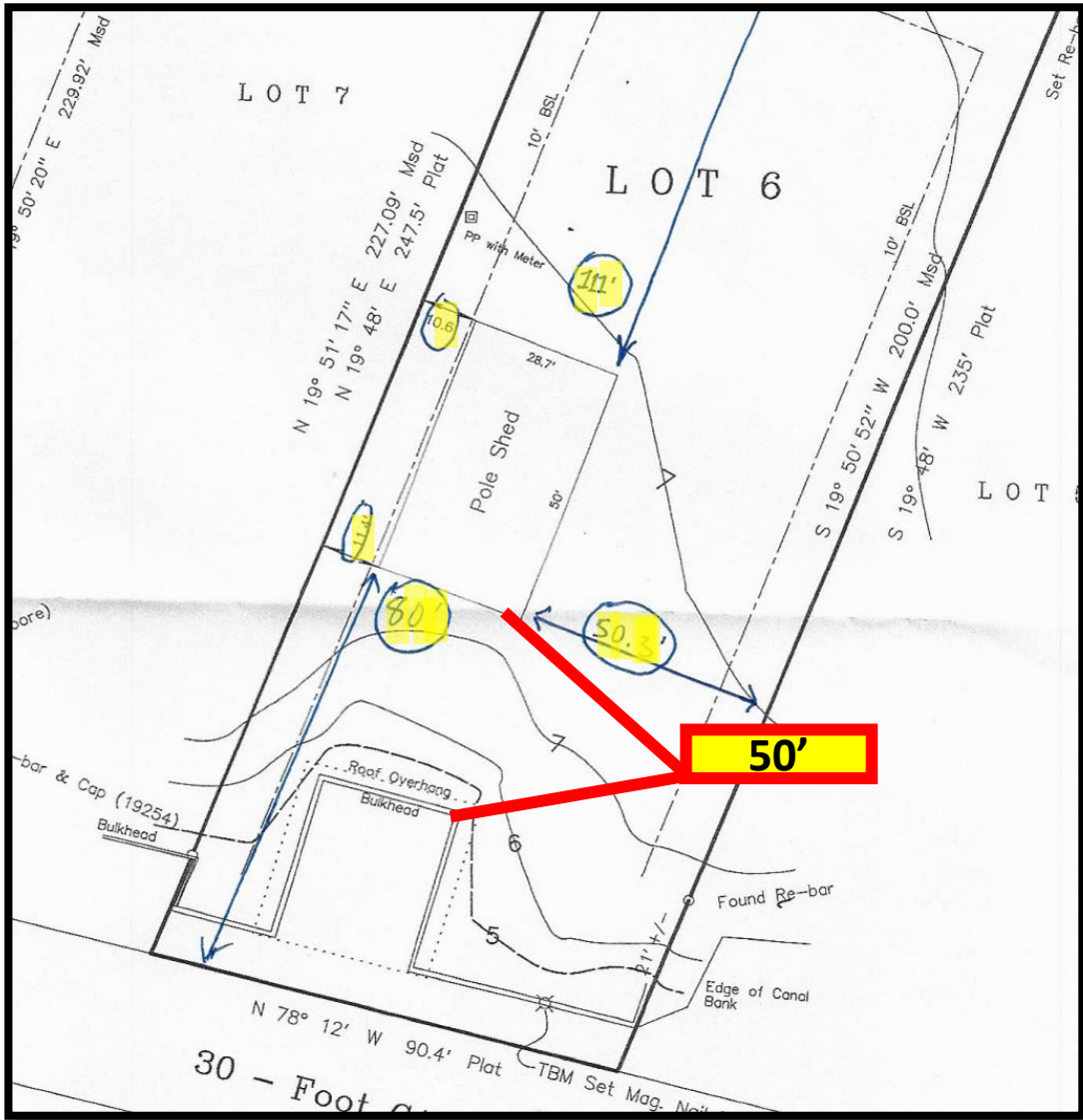
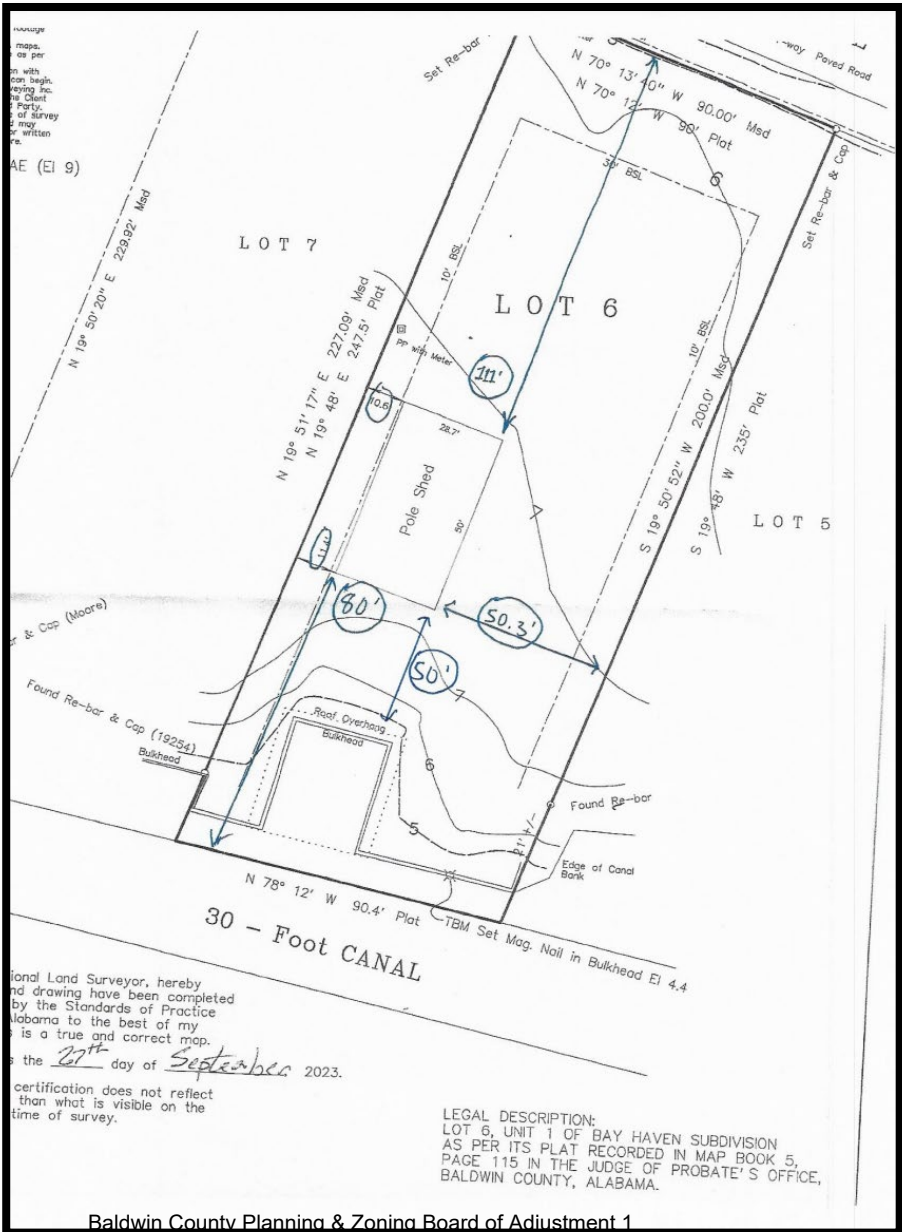


Nov 3, 2023 at 1:37:20 PM
198° S

Property to the East



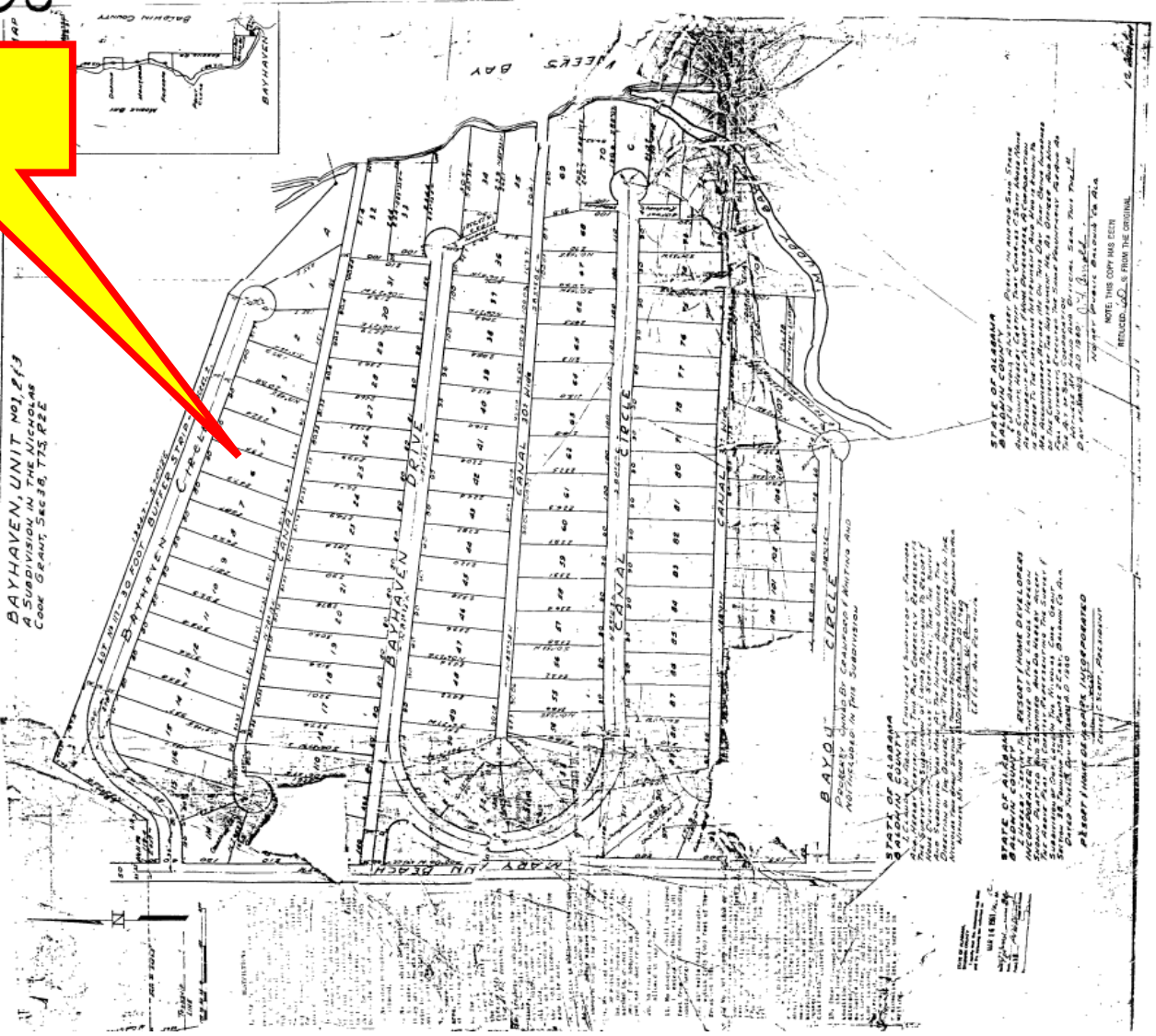
Site Plan



Survey of Record

138

Subject Property



395 B



Action Timeline

DATE	ACTION
3/30/2023	MEP23-1349-Electrical permit for boat lift in existing boat house
3/31/2023	Building Permit BPC23-147: Building Permit applied for pole barn. (application not approved/pending zoning site plan approval)
4/25/2023	Zoning Site Plan ZSP23-641: Zoning Site Plan applied for pole barn. (application denied per Section 13.1.2 (b) and (d))
5/24/2023	Complaint File Number 23-004622: Pole barn built without site plan approval/building permits
10/2/2023	Zoning Variance Application: ZVA23-66 applied for from section 13.1.2 (b) and (d)

POA Letter & Restrictions

To whom it may concern,

To my knowledge, there is no active neighborhood association for the Bay Haven subdivision. There were some by-laws written at the time of development which I have attached hereto. None of the by-laws are applicable to my variance request.



10/2/2023

Bay Haven Subdivision Restrictions

Taken from Plat Recorded in Office of the Judge of Probate, Baldwin County Alabama

THIS DOCUMENT IS NOT A LEGAL DOCUMENT. IT IS PROVIDED SOLELY TO PROVIDE AN EASILY-READABLE COPY OF THE RESTRICTIONS OF BAY HAVEN SUBDIVISION. RESTRICTIONS PRINTED ON THE SUBDIVISION PLATS ARE THE APPROPRIATE LEGAL DOCUMENTS.

1. The premises are conveyed and shall be used exclusively for residential purposes, except as to those lots designated as business or commercial areas on the maps of BAY HAVEN, and no more than one single family dwelling house may be erected on each residential lot, nor more than one other building for garage or storage purposes in connection therewith.
2. Buildings shall be neat in appearance, and no building or structure shall be moved, constructed or erected on the premises that may be considered detrimental to the development. Wood exteriors shall be stained or painted with two coats of paint or stain.
3. No outside toilets shall be allowed.
4. No waste shall be allowed to enter the canals, and sanitary arrangements must comply with local and state health laws and regulations.
5. No residence of less than 800 square feet, including porch area, shall be erected or constructed on each lot.
6. There shall be no building, porch or projections extending nearer than fifty (50) feet from the front line of any lot or within fifteen (15) from the property line of any abutting property owner.
7. Property is subject to the right to install and service electrical lines. Telephone lines, gas and water mains, over and upon any and all lots, streets, rights-of-way, beaches or recreation areas, or the right to license or permit the same to be done.
8. Property is subject to the right to locate and install drains where necessary and to cause or permit drainage of surface water over, and/or through any of the aforesaid lots.
9. No animal or fowl shall be kept or maintained on said property, but nothing herein shall be construed to prevent or prohibit the owner from keeping as a domestic pet, cats, dogs, or birds.
10. No housetrailer shall be allowed at any time.
11. No obstruction shall be allowed to extend more than eight (8) feet from side of canals, including boats or barges.
12. All wells shall be located within fifty (50) feet of the front line.
13. No part of any septic tank or drain field shall be allowed closer than 100 (one hundred) feet from any well; that is all parts of any septic tank system must be at least 100 feet from the well nearest to it.
14. All driveways shall be equipped with culverts where same cross road-side ditches; all culverts shall be at least 18 inches in diameter, and shall be of standard strength road-way type concrete culvert pipe, or of standard corrugated metal culvert pipe.
15. These covenants shall run with the land, and subject to the condition same shall not be altered, changed, amended or revoked before January, 1965, same may be thereafter, and from time to time, changed, altered, amended or revoked, in whole or in part, whenever the owners of at least sixty percent (60%) of the residential lots so agree in writing.

Zoning Requirements

Section 4.3 RSF-2, Single Family District

4.3.1 *Generally.* This zoning district is provided to afford the opportunity for the choice of a moderate density residential environment consisting of single family homes.

4.3.2 *Permitted uses.* Except as provided by *Section 2.3: Establishment of Zoning in Planning Districts*, the following uses and structures designed for such uses shall be permitted:

- (a) The following general industrial uses: extraction or removal of natural resources on or under land.
- (b) The following transportation, communication, and utility uses: water well (public or private).
- (c) The following agricultural uses: Silviculture.
- (d) Single family dwellings including manufactured housing and mobile homes.
- (e) Accessory structures and uses.
- (f) The following institutional use: church or similar religious facility.

4.3.3 *Conditional Use Commission Site Plan Approval.* Except as provided by *Section 2.3: Establishment of Zoning in Planning Districts*, the following uses and structures designed for such uses may be allowed by the site plan approval process:

- (a) Outdoor recreation uses.
- (b) The following institutional uses: day care home; fire station; school (public or private).
- (c) The following...
- (d) The following...

4.3.4 *Special exceptions in Planning Districts*, the following uses and structures designed for such uses may be allowed by the site plan approval process:

4.3.5 *Area and dimensional ordinance*...

Maximum Height of Structure	35-Feet
Maximum Height in Habitable Stories	2 ½
Minimum Front Yard	30-Feet
Minimum Rear Yard	30-Feet
Minimum Side Yards	10-Feet
Minimum Lot Area	15,000 Square Feet
Minimum Lot Width at Building Line	80-Feet
Minimum Lot Width at Street Line	40-Feet
Maximum Ground Coverage Ratio	.35

Article 13 Design Standards

Section 13.1 Accessory Uses and Structures

13.1.1 *Generally.* Any use may be established as an accessory use to any permitted principal use in any district provided that such accessory use:

- (a) Is customarily incidental to and is maintained and operated as a part of the principal use.
- (b) Is not hazardous to and does not impair the use or enjoyment of nearby property in greater degree than the principal use with which it is associated.
- (c) Does not create levels of noise, odors, vibration and lighting, or degrees of traffic congestion, dust or pollutants, in a greater amount than customarily created by principal use.
- (d) Is not located in a required yard.

13.1.2 *Rural and Residential districts.* In residential districts an accessory use or structure will conform to the following requirements:

- (a) An accessory structure may be located in a rear or side yard but shall not be closer than 5-feet to any lot line.
- (b) Except in rural districts, an accessory structure may not be located in the front yard of a lot, except that on waterfront lots accessory structures may be located between the principal building and the waterfront property line but not within the required front yard setback.
- (c) An accessory structure may not exceed the height limit for the district in which it is located and may not occupy more than 30% of the rear yard.
- (d) Except in rural districts, no accessory structure, other than a pier and boathouse, may be located on a lot by itself.

Staff Analysis and Findings

1.) Exceptional narrowness, shallowness or shape of a specific piece of property existing at the time of the enactment of these zoning regulations.

Per Revenue Commission records the parcel is approximately 90' x 235' and approximately 21,150 square feet located in *Bay Haven Subdivision Lot 6 Unit 1*. Minimum lot size requirements for RSF-2 zoning is 15,000 square feet with a minimum lot width at the street line of 40' and minimum lot width at the building line of 80'. Planning District 26 zoning was adopted on September 21, 1993. The pole barn was constructed after a denial, of a zoning site plan. Therefore, staff does not perceive the subject parcel to be exceptionally narrow, shallow, or otherwise configured to create a hardship on the land that would require a variance, and the variance request is due to a self-created hardship.

Minimum lot size: **15,000sf** Actual lot size: **21, 150sf** Minimum Lot width: **80'** Actual Lot Width: **90.40'** Hardship: **NONE**

2.) Exceptional topographic conditions or other extraordinary situations or conditions of a specific piece of property.

The subject property doesn't contain jurisdictional wetlands on the property or any other exceptional topographic conditions. Therefore, this criteria is not a factor for consideration.

Staff Analysis and Findings

3.) The granting of the application is necessary for the preservation of a property right and not merely to serve as a convenience to the applicant or based solely upon economic loss.

The subject property is zoned RSF-2, Residential Single-Family District, which allows for single-family dwellings and related accessory uses. As mentioned previously, a zoning site plan approval for the accessory structure was applied for and denied due to not having a primary dwelling on the property. Construction of the pole barn continued without proper permitting. As a result, staff does not perceive that the subject property establishes conditions which require a variance, and the request appears to be for the convenience of the applicant rather than preservation of a property right.

Staff Analysis and Findings

4.) The granting of this application will not impair an adequate supply of light and air to adjacent property or unreasonably increase the congestion in public streets, or increase the danger of fire, or imperil the public safety, or unreasonably diminish or impair established property values within the surrounding areas, or in any other respect impair the health, safety, comfort, morals, or general welfare of the inhabitants of Baldwin County.

Staff anticipates no major impacts, therefore staff does not believe the granting of this application will impair an adequate supply of light and air to adjacent property or unreasonably increase the congestion in public streets, or increase the danger of fire, or imperil the public safety, or in any other respect impair the health, safety, comfort, morals, or general welfare of the inhabitants of Baldwin County. ***However, staff is unable to determine if approved, the requested variance will unreasonably diminish or impair established property values within the surrounding areas because it is not feasible to gather sufficient data to make that determination for presentation at the public hearing.***

5.)Other matters which may be appropriate.

ZVA23-66 Hudson Property

VARIANCE REQUEST SUMMARY AND RECOMMENDATION

Lead Staff: Crystal Bates Planning Technician II

The applicant is requesting a variance from *Section 13.1.2 (b) and (d)* of the *Baldwin County Zoning Ordinance* to allow for accessory structure without a primary dwelling.

The applicant is requesting a variance to allow for an accessory structure to remain in place without alterations. If approved the variance will allow an accessory structure on a parcel without primary a dwelling.

Staff cannot establish a hardship on the subject property and therefore recommends **DENIAL** unless information to the contrary is revealed at the public hearing.

ZVA23-66 Hudson Property

VARIANCE REQUEST SUMMARY AND RECOMMENDATION

Lead Staff: Crystal Bates Planning Technician II

GENERAL NOTES {By-laws}

Any party aggrieved by a final judgment or decision of the Board of Adjustment may within fifteen (15) days thereafter, appeal the final judgment to the Circuit Court of Baldwin County, Alabama, by filing with the Circuit Court and the Board of Adjustment a written notice of appeal specifying the judgment or decision from which the appeal is taken. In case of such appeal, the Board of Adjustment shall cause a transcript of the proceedings and the action to be certified to the Court where the appeal is taken.

Whenever the Board imposes conditions with respect to a project or variance, such conditions must be stated in the Board Order and in the permit(s) issued, pursuant thereto by the Administrative Officer. Such permits shall remain valid only as long as conditions upon which it is granted, and the conditions imposed by the Zoning Ordinance are adhered to.

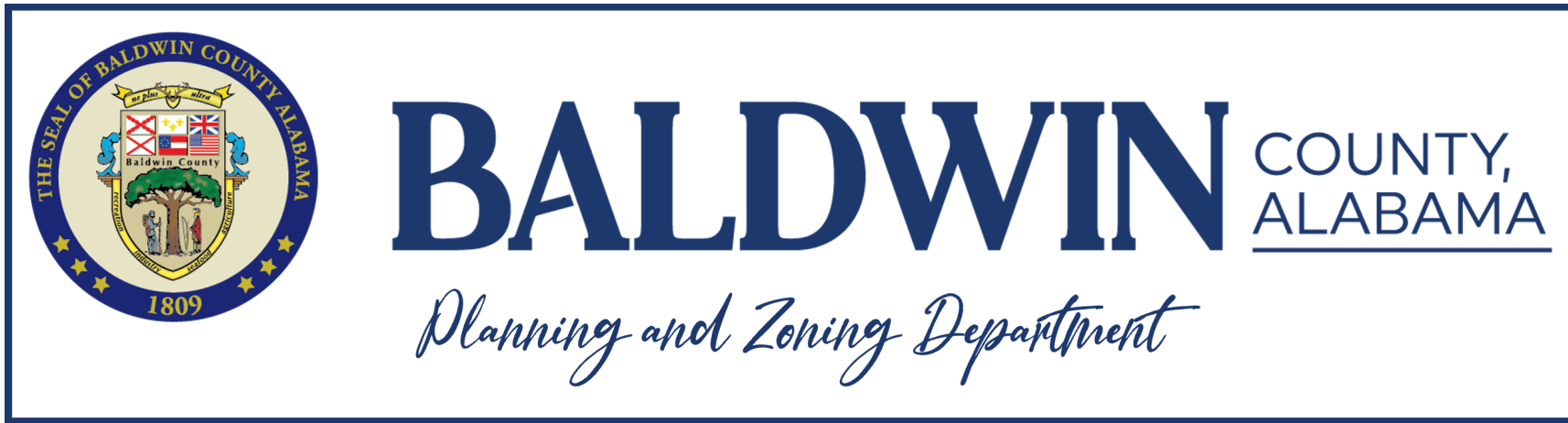
ZVA23-66 Hudson Property

VARIANCE REQUEST SUMMARY AND RECOMMENDATION

Lead Staff: Crystal Bates Planning Technician II

If it the pleasure of the Board of Adjustment to **Approve** variance case ZVA23-66, staff memorializes within the meeting minutes the following information:

1. If approved, the variance is limited to the specific site plan within this staff report.
2. If approved, the applicant will be required to apply for a zoning site plan for a single-family dwelling within a sufficient time frame to bring the property in compliance.
3. This variance relieves subject property of no other requirements of the Baldwin County Zoning Ordinance, Baldwin County Subdivision Regulations, Baldwin Country Building Department (building Permit), Baldwin County Highway Department (driveway or turnout permit), or requirements of other agencies.



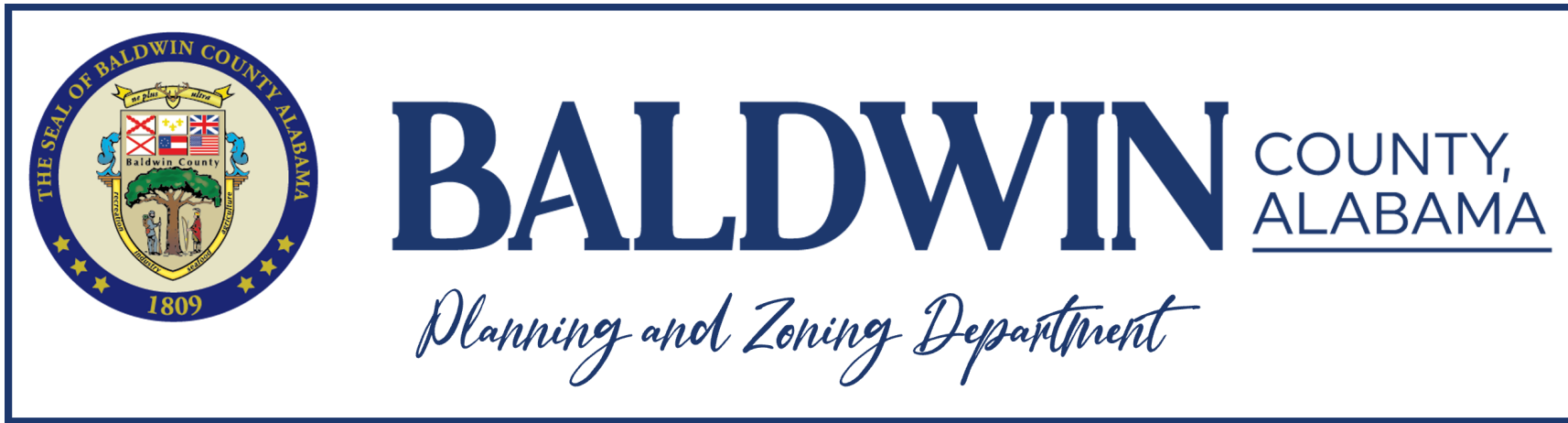
BALDWIN COUNTY BOARD OF ADJUSTMENT #1

NEXT REGULAR MEETING

DECEMBER 19, 2023 @ 4:00PM

BALDWIN COUNTY CENTRAL ANNEX

ROBERTSDALE, AL



BALDWIN COUNTY BOARD OF ADJUSTMENT #1

REGULAR MEETING

NOVEMBER 21ST, 2023

BALDWIN COUNTY CENTRAL ANNEX

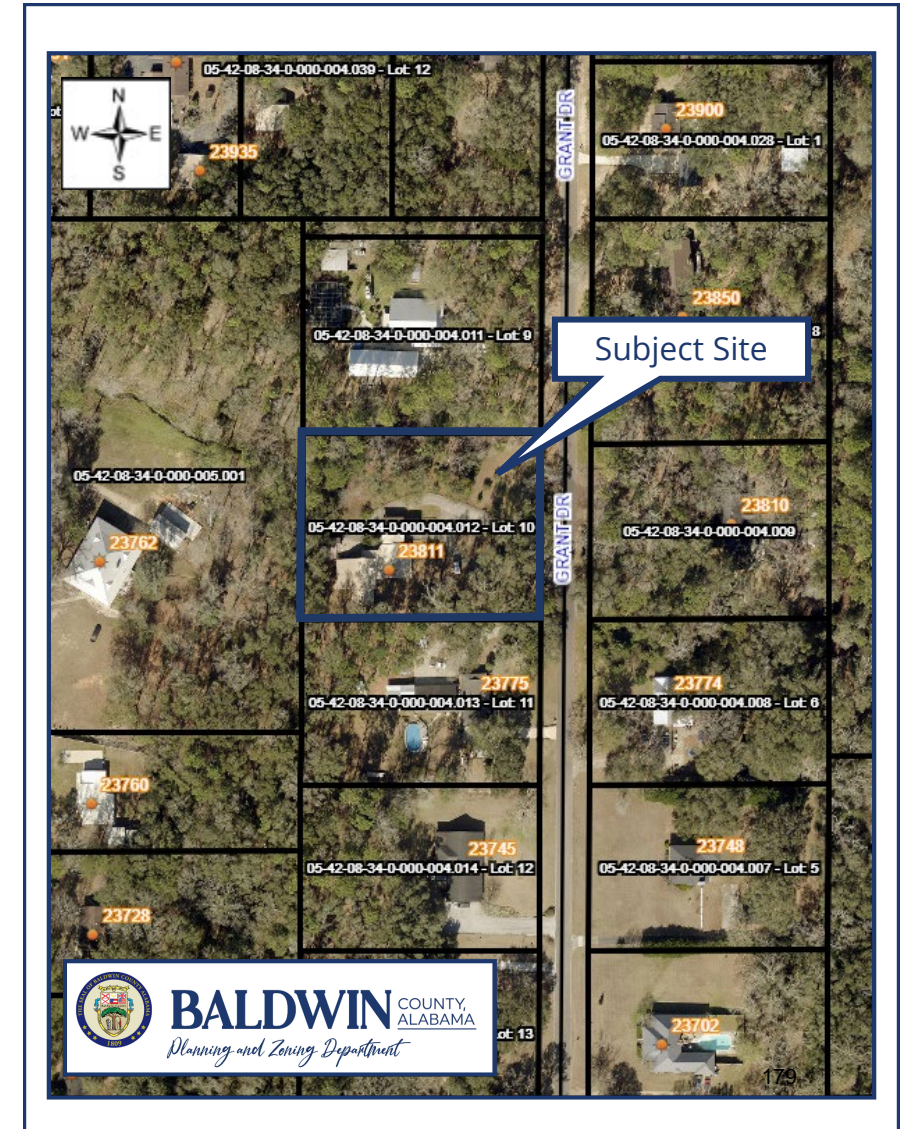
ROBERTSDALE, AL

ZVA23-68 NEMER PROPERTY

VARIANCE REQUEST

Lead Staff: Calla McKenzie, Planning Technician

- **Planning District:** 12
- **Zoned:** RSF-1, Residential Single Family
- **Location:** Lot 10 Oakleigh Estates
- **PID:** 05-42-08-34-0-000-004.012
- **PPIN:** 75031
- **Acreage:** 1.49 +/-
- **Physical Address:** 23811 Grant Dr
- **Applicant:** Mike Nelson - Nelson Pools Inc.
- **Owner:** Gregory and Alice Nemer



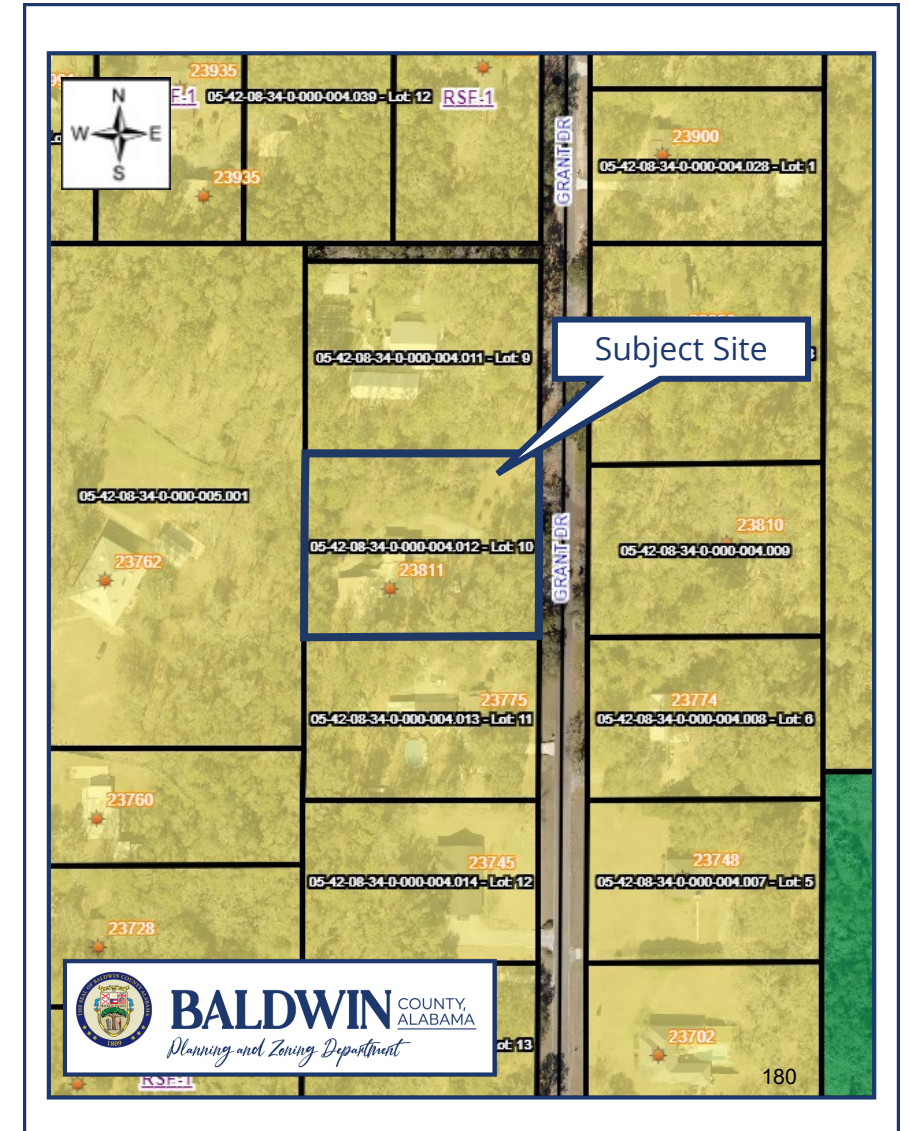
ZVA23-68 NEMER PROPERTY

VARIANCE REQUEST SUMMARY AND RECOMMENDATION

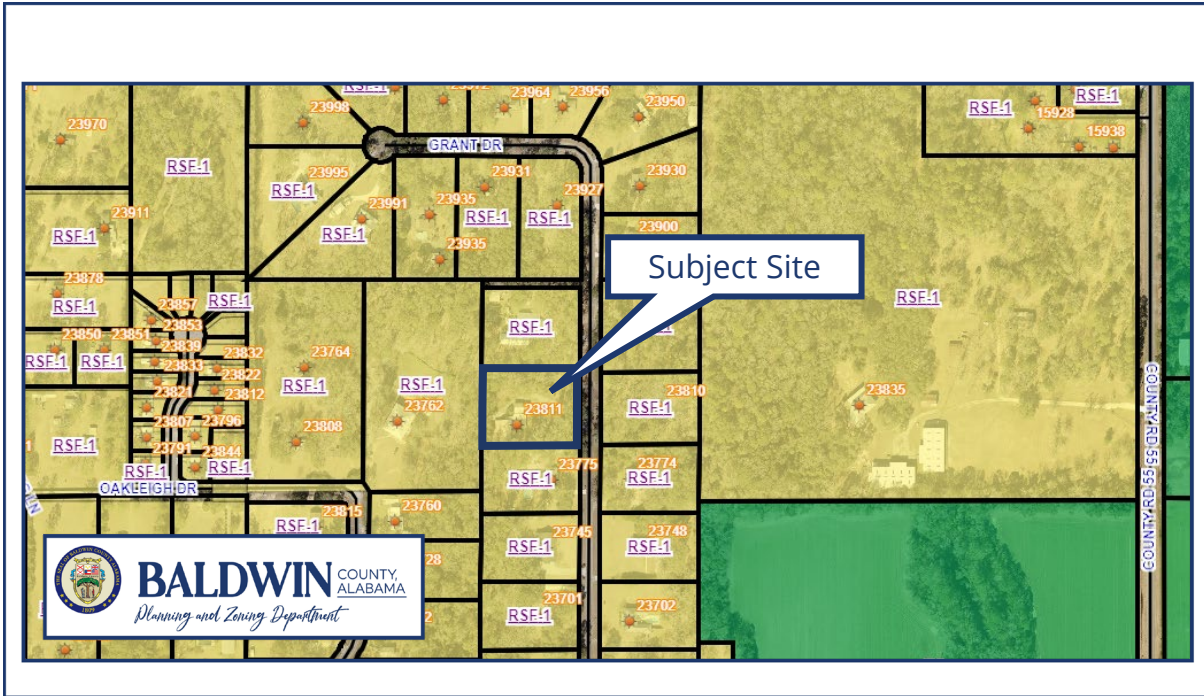
Lead Staff: Calla McKenzie, Planning Technician

The applicant is requesting a variance from Section 13.1.2 (b) of the Baldwin County Zoning Ordinance to allow an accessory structure in the front yard.

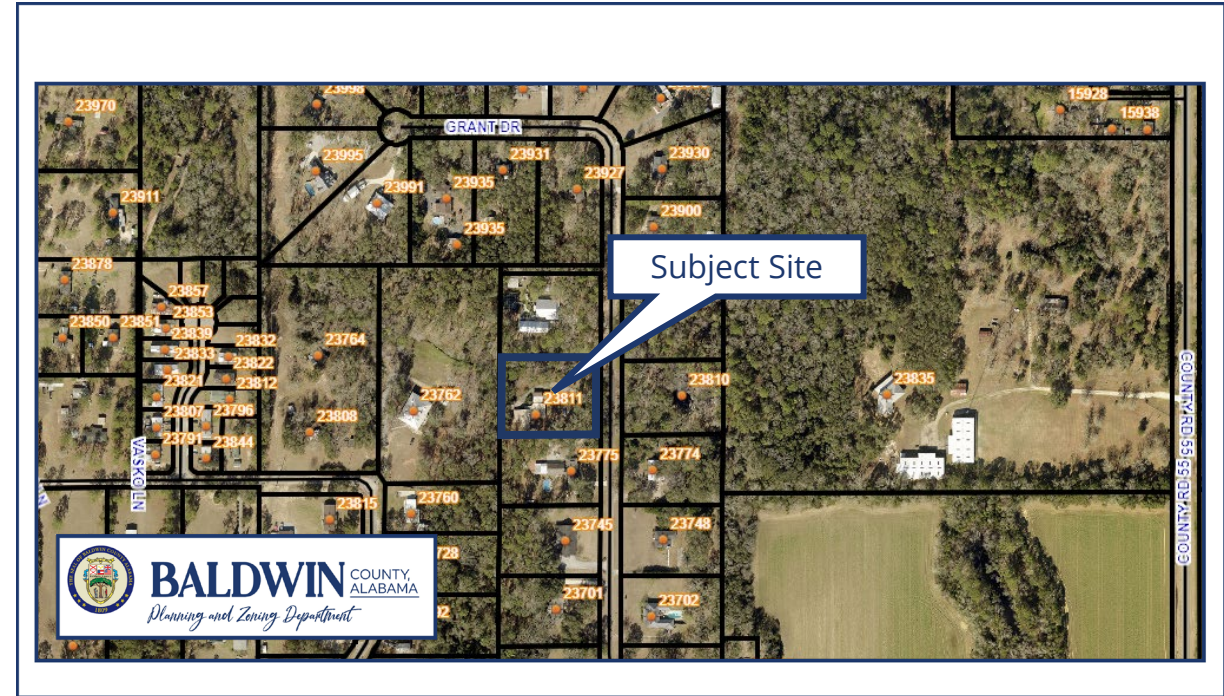
Staff recommends ZVA23-68 be **DENIED** unless information to the contrary is revealed at the public hearing.



Locator Map



Site Map



	Adjacent Zoning	Adjacent Land Use
North	RSF-1, Residential Single Family	Residential
South	RSF-1, Residential Single Family	Residential
East	RSF-1, Residential Single Family	Vacant
West	RSF-1, Residential Single Family	Residential

Nov 3, 2023 at 11:01:05 AM
276° W

Subject Property



**VARIANCE
PROPOSED
FOR THIS PROPERTY**
Case Number
ZVA23-000068
For information Contact
Baldwin County Planning &
Zoning Department
(251) 580-1655



Nov 3, 2023 at 11:01:32 AM
212° SW

Subject Property



Nov 3, 2023 at 11:03:26 AM
90° E

Property to the
East



Nov 3, 2023 at 11:04:32 AM
276° W

Adjoining Property
to The North

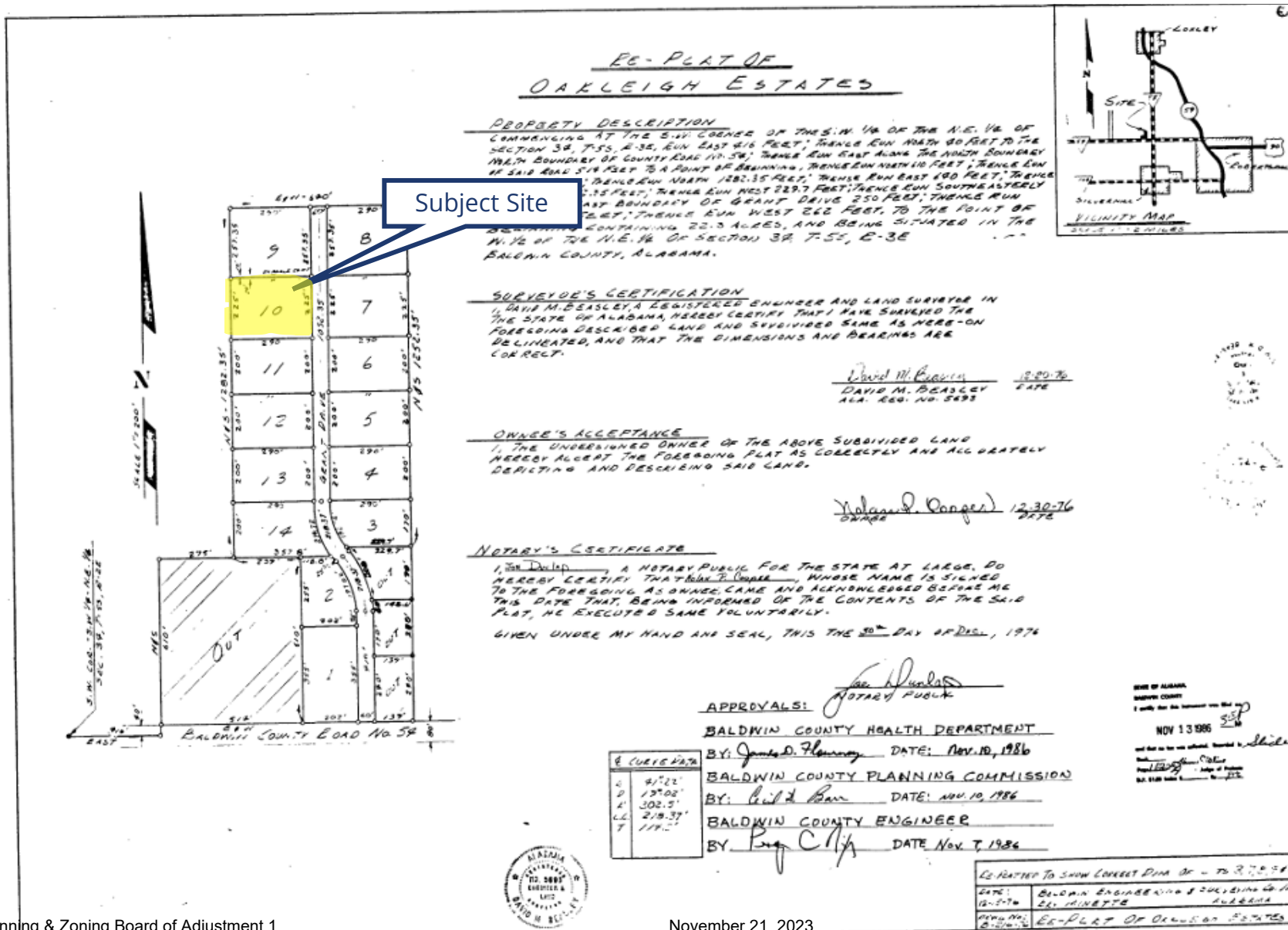


Nov 3, 2023 at 11:06:10 AM
269° W

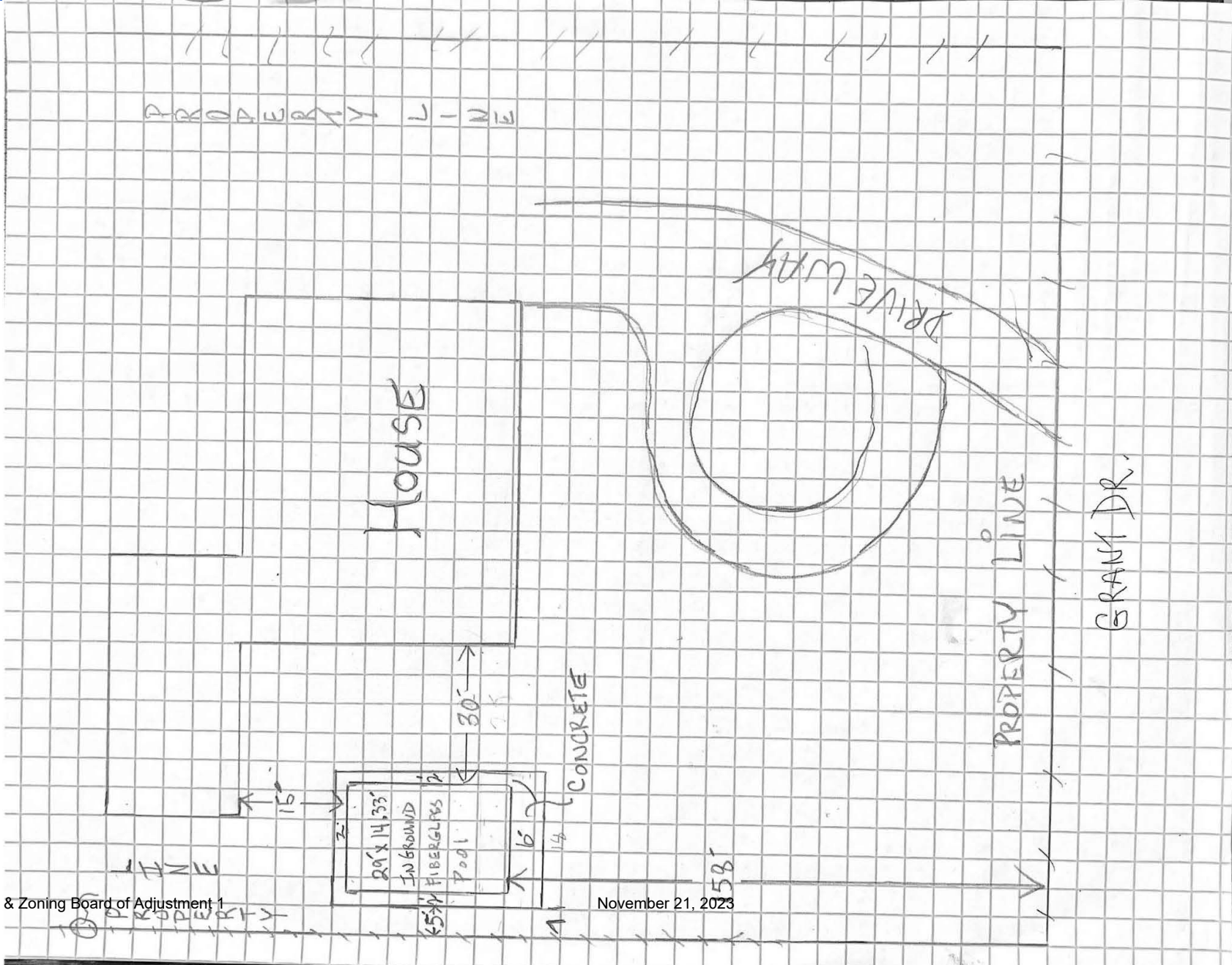
Adjoining Property
to the South



Plat



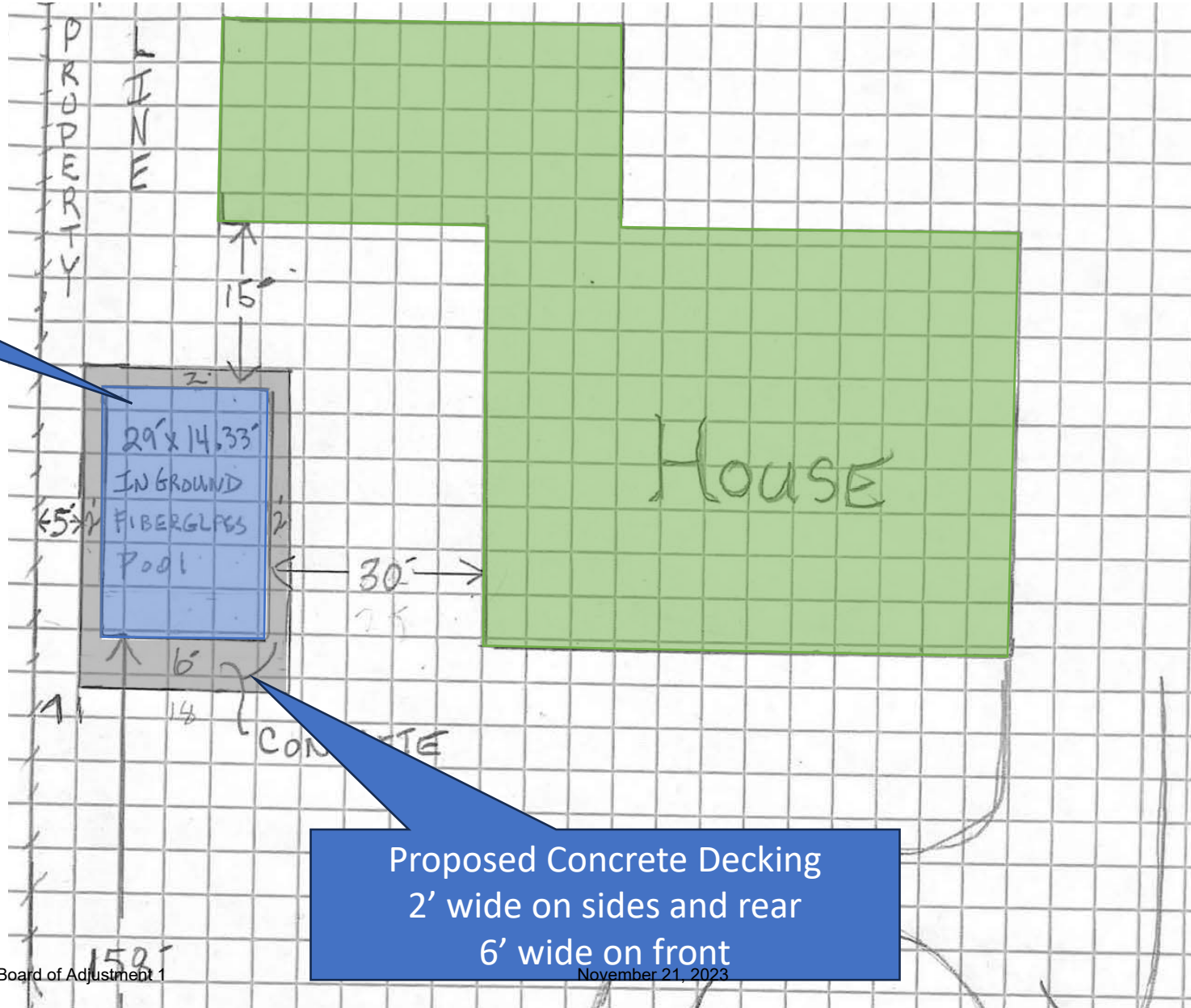
Site Plan



Enlarged Site Plan

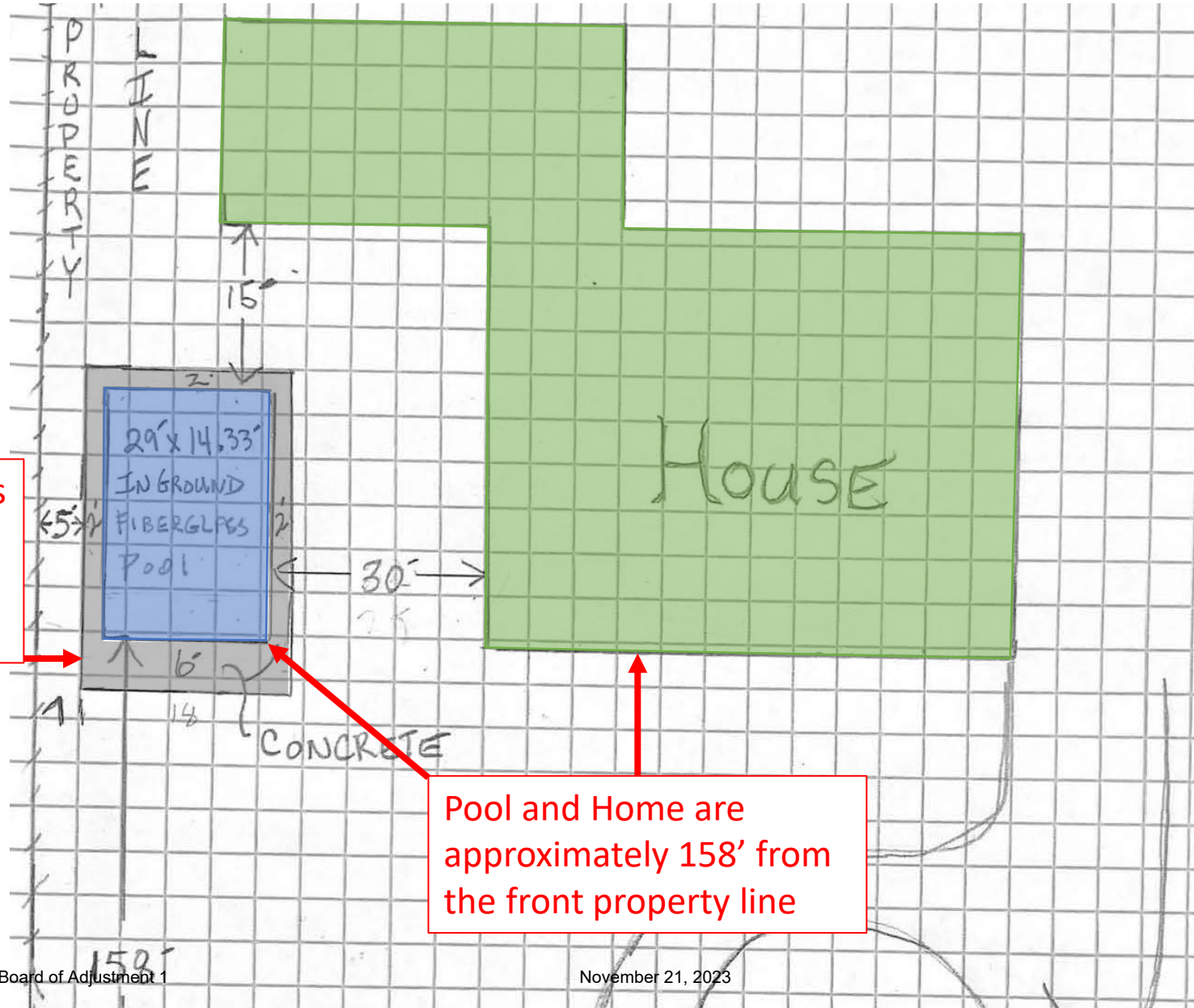


Proposed Pool
29' x 14.33'



Proposed Concrete Decking
2' wide on sides and rear
6' wide on front

Enlarged Site Plan



Concrete decking extends 6' in front of the home meaning that it is in the front yard

Pool and Home are approximately 158' from the front property line

Zoning Requirements

13.1.2 *Rural and Residential districts.* In residential districts an accessory use or structure will conform to the following requirements:

- (a) An accessory structure may be located in a rear or side yard but shall not be closer than 5-feet to any lot line.
- (b) Except in rural districts, **an accessory structure may not be located in the front yard of a lot**, except that on waterfront lots accessory structures may be located between the principal building and the waterfront property line but not within the required front yard setback.

Yard, front. An open, unoccupied space on the same lot with the principal building, **extending the full width of the lot and situated between the right-of-way line and the front line of the building projected to the side lines of the lot.** The depth of the front yard shall be measured between the front lines of the building and the right-of-way line. On corner lots the front yard shall be considered as parallel to the street upon which the lot has its

Staff Analysis and Findings

1.) Exceptional narrowness, shallowness or shape of a specific piece of property existing at the time of the enactment of these zoning regulations.

Zoning in Planning District 12 came into effect on November 7, 2006. Per Revenue Commission records the property is approximately 225' x 290'. The minimum lot size requirements for RSF-1 zoning is 30,000 square feet with a minimum lot width at the street line of 50' and minimum lot width at the building line of 100'. The subject property meets these minimum requirements. Therefore, staff does not perceive any exceptional narrowness, shallowness, or shape of the subject property that would require a variance.

Minimum lot size: **30,000 sf** Actual lot size: **65,250 sf** Minimum Lot width: **50'** Actual Lot Width: **225'** Hardship: **NONE**

2.) Exceptional topographic conditions or other extraordinary situations or conditions of a specific piece of property.

On the northwest side of the property (behind the house) staff did notice that the property slopes downward. Additionally, had the applicant proposed to place the pool in this area, we would have required them to provide a wetland assessment. However, in the current proposed location there are no conditions that would prevent them from being able to stay within the required side or rear yard. So, staff does not perceive that the subject property establishes exceptional topographic conditions or other extraordinary situations, or conditions contained on the subject property which may qualify for a variance.

Staff Analysis and Findings

3.) The granting of the application is necessary for the preservation of a property right and not merely to serve as a convenience to the applicant or based solely upon economic loss.

The subject property is zoned RSF-1, Residential Single-Family District which allows for residential and accessory uses. The request is to allow for the construction of a pool in the front yard. Staff does not perceive that the granting of the application is necessary for the preservation of a property right and not merely to serve as a convenience to the applicant or based solely upon economic loss.

4.) The granting of this application will not impair an adequate supply of light and air to adjacent property or unreasonably increase the congestion in public streets, or increase the danger of fire, or imperil the public safety, or unreasonably diminish or impair established property values within the surrounding areas, or in any other respect impair the health, safety, comfort, morals, or general welfare of the inhabitants of Baldwin County.

Staff does not believe the granting of this application, **in general**, will impair an adequate supply of light and air to adjacent property or unreasonably increase the congestion in public streets, or increase the danger of fire, or imperil the public safety, or unreasonably diminish or impair established property values within the surrounding areas or in any other respect impair the health, safety, comfort, morals, or general welfare of the inhabitants of Baldwin County.

However, staff cannot specifically assure and makes no warranty or guarantee that if granted the resultant variance will or will not diminish or impair established property values within the surrounding areas, or in any other respect impair the health, safety, comfort, morals, or general welfare of the inhabitants of Baldwin County because the effect of the variance cannot be quantified at the time of consideration.

Staff Analysis and Findings

5.) Other matters which may be appropriate.

- The applicant has submitted a written document stating there is no active homeowner association for the subject property.
- No documentation in favor of or opposition to this variance request has been received at the time this staff report was written.

There is not an active HOA or POA for the property located at 23811 Grant Dr., Loxley, Al. 36551.

Owner: Greg Nemer

Date 10-5-23



Owner: Alice Nemer

Date 10/5/23



ZVA23-68 NELSON PROPERTY

VARIANCE REQUEST SUMMARY AND RECOMMENDATION

Lead Staff: Calla McKenzie, Planning Technician

The applicant is requesting a variance from Section 13.1.2 (b) as it pertains to the location of an accessory structure.

Staff cannot establish a hardship on the subject property and therefore recommends ZVA23-68 be **DENIED** unless information to the contrary is revealed at the public hearing.

ZVA23-68 NEMER PROPERTY

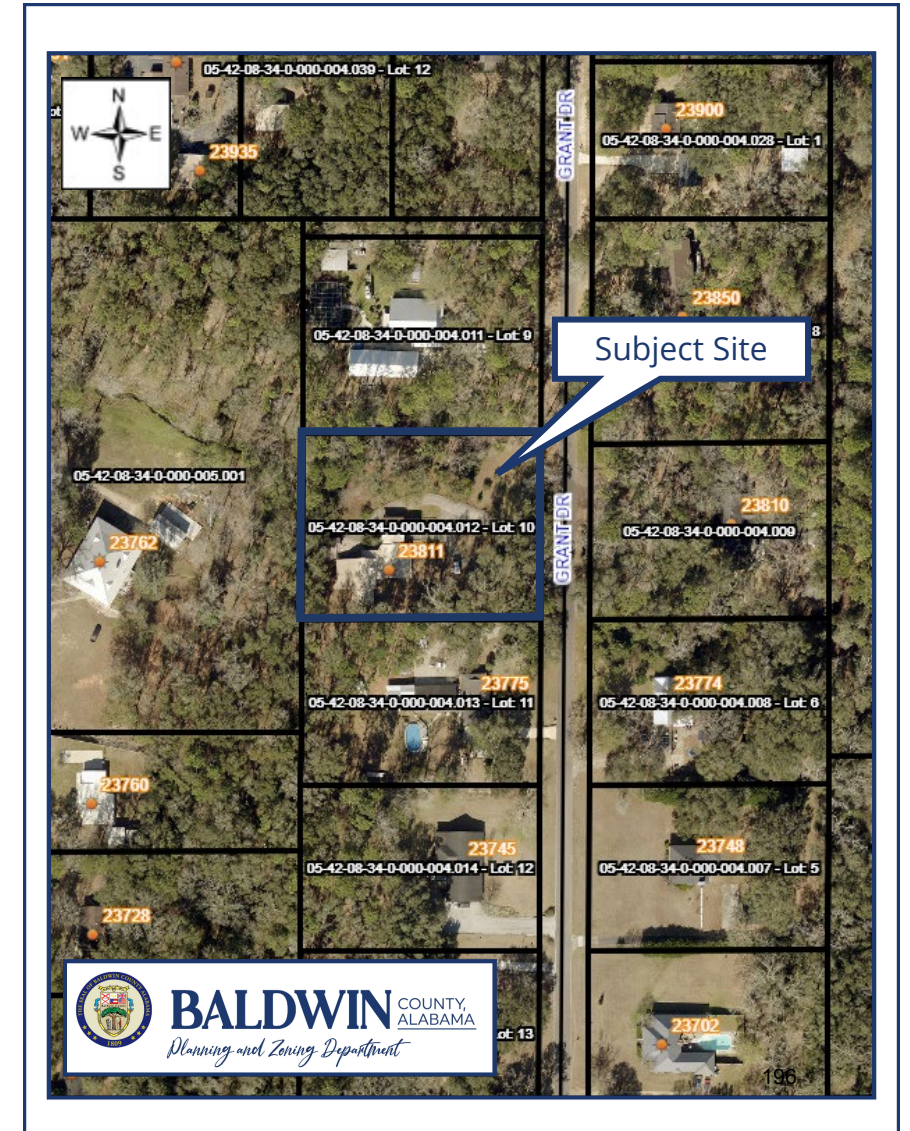
VARIANCE REQUEST SUMMARY AND RECOMMENDATION

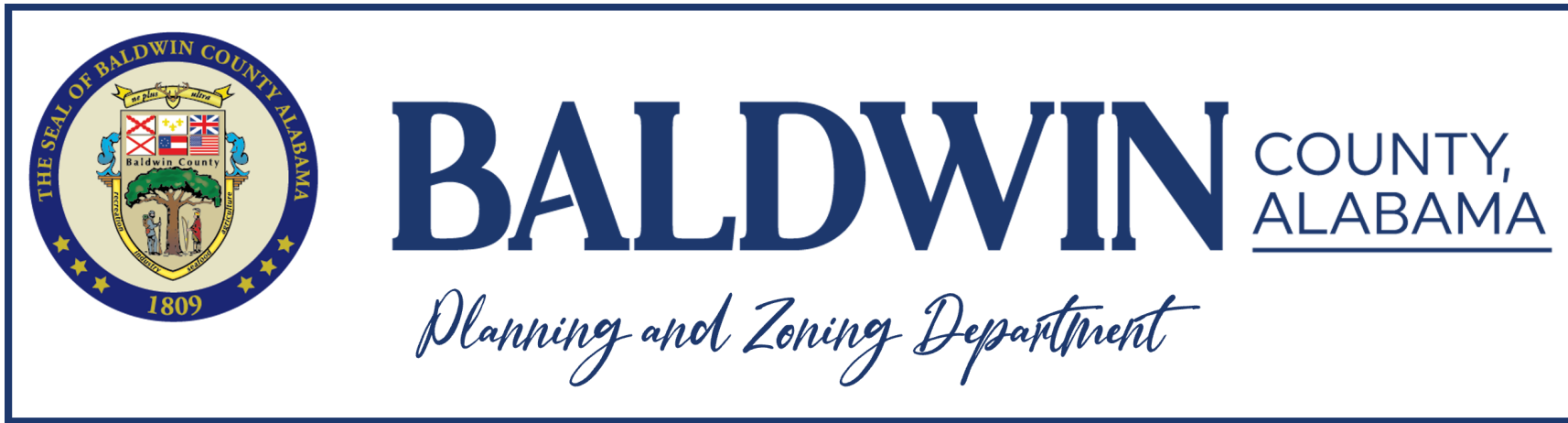
Lead Staff: Calla McKenzie, Planning Technician

GENERAL NOTES {By-laws}

Any party aggrieved by a final judgment or decision of the Board of Adjustment may within fifteen (15) days thereafter, appeal the final judgment to the Circuit Court of Baldwin County, Alabama, by filing with the Circuit Court and the Board of Adjustment a written notice of appeal specifying the judgment or decision from which the appeal is taken. In case of such appeal, the Board of Adjustment shall cause a transcript of the proceedings and the action to be certified to the Court where the appeal is taken.

Whenever the Board imposes conditions with respect to a project or variance, such conditions must be stated in the Board Order and in the permit(s) issued, pursuant thereto by the Administrative Officer. Such permits shall remain valid only as long as conditions upon which it is granted, and the conditions imposed by the Zoning Ordinance are adhered to.





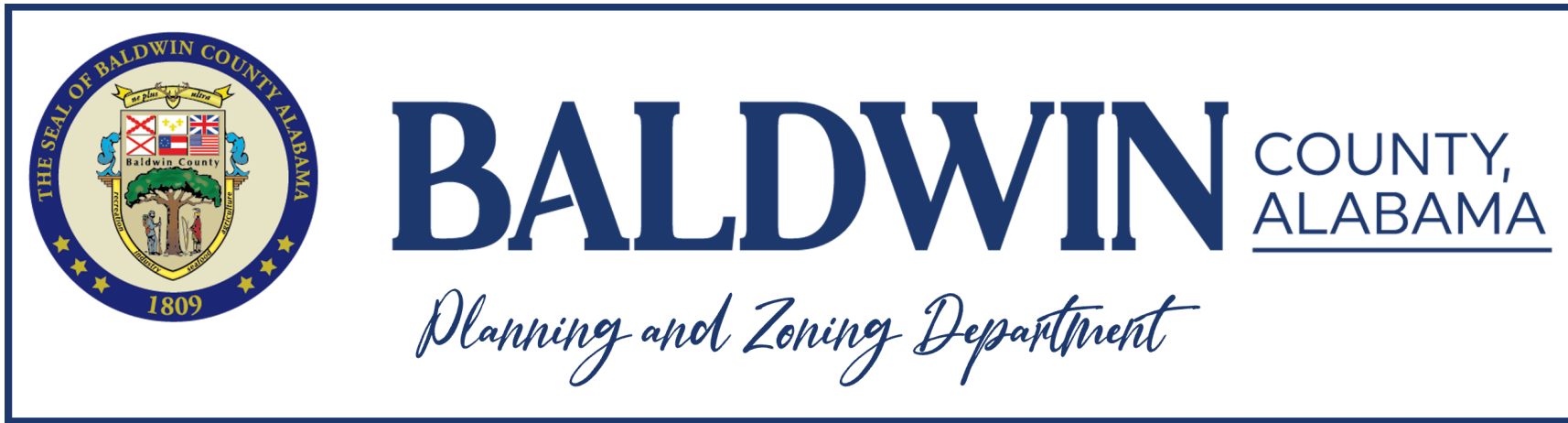
BALDWIN COUNTY BOARD OF ADJUSTMENT #1

NEXT REGULAR MEETING

DECEMBER 19TH, 2023 @ 4:00PM

BALDWIN COUNTY CENTRAL ANNEX

ROBERTSDALE, AL



BALDWIN COUNTY BOARD OF ADJUSTMENT #1

REGULAR MEETING

NOVEMBER 21ST, 2023

BALDWIN COUNTY CENTRAL ANNEX

ROBERTSDALE, AL

ZVA23-76 ANKERSON PROPERTY

VARIANCE REQUEST

Lead Staff: Calla McKenzie, Planning Technician

- **Planning District:** 26
- **Zoned:** RSF-1, Residential Single-Family District
- **Location:** Lot 603 of Eastern Shore Parkway No. 2
- **PID:** 05-56-09-29-0-000-013.000
- **PPIN:** 61221
- **Acreage:** +/- 0.93
- **Physical Address:** 12550 County Road 1
- **Applicant:** Ronnie Ankerson
- **Owner:** Ronnie Ankerson



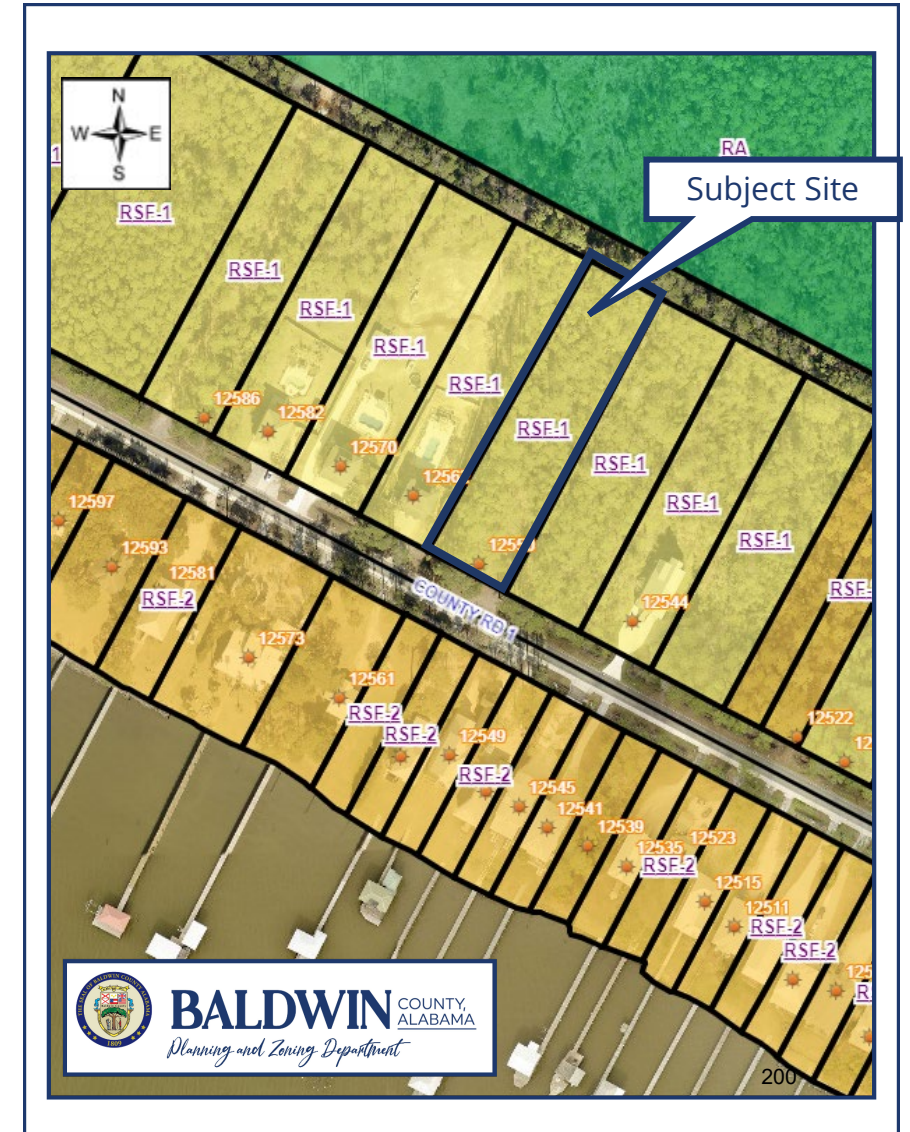
ZVA23-76 ANKERSON PROPERTY

VARIANCE REQUEST SUMMARY AND RECOMMENDATION

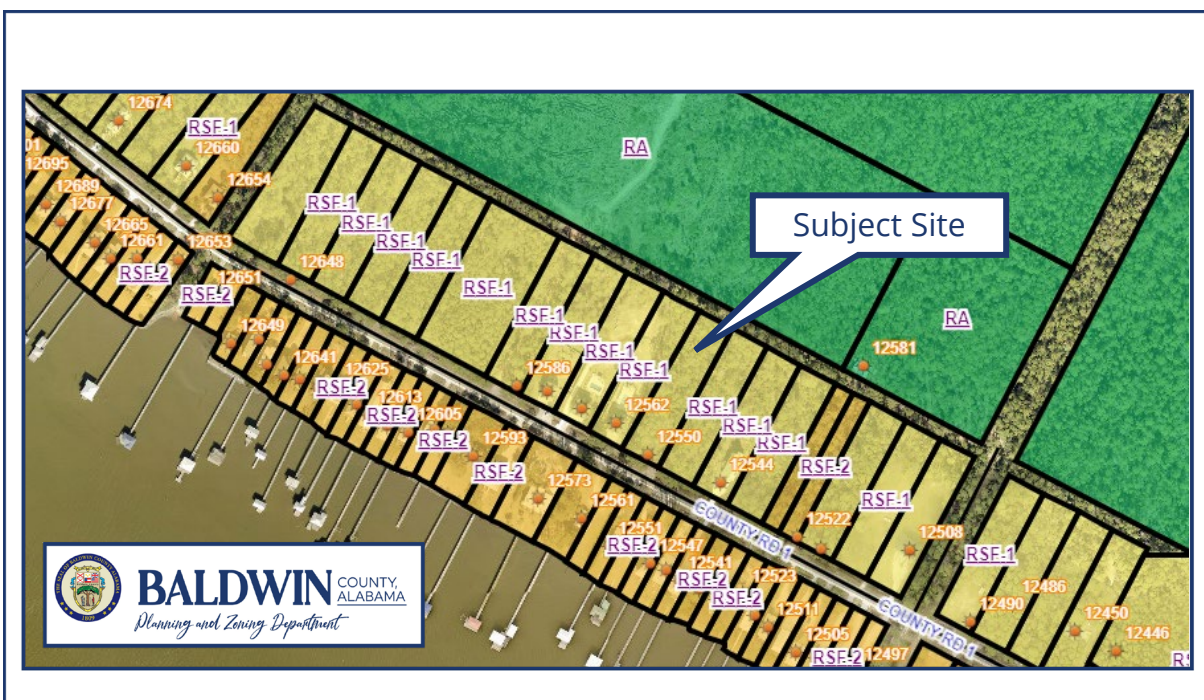
Lead Staff: Calla McKenzie, Planning Technician

The applicant is requesting a variance from Section 2.3.26.3 (g) and 10.4.4 of the Baldwin County Zoning Ordinance to allow for the property to be filled to build a single-family dwelling.

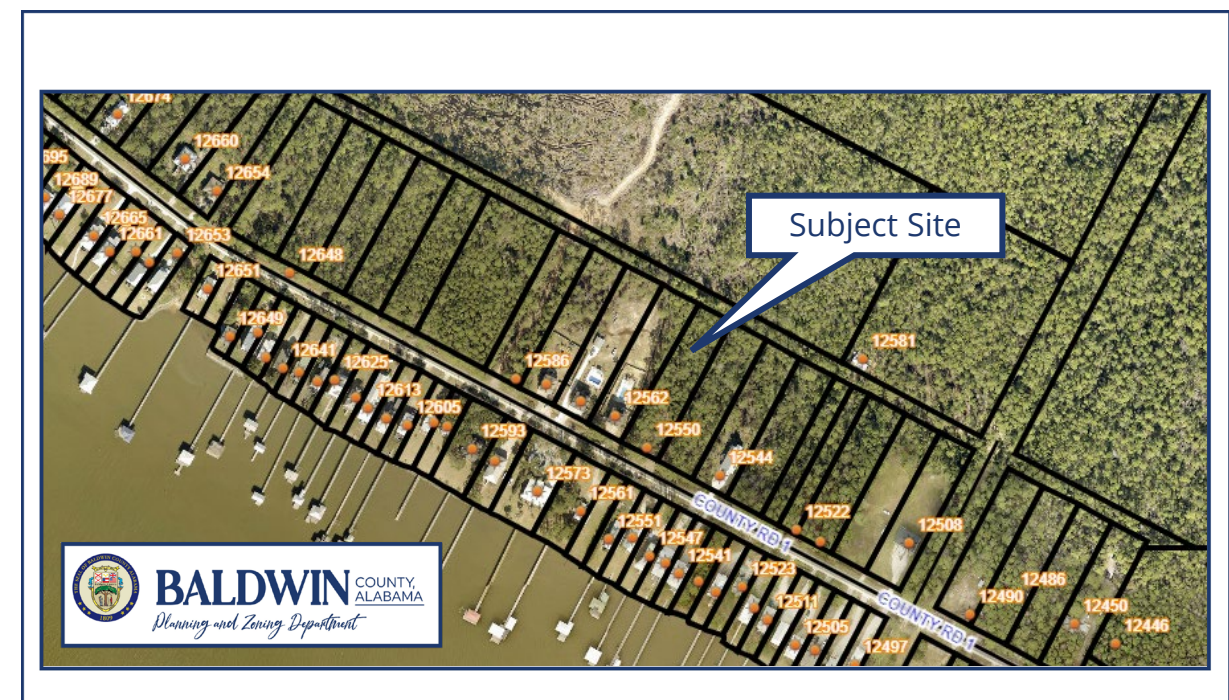
Staff perceives the wetlands do establish a hardship on the subject property and therefore recommends ZVA23-76 be **APPROVED** unless information to the contrary is revealed at the public hearing.



Locator Map



Site Map



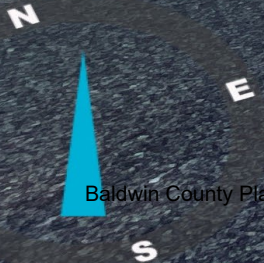
	Adjacent Zoning	Adjacent Land Use
North	RA, Rural Agricultural	Vacant
South	RSF-2, Residential Single Family	Vacant and Residential
East	RSF-1, Residential Single Family	Vacant
West	RSF-1, Residential Single Family	Residential

Nov 3, 2023 at 1:11:58 PM
21° N

Subject Property



ADJUSTING PROPOSAL
FOR THIS PROPERTY
ZVA23-000076



Nov 3, 2023 at 1:12:35 PM
359° N

Subject Property



N



W

E

S

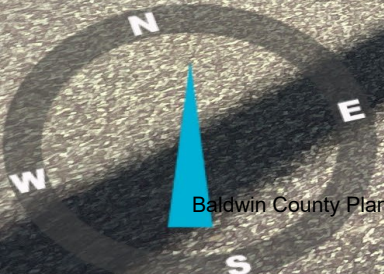
Nov 3, 2023 at 1:14:08 PM
201° S

Property to the
South



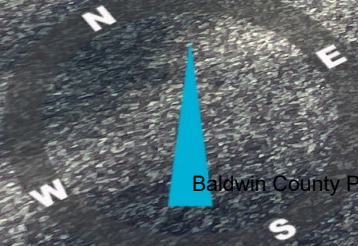
Nov 3, 2023 at 1:14:32 PM
16° N

Adjoining Property
to The West

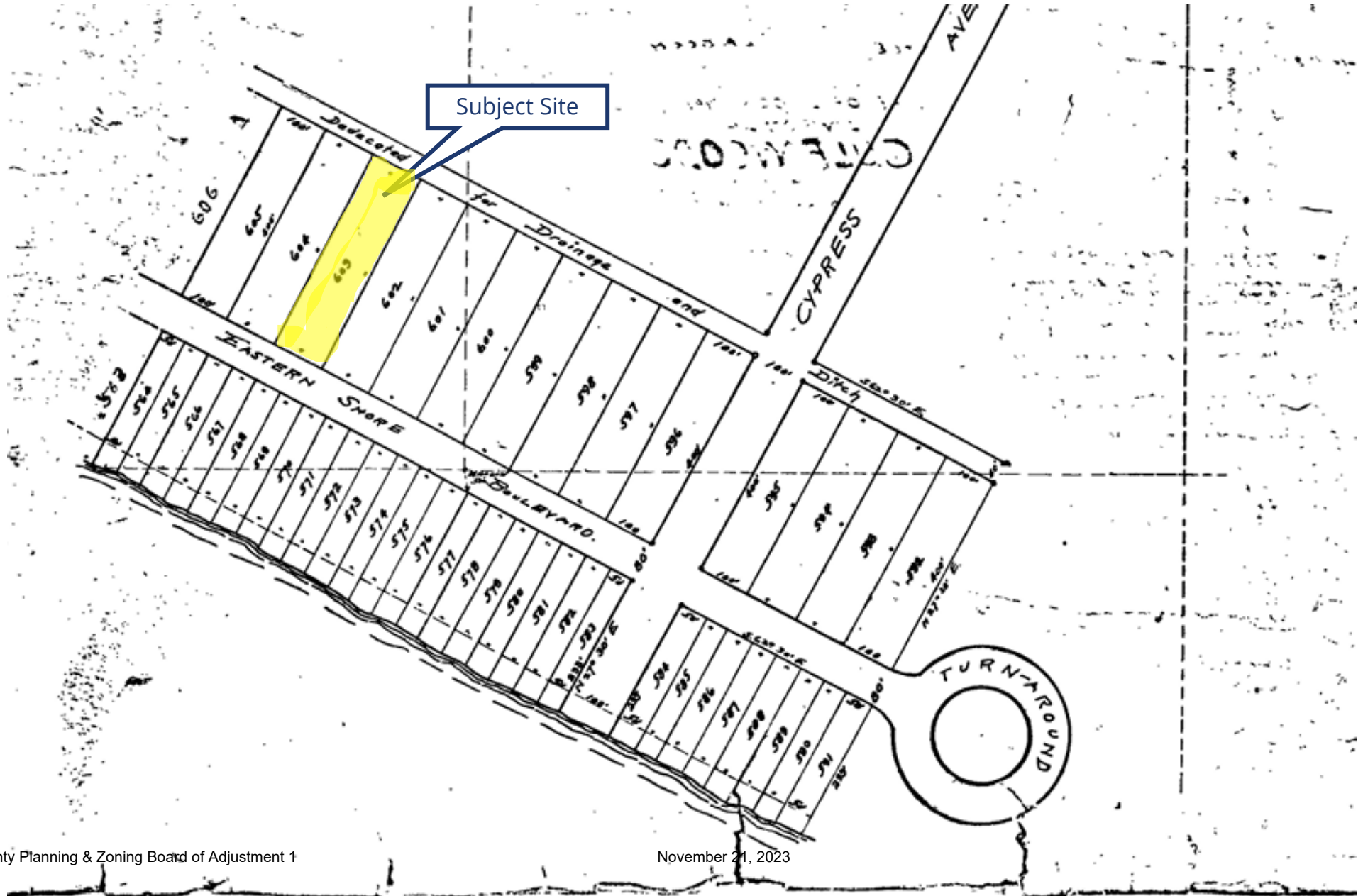


Nov 3, 2023 at 1:15:20 PM
33° NE

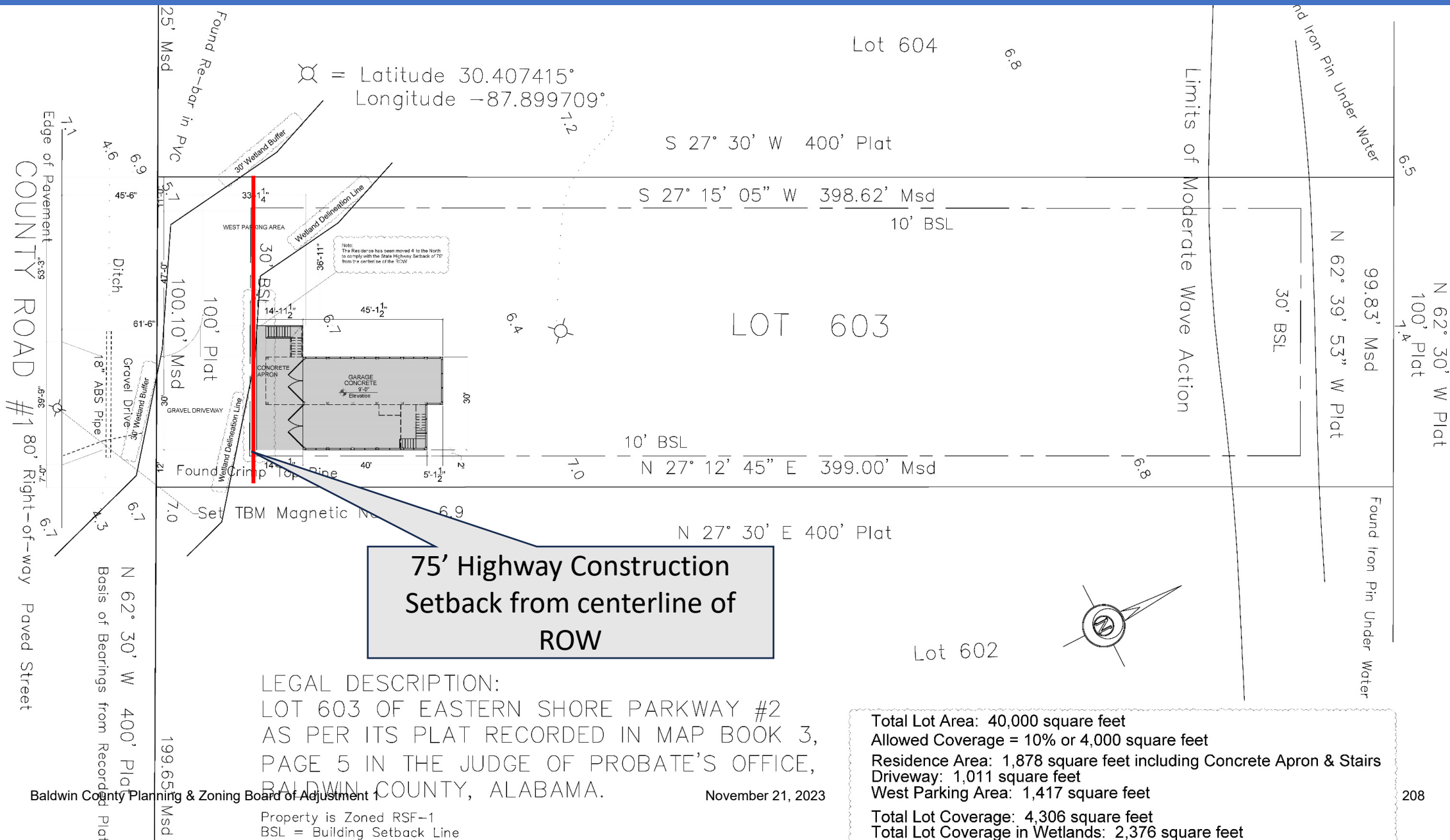
Adjoining Property
to the East



Survey Plat



Site Plan



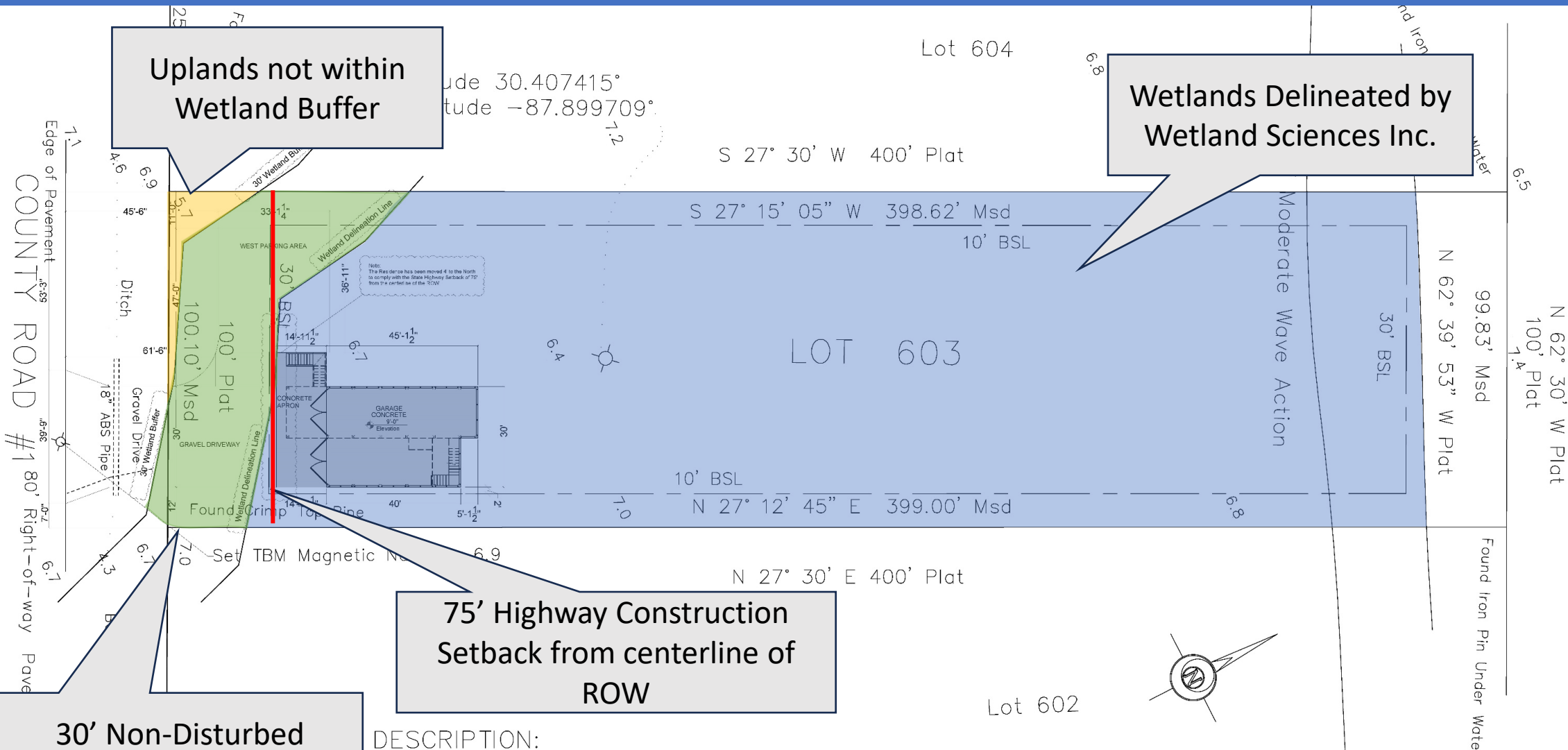
⊙ = Latitude 30.407415°
Longitude -87.899709°

**75' Highway Construction
Setback from centerline of
ROW**

LEGAL DESCRIPTION:
LOT 603 OF EASTERN SHORE PARKWAY #2
AS PER ITS PLAT RECORDED IN MAP BOOK 3,
PAGE 5 IN THE JUDGE OF PROBATE'S OFFICE,
BALDWIN COUNTY, ALABAMA.

Total Lot Area: 40,000 square feet
Allowed Coverage = 10% or 4,000 square feet
Residence Area: 1,878 square feet including Concrete Apron & Stairs
Driveway: 1,011 square feet
West Parking Area: 1,417 square feet
Total Lot Coverage: 4,306 square feet
Total Lot Coverage in Wetlands: 2,376 square feet

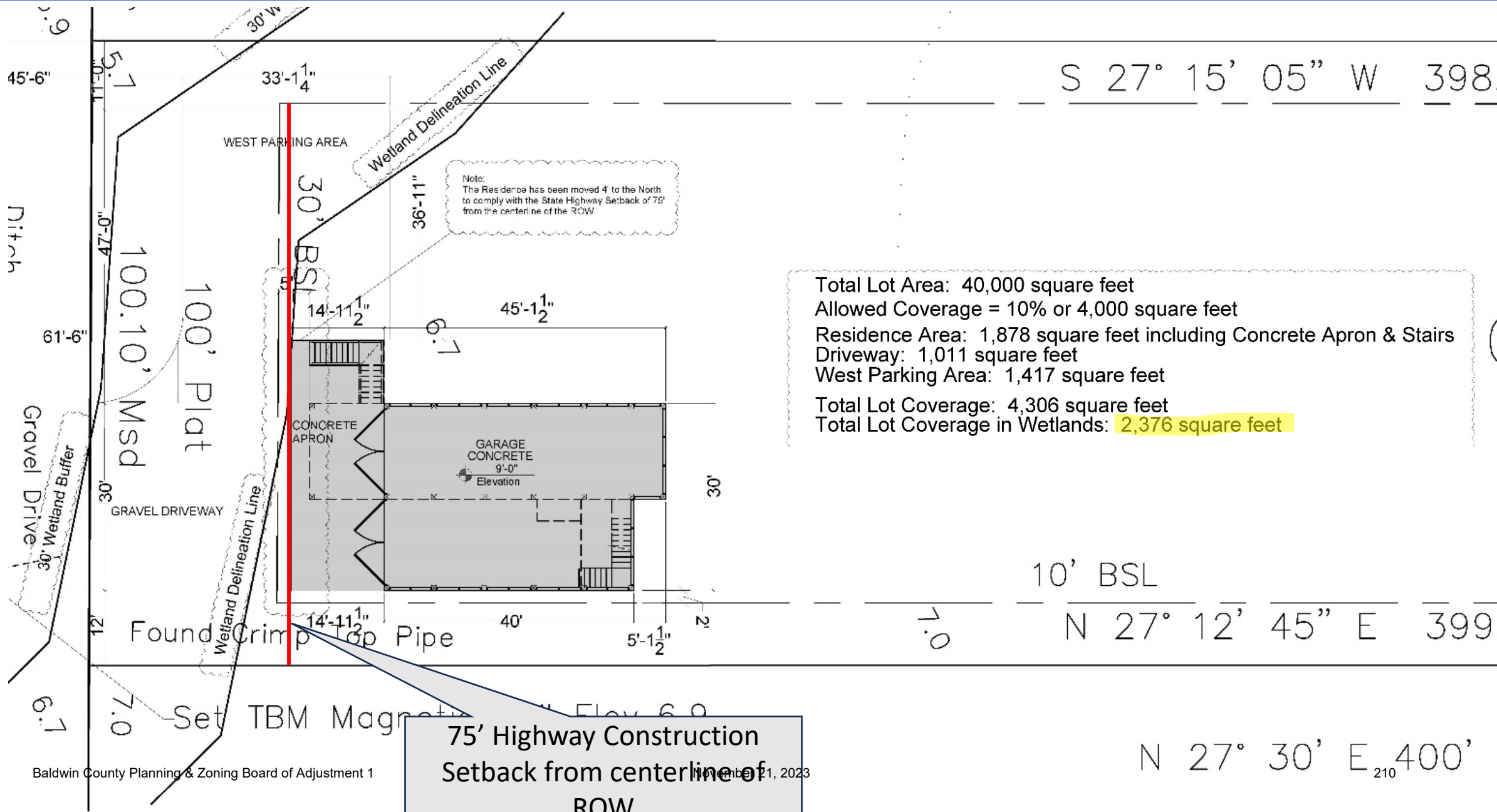
Site Plan



DESCRIPTION:
 LOT 603 OF EASTERN SHORE PARKWAY #2
 FOR ITS PLAT RECORDED IN MAP BOOK 3,
 PAGE 5 IN THE JUDGE OF PROBATE'S OFFICE,
 BALDWIN COUNTY, ALABAMA.

Total Lot Area: 40,000 square feet
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 Residence Area: 1,878 square feet including Concrete Apron & Stairs
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 West Parking Area: 1,417 square feet
 Total Lot Coverage: 4,306 square feet
 Total Lot Coverage in Wetlands: 2,376 square feet

Enlarged Site Plan



Total Lot Area: 40,000 square feet
 Allowed Coverage = 10% or 4,000 square feet
 Residence Area: 1,878 square feet including Concrete Apron & Stairs
 Driveway: 1,011 square feet
 West Parking Area: 1,417 square feet
 Total Lot Coverage: 4,306 square feet
 Total Lot Coverage in Wetlands: 2,376 square feet

75' Highway Construction
 Setback from centerline of
 ROW

Wetland Delineation



May 4, 2023

Ronnie Ankerson
12549 County Road 1
Fairhope, AL 36532

**Re: Wetland Jurisdictional Assessment
12550 County Road 1, Fairhope, Baldwin County, AL
WSI Reference #2023-321**

Dear Mr. Ankerson,

As requested, Wetland Sciences, Inc. has completed a field wetland assessment of the above-mentioned property located at 12550 County Road 1 in Section 29, Township 7 South, Range 2 East in Baldwin County, Alabama. The Baldwin County Property Appraiser identifies the subject property by the following property identification number: 61221. This assessment included an analysis of plant communities, soils, and indirect hydrologic indicators. During this determination, Wetland Sciences, identified a wetland complex subject to the regulatory jurisdiction of the US Army Corps of Engineers (Corps), the Alabama Department of Environmental Management (ADEM) and Baldwin County within the subject property (See attached wetland sketch – **Exhibit A**). The following is a summary of our findings.

The purpose of performing the wetland assessment was to assess if wetlands or Waters of the United States (WOTUS) are present and, if so, to identify the boundaries. The wetland delineation was performed in accordance with the 1987 Corps of Engineers Wetlands Delineation Manual, the 2012 Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic & Gulf Coast Supplement (2010).

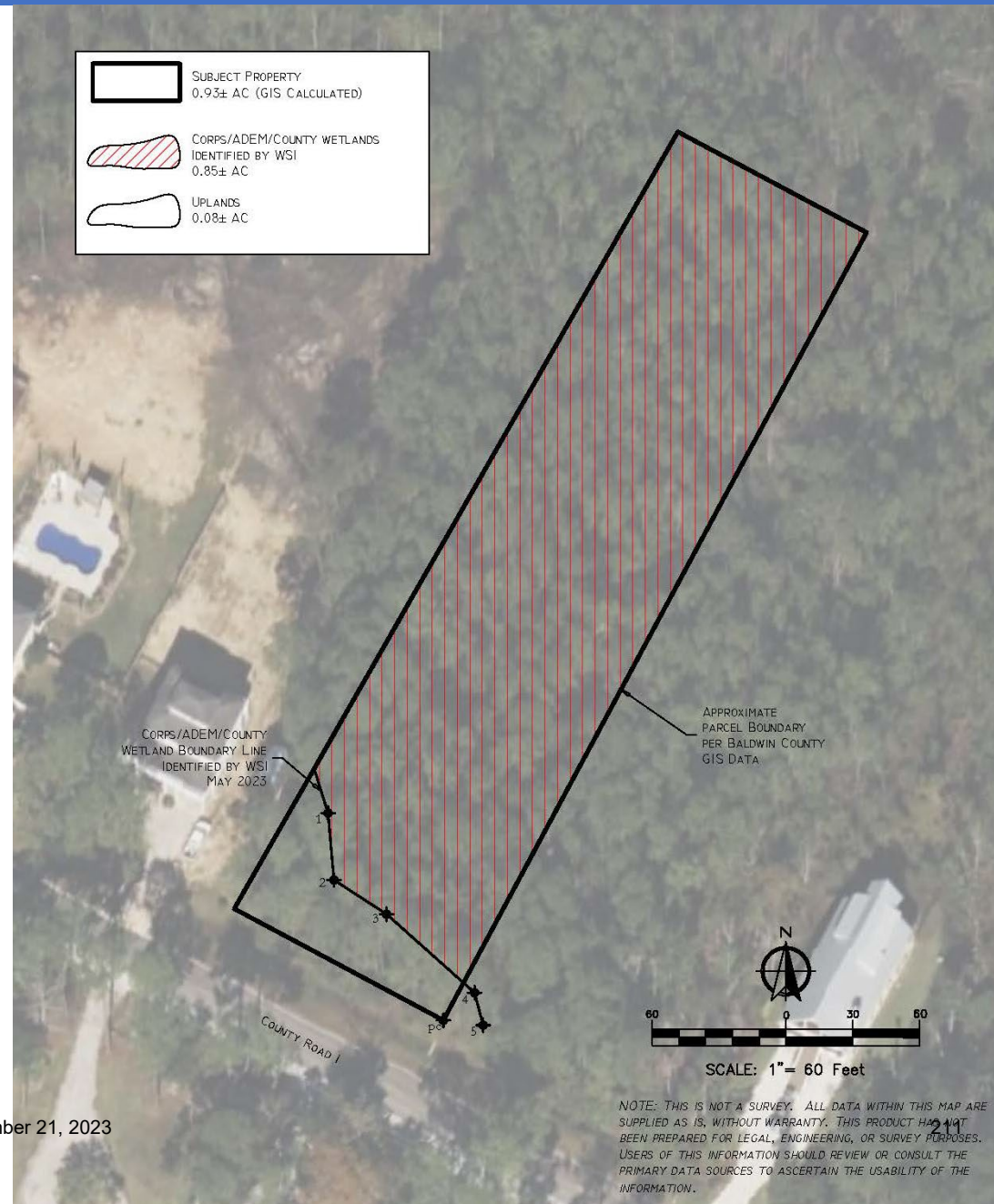
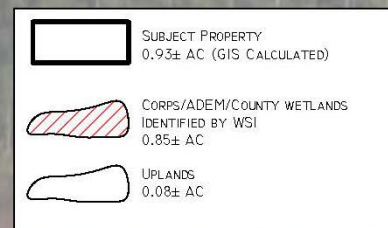
During inspection of the property I used technical criteria, field indicators, historic aerial photographs, and other sources of information to assess the site. Wetlands generally have three essential characteristics: hydrophytic vegetation, hydric soils, and wetland hydrology. The techniques for evaluating the plant community, soils, and hydrology are described in the following sections.

Hydric Soils Assessment

Several soil test holes were evaluated to identify field indications of hydric soils. WSI utilized the hydric soil definition provided by the National Technical Committee for Hydric Soils and criteria to determine whether soils within the site are considered hydric. It was determined during the desktop review that the property contains hydric soils. A specific area is not necessarily considered to have hydric soils because it is dominated by soils on a hydric soils list. Hydric soils must be identified by verifying the presence of one or more of the hydric soil indicators. During our field inspection, WSI verified the presence of hydric soils within forested wetland complex within the subject property.

Wetland Hydrology Assessment

Visual indicators of wetland hydrology were evaluated. Examples of primary wetland hydrology indicators include, but are not limited to, surface water, high water table, soil saturation, water marks, sediment deposits, drift deposits, iron deposits, inundation visible on aerial imagery, sparsely vegetated concave surface, and water-stained leaves. If at least one primary or two secondary indicators are observed, the wetland location was confirmed. Other indicators including surface water, water-stained leaves, and aquatic fauna.



USACE Wetland Fill Permit



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, MOBILE DISTRICT
P.O. BOX 2288
MOBILE, AL 36628-0001

September 6, 2023

Special Projects Branch
Regulatory Division

SUBJECT: Department of the Army Alabama Regional General Permit, File Number SAM-2023-00452-STB, Ronnie Ankersen, East Mobile Bay Area

Ronnie J. Ankersen
Email: rjankersen@gmail.com
12549 County Road 1
Fairhope, Alabama 36532

Dear Mr. Ankersen,

Reference is made to your request for a Department of the Army permit to construction of two residential structures with access/driveway fill which will impact 0.086 acres of wetlands near Mobile Bay East. The project has been assigned file number SAM-2023-00452-STB which should be referred to in all future correspondence with this office concerning this project. The project is located at 12550 County Road 1, in Section 29, Township 7 South, Range 2 East; at Latitude 30.407569° North, Longitude -87.899982° West; in Fairhope, Baldwin County, Alabama.

Department of the Army permit authorization is necessary because your project involves work in waters of the United States under our regulatory jurisdiction. The project activities include the following:

- a. Construction of two residential structures, parking, and access drives resulting in the fill of 3,750 square feet (0.086 acre) of Wet Pine Flatwood (bottomland hardwood) wetlands.

Wetland impacts will be minimalized by utilizing the uplands of the subject parcel closest to County Road 1, and construction activities will incorporate containment borders to prevent sediments from migrating into adjacent wetlands. No additional wetland fill for yard or landscaping is authorized within this verification. The applicant will mitigate the permanent loss of wetlands by purchasing compensatory mitigation credits from a mitigation bank servicing the project area.

Based upon the information and plans you provided, we hereby verify the work described above, which would be performed in accordance with the attached drawings, is authorized by National Wetlands Permit (NWP) 18, *Minor Discharges*, in accordance with the 2021 NWP Program. The NWP(s) and associated conditions are attached for your review and compliance.



This notice of authorization must be
conspicuously displayed at the site of work.

A permit to perform work authorized by statutes and regulations of the Department of the Army at
Baldwin County Parcel Number 05-56-09-29-0-000-013.000 (PIN 061221)

has been issued to Ronnie J. Ankersen on September 6, 2023

Address of Permittee: 12549 County Road 1, Fairhope, Alabama 36532

Digitally signed by Samuel T. Barber
Date: 2023.09.06 12:29:00 -05'00'

PERMIT NUMBER

SAM-2023-00452-STB

Special Projects Branch
Mobile District, Regulatory Division

For the District Commander

ENG FORM 4336, Jul 81 (33 CFR 320-330) EDITION OF JUL 70 MAY BE USED

Proponent: CECW-O

Zoning Requirements

Section 4.2 RSF-1, Single Family District

4.2.5 *Area and dimensional ordinances.* Except as provided by *Section 2.3: Establishment of Zoning in Planning Districts, Section 12.4: Height Modifications, Section 12.5: Yard Requirements, Section 12.6: Coastal Areas, Section 12.8: Highway Construction Setbacks, Section 18.4 Variances, and Article 20: Nonconformities*, the area and dimensional ordinances set forth below shall be observed.

Maximum Height of Structure	35-Feet
Maximum Height in Habitable Stories	2 ½
Minimum Front Yard	30-Feet
Minimum Rear Yard	30-Feet
Minimum Side Yards	10-Feet
Minimum Lot Area	30,000 Square Feet
Minimum Lot Width at Building Line	100-Feet
Minimum Lot Width at Street Line	50-Feet
Maximum Ground Coverage Ratio	.35

2.3.26.3 Local Provisions for Planning District 26

(g) A variance shall not be required for a 25%-yard setback encroachment that results in a 25% or greater reduction in jurisdictional wetland fill.

Zoning Requirements

10.4.4 *Permit requirements.* The non-disturbed setback for development from a jurisdictional wetland and/or stream must be a minimum of 30 feet unless exempted by Section 10.4.7 below. The stream setback shall be from the top of bank on both sides of the waterway. When a stream is located within a gully, the top of bank shall be the top of the bank of the gully.

10.4.7 *Exemptions.*

(a) Lots of record that acquire all federal and state permits and that meet one or more of the following conditions shall be exempt from the prohibition of filling wetlands to create a buildable area and the corresponding setback requirements and a Variance from the Baldwin County Board of Adjustments shall not be required:

1. Up to 1/10th of an acre on lots that are 100% wetland
2. The minimum wetland fill required or minimum wetland setback encroachment for access (including an internal road) to a lot when no other access to a public road or easement is available, or
3. Fill necessary to create a maximum of 1/10-of-an-acre of buildable uplands on residential lots where insufficient uplands are available. If uplands already exist on the lot, those existing uplands shall be applied toward the 1/10th acre maximum.

If jurisdictional wetlands and/or streams will be filled or altered, then the applicant shall submit a U.S. Corps of Engineers 404 Wetland Permit and, unless exempted under Section 10.4.7, a Baldwin County wetland and/or stream setback variance approval by the Board of Adjustment prior to Site Plan approval.

None of the exemptions listed in 10.4.7 apply for this case

Staff Analysis and Findings

1.) Exceptional narrowness, shallowness or shape of a specific piece of property existing at the time of the enactment of these zoning regulations.

Zoning in Planning District 26 came into effect on September 21, 1993. Per Revenue Commission records the property is approximately 100' x 400'. The required minimum lot size for RSF-1 is 30,000 square feet with a 100' minimum lot width at the building line, and a 50' minimum lot width at the street line. Staff does not perceive any exceptional narrowness, shallowness, or shape of the subject property that would require a variance. However, staff believes that this criteria is **not a factor** to the requested variance.

Minimum lot size: **30,000 sf** Actual lot size: **40,000 sf** Minimum Lot width: **50'** Actual Lot Width: **100'** Hardship: **NONE**

2.) Exceptional topographic conditions or other extraordinary situations or conditions of a specific piece of property.

Staff perceives the +/- 0.85 acres of wetlands located on the subject property to be an exceptional topographic condition or other extraordinary situation, or condition contained on the subject property which may qualify for a variance due to a hardship created by the land.

Staff Analysis and Findings

3.) The granting of the application is necessary for the preservation of a property right and not merely to serve as a convenience to the applicant or based solely upon economic loss.

The subject property is zoned RSF-1, Residential Single-Family District which allows for residential and accessory uses. The request is to fill in a portion of the wetlands on the property to build a single-family dwelling. There is only +/- 0.08 acres of upland area on the property where they could build, and this area is made even smaller by the 30' non-disturbed wetland buffer required by the Baldwin County Zoning Ordinance. Therefore, staff perceives the granting of the application may be a necessity for preservation of a property right due to the wetlands on the subject property.

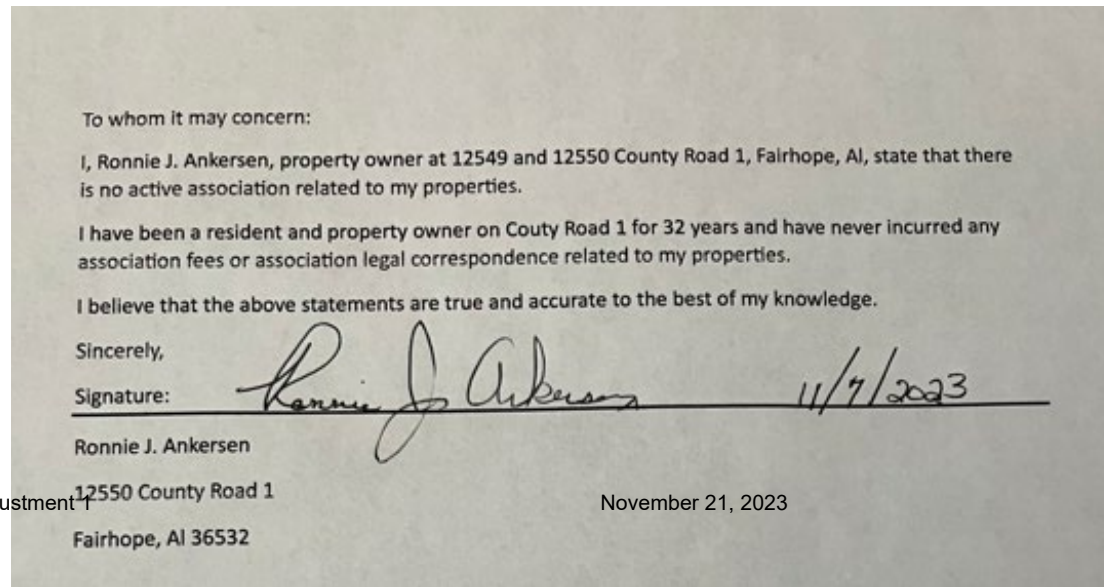
4.) The granting of this application will not impair an adequate supply of light and air to adjacent property or unreasonably increase the congestion in public streets, or increase the danger of fire, or imperil the public safety, or unreasonably diminish or impair established property values within the surrounding areas, or in any other respect impair the health, safety, comfort, morals, or general welfare of the inhabitants of Baldwin County.

Staff does not believe the granting of this application, **in general**, will impair an adequate supply of light and air to adjacent property or unreasonably increase the congestion in public streets, or increase the danger of fire, or imperil the public safety, or unreasonably diminish or impair established property values within the surrounding areas or in any other respect impair the health, safety, comfort, morals, or general welfare of the inhabitants of Baldwin County. **However, staff cannot specifically assure and makes no warranty or guarantee that if granted the resultant variance will or will not diminish or impair established property values within the surrounding areas, or in any other respect impair the health, safety, comfort, morals, or general welfare of the inhabitants of Baldwin County because the effect of the variance cannot be quantified at the time of consideration.**

Staff Analysis and Findings

5.) Other matters which may be appropriate.

- A wetland delineation has been provided by Wetland Sciences, Inc showing that approximately 0.85 acres of wetlands on the subject property.
- CR 1 is a major collector and requires a 75' setback from the centerline of the Right of Way.
- **US Army Corps of Engineers (USACE) issued a permit for the applicant to fill in a portion of the wetlands.**
- The applicant has submitted a written document stating there is no active homeowner association for the subject property.
- No documentation in favor of or opposition of this variance request has been received at the time this staff report was written.



ZVA23-76 ANKERSON PROPERTY

VARIANCE REQUEST SUMMARY AND RECOMMENDATION

Lead Staff: Calla McKenzie, Planning Technician

The applicant is requesting a variance from Section 2.3.26.3 (g) and 10.4.4 of the Baldwin County Zoning Ordinance to allow for the property to be filled to build a single-family dwelling.

Staff perceives the wetlands do establish a hardship on the subject property and therefore recommends ZVA23-76 be **APPROVED** with the following conditions unless information to the contrary is revealed at the public hearing.

1. If approved, the variance is limited to the wetland setback encroachment as shown on the provided site plan.
2. If approved, the wetland fill is limited to the amount as shown on the provided site plan (2,376 sf).
3. This variance relieves subject property of no other requirements of the Baldwin County Zoning Ordinance (zoning site plan), Baldwin County Subdivision Regulations, Baldwin County Building Department (building permit), Baldwin County Highway Department (driveway or turnout permit), or requirements of other agencies.

ZVA23-76 ANKERSON PROPERTY

VARIANCE REQUEST SUMMARY AND RECOMMENDATION

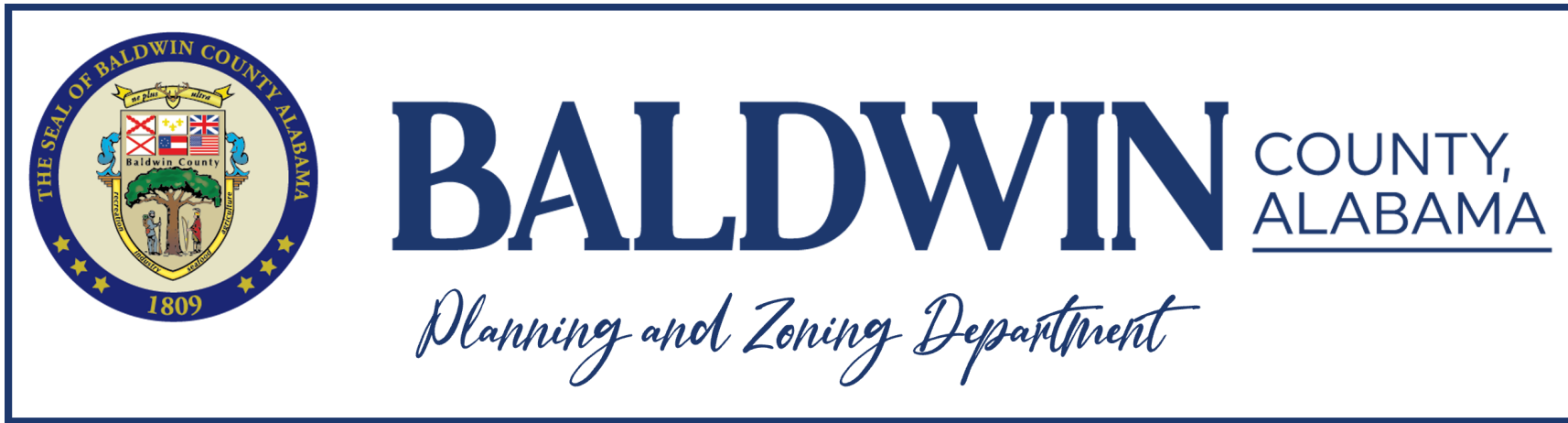
Lead Staff: Calla McKenzie, Planning Technician

GENERAL NOTES {By-laws}

Any party aggrieved by a final judgment or decision of the Board of Adjustment may within fifteen (15) days thereafter, appeal the final judgment to the Circuit Court of Baldwin County, Alabama, by filing with the Circuit Court and the Board of Adjustment a written notice of appeal specifying the judgment or decision from which the appeal is taken. In case of such appeal, the Board of Adjustment shall cause a transcript of the proceedings and the action to be certified to the Court where the appeal is taken.

Whenever the Board imposes conditions with respect to a project or variance, such conditions must be stated in the Board Order and in the permit(s) issued, pursuant thereto by the Administrative Officer. Such permits shall remain valid only as long as conditions upon which it is granted, and the conditions imposed by the Zoning Ordinance are adhered to.





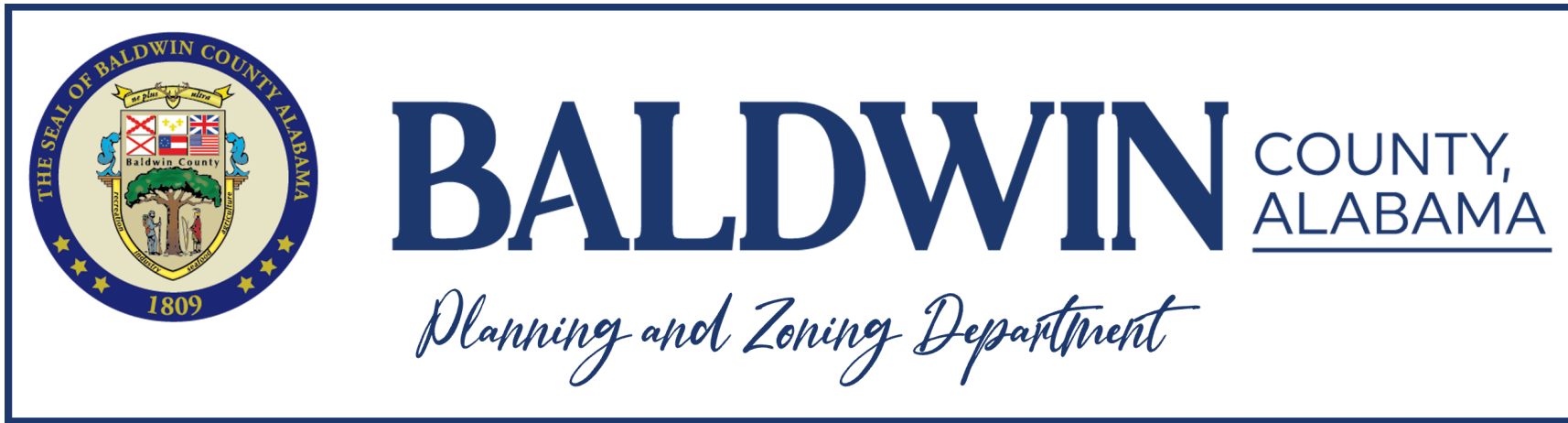
BALDWIN COUNTY BOARD OF ADJUSTMENT #1

NEXT REGULAR MEETING

DECEMBER 19TH, 2023 @ 4:00PM

BALDWIN COUNTY CENTRAL ANNEX

ROBERTSDALE, AL



BALDWIN COUNTY BOARD OF ADJUSTMENT #1

REGULAR MEETING

NOVEMBER 21, 2023

BALDWIN COUNTY CENTRAL ANNEX I

ROBERTSDALE, AL

ZVA23-78 GARRETT Property

VARIANCE REQUEST

Lead Staff: Crystal Bates Planning Technician II

Parcel#: 05-42-03-08-0-000-082.000

Planning District: 15

Zoning: RSF-1, Residential Single Family

Lot size: 40' x 70'

Physical Address: 27033 Hall Rd

Applicant: Jamie McBride

Owner: Wille Garrett



ZVA23-78 GARRETT Property

VARIANCE REQUEST SUMMARY AND RECOMMENDATION

Lead Staff: Crystal Bates Planning Technician II

The applicant is requesting a variance from *Section 4.2.5 of the Baldwin County Zoning Ordinance* as it pertains to the front and rear yard setback requirements.

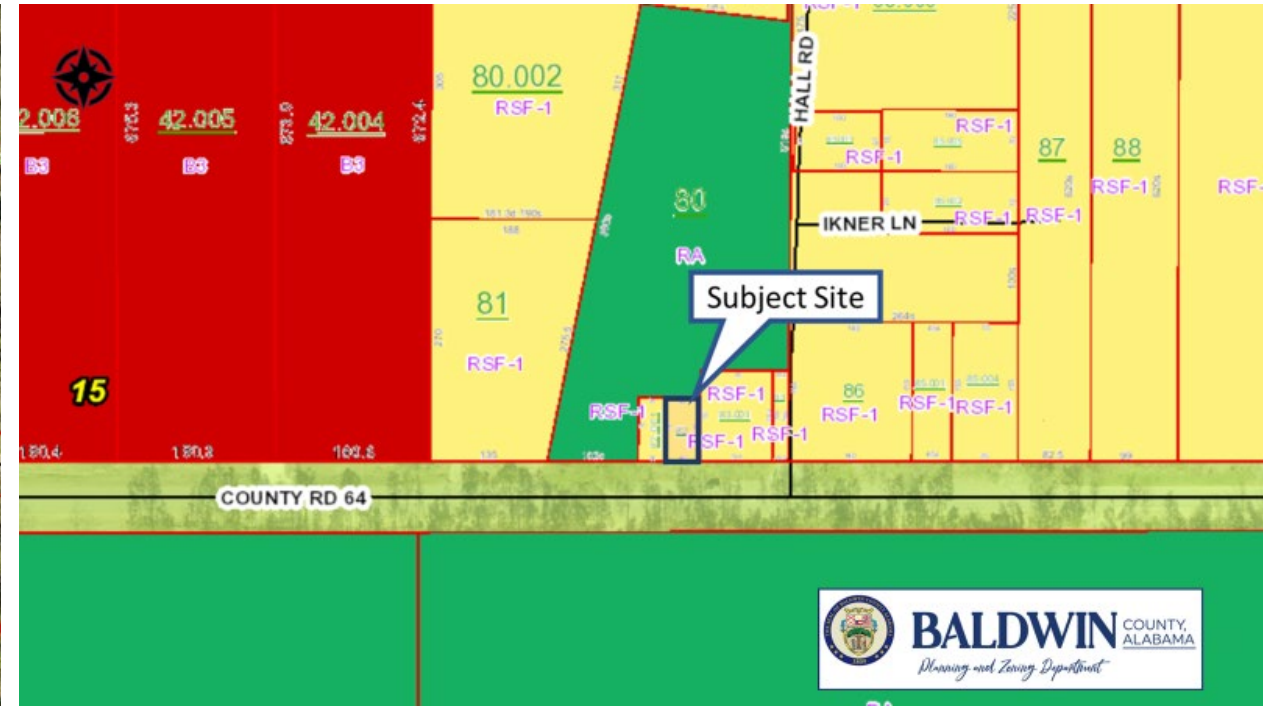
The applicant is requesting a setback variance to be 8' from the front property line instead of the required 30' and 8' from the rear property setback line instead of the required 30' for a 13 x 54 mobile home to remain in place.

Staff recommends **APPROVAL** unless information to the contrary is revealed at the public hearing.



Site Map

Locator Map



	Adjacent Zoning
North	RA, Rural Agriculture District
South	RA, Rural Agriculture District
East	RSF-1, Residential Single Family
West	RSF-1, Residential Single Family

	Adjacent Land Use
North	Residential
South	Vacant
East	Residential
West	Residential

Property Images

Nov 3, 2023 at 11:43:52 AM
238° SW

Subject Property



Nov 3, 2023 at 11:44:14 AM
246° SW

Adjoining Property
to The East



Nov 3, 2023 at 11:46:38 AM
174° S

Property to the
South

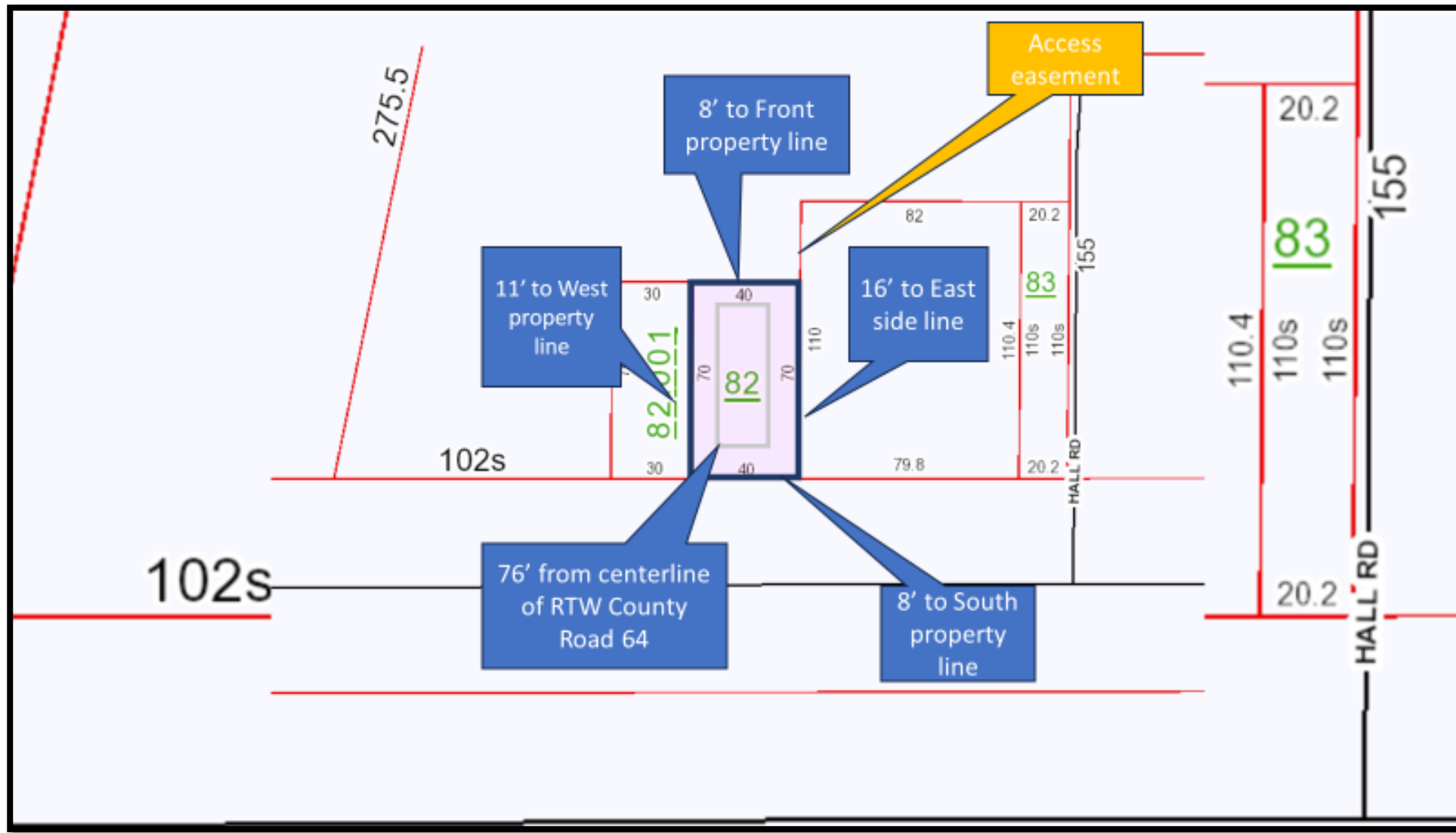


Nov 3, 2023 at 11:45:31 AM
315° NW

Adjoining Property
to the North



As-Submitted Site Plan



Hwy Construction Setback Line



POA Letter

There's No active association
on the property. or any restrictions.

11-4-2023

Jamie McNamee

Zoning Requirements

Section 4.2 RSF-1, Single Family District

4.2.1 *Generally.* This zoning district is provided to afford the opportunity for the choice of a low density residential environment consisting of single family homes on large lots.

4.2.2 *Permitted uses.* Except as provided by *Section 2.3: Establishment of Zoning in Planning Districts*, the following uses and structures designed for such uses shall be permitted:

- (a) The following general industrial uses: extraction or removal of natural resources on or under land.
- (b) The following transportation, communication, and utility uses: water well (public or private).
- (c) The following agricultural uses: Silviculture.
- (d) Single family dwellings including manufactured housing and mobile homes.

(e) Accessory structures and uses.

(f) The following institutional use: church or similar religious facility.

4.2.3 *Conditional Use Commission Site Plan Approval.* Except as provided by *Section 2.3: Establishment of Zoning in Planning Districts*, the following uses and structures designed for such uses may be allowed by the site plan approval process:

(a) Outdoor recreation uses.

(b) The following institutional uses: day care home; fire station; school (public or private).

(c) The following general commercial uses: country club.

(d) The following local commercial use: bed and breakfast or tourist home (see *Section 13.10: Bed and Breakfast Establishments*).

4.2.4 *Special exception.* Except as provided by *Section 2.3: Establishment of Zoning in Planning Districts*, the following use and structures designed for such use may be allowed as a special exception: Not Applicable

4.2.5 *Area and dimensional ordinances.* Except as provided by *Section 2.3: Establishment of Zoning in Planning Districts*, *Section 12.4: Height Modifications*, *Section 12.5: Yard Requirements*, *Section 12.6: Coastal Areas*, *Section 12.8: Highway Construction Setbacks*, *Section 18.4 Variances*, and *Article 20: Nonconformities*, the area and dimensional ordinances set forth below shall be observed.

Maximum Height of Structure	35-Feet
Maximum Height in Habitable Stories	2 ½
Minimum Front Yard	30-Feet
Minimum Rear Yard	30-Feet
Minimum Side Yards	10-Feet
Minimum Lot Area	30,000 Square Feet
Minimum Lot Width at Building Line	100-Feet
Minimum Lot Width at Street Line	50-Feet
Maximum Ground Coverage Ratio	.35

Staff Analysis and Findings

1.) Exceptional narrowness, shallowness or shape of a specific piece of property existing at the time of the enactment of these zoning regulations.

Per Revenue Commission records the parcel is approximately 40' x 70' and approximately 2,800 square feet. Minimum lot size requirements for RSF-1 zoning is 30,000 square feet with a minimum lot width at the street line of 100' and minimum lot width at the building line of 50'. Planning District 15 zoning was adopted on August 1, 2006. The dwelling was moved on the property without property permits but staff does feel that the shape and size of the lot would create a hardship for placement of the dwelling. Therefore, staff does perceive the subject parcel to be exceptionally narrow, shallow, or otherwise configured to create a hardship on the land that would require a variance, and the encroachment across the front and rear building setback line.

Minimum lot size: **30,000sf** Actual lot size: **2,800sf** Minimum Lot width: **100'** Actual Lot Width: **40'** Hardship: **YES**

2.) Exceptional topographic conditions or other extraordinary situations or conditions of a specific piece of property.

The subject property is relatively flat without any wetlands indicated on the subject property. Therefore, staff could not establish exceptional topographical conditions or other extraordinary situation, or condition contained on the subject property which would require a variance.

Staff Analysis and Findings

3.) The granting of the application is necessary for the preservation of a property right and not merely to serve as a convenience to the applicant or based solely upon economic loss.

The subject property is zoned RSF-1, Residential Single Family District, which allows for single-family dwellings and related accessory uses. The request is to allow for the 13 x 54 mobile home to remain on the property in its current location. As a result, staff does believe that the shape and size of the subject property would require a variance, a variance may be necessary for preservation of property right.

Staff Analysis and Findings

4.) The granting of this application will not impair an adequate supply of light and air to adjacent property or unreasonably increase the congestion in public streets, or increase the danger of fire, or imperil the public safety, or unreasonably diminish or impair established property values within the surrounding areas, or in any other respect impair the health, safety, comfort, morals, or general welfare of the inhabitants of Baldwin County.

Staff anticipates no major impacts, therefore staff does not believe the granting of this application will impair an adequate supply of light and air to adjacent property or unreasonably increase the congestion in public streets, or increase the danger of fire, or imperil the public safety, or in any other respect impair the health, safety, comfort, morals, or general welfare of the inhabitants of Baldwin County. ***However, staff is unable to determine if approved, the requested variance will unreasonably diminish or impair established property values within the surrounding areas because it is not feasible to gather sufficient data to make that determination for presentation at the public hearing.***

5.) Other matters which may be appropriate

-The applicant has submitted written documentation stating no active POA on the parcel.

-No documentation in favor of or opposition of this variance request has been received at the time.

ZVA23-78 GARRETT Property

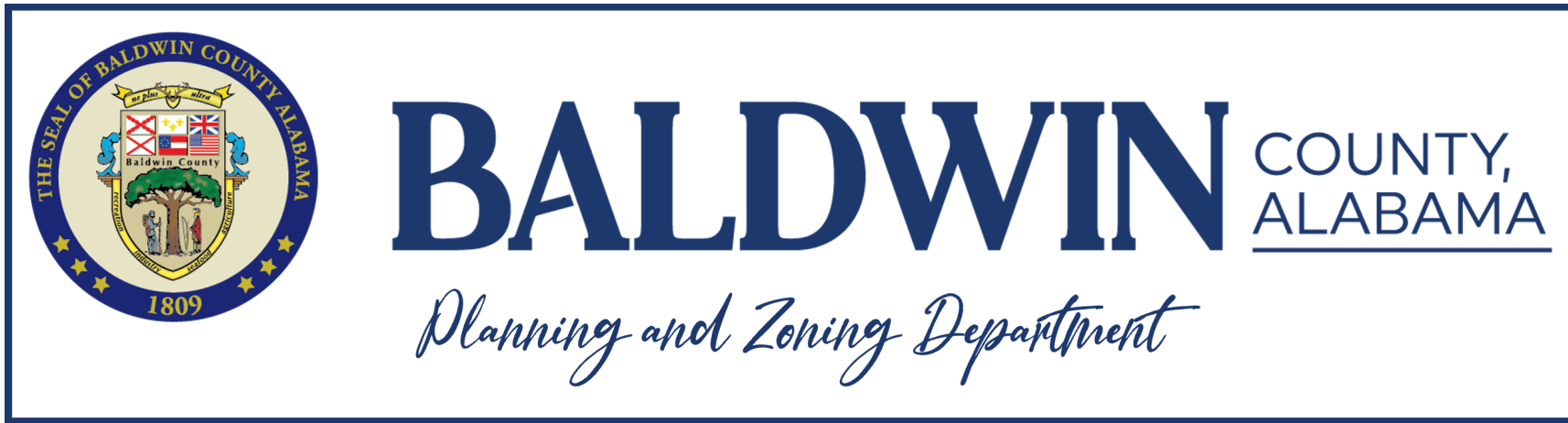
VARIANCE REQUEST SUMMARY AND RECOMMENDATION

Lead Staff: Crystal Bates Planning Technician II

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The applicant is requesting a setback variance to be 8' from the front property line instead of the required 30' and 8' from the rear property line instead of the required 30' for a 13 x 54 mobile home to remain in place.

Staff recommends **APPROVAL** unless information to the contrary is revealed at the public hearing.



BALDWIN COUNTY BOARD OF ADJUSTMENT #1

NEXT REGULAR MEETING

DECEMBER 19, 2023 @ 4:00PM

BALDWIN COUNTY CENTRAL ANNEX

ROBERTSDALE, AL