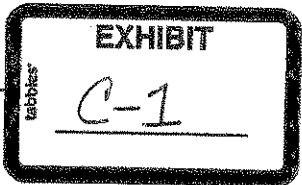


**LEGISLATIVE #**

**110112D**

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Final Order of  
The City of Gainesville's  
Board of Adjustment

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4  
5 IN THE MATTER OF PETITION BA-10-05 APP, PRESSMAN AND ASSOCIATES, INC.,  
6 AGENT FOR MAIN AND WALDO INVESTMENTS LLC. ICE HOUSE AMERICA  
7 APPEALING AN ADMINISTRATIVE DECISION OF THE PLANNING MANAGER TO  
8 CLASSIFY THE PROPOSED ICE MAKING AND DISPENSING MACHINE AS A USE  
9 IN THE STANDARD INDUSTRIAL CLASSIFICATION AS IN 2097  
10 (MANUFACTURED ICE) INSTEAD OF A RETAIL USE FOR ZONING PURPOSES.  
11 ZONED MU-1 (MIXED USE LOW INTENSITY, 8-30 DU/AC). LOCATED AT 1030 SE  
12 4TH AVE.

13  
14 Upon reaching its decision, the board shall make such order as it shall deem to be proper to each  
15 case and to that end shall have all of the powers of the officer from whom the appeal was taken.  
16 Each order shall thereafter be reduced to writing and shall contain a full recital of the board in  
17 each case. A copy thereof shall be filed in the records of the board by its secretary

18  
19 **ORDER**

20  
21 The Board of Adjustment (BOA) of the City of Gainesville held an informal quasi-judicial  
22 hearing on October 5, 2010, on Petition BA-10-05 APP, filed by Pressman and Associates, Inc.,  
23 agent for Main and Waldo Investments LLC, Ice House America. Appealing an administrative  
24 decision of the Planning Manager to classify the proposed ice making and dispensing machine as  
25 a use in the Standard Industrial Classification as IN 2097 (Manufactured Ice) instead of a retail  
26 use for zoning purposes.

27  
28 **STATEMENT OF THE PETITION**

29  
30 The issue in this proceeding was whether or not the proposed use, (*manufacturing of ice and*  
31 *selling such ice from a fixed location*), is classified as an establishment engaged in manufacturing  
32 ice for sale (Standard Industrial Classification IN 2097) or as an ice dealer (IN5999).

33  
34 **PRELIMINARY STATEMENT**

35  
36 On October 5, 2010, the Board of Adjustment (BOA) held an informal quasi-judicial hearing on  
37 Petition BA-10-05 APP. After hearing presentations, receiving evidence, and testimony from  
38 staff, and the applicant, the Board of Adjustment voted to deny the applicant's request to classify  
39 the proposed use as (Standard Industrial Classification SIC) IN5999.

40  
41 **FINDINGS OF FACT**

42  
43 Based upon the oral and documentary evidence presented at the informal quasi-judicial  
44 hearing and the entire record of this proceeding, the following findings of fact are made:

- 45  
46 1) The request is specific to the property located at 1030 SE 4<sup>th</sup> Avenue and  
47 incorporates a total of approximately 0.43 acres.

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- 1 2) The interpretation applies to all zoning district which allows the uses listed in  
 2 SIC IN 2097 and IN 5999.
- 3 3) The property is zoned Mixed-Use Low Intensity (MU-1) and the use IN2097 Manufactured  
 4 Ice: Establishments primarily engaged in manufacturing ice for sale is a not a permitted use  
 5 in the MU-1 zoning district.
- 6 4) The use "IN5999 Miscellaneous Retail Stores, Not Elsewhere Classified: Establishments  
 7 primarily engaged in the retail sale of specialized lines of merchandise, not elsewhere  
 8 classified", is a permitted use in the MU-1 Zoning District.
- 9 5) The proposed use involves the Manufacturing of ice as well as the sale of ice.
- 10 6) The petition was timely filed and there were no disputed issues of material fact.
- 11
- 12 7) On March 3, 2010, the applicant filed an application for a Text Change to the Land  
 13 Development Code as follows:  
 14 Ice House America, LLC (IHA) respectfully requests a text amendment to the  
 15 Gainesville zoning code Chapter 30, Land Development Code, Article IV, Use  
 16 Regulations, division 4, Business and Mixed Use Districts, Sections 30-63 and 30-65 to  
 17 allow the IHA automated ice vending machines as one of the permitted uses. Or in the  
 18 alternative IHA request reclassification of its Ice Vending machine to SIC5999 from  
 19 SIC 2097 as this will appropriately characterize the machines as commercial retail, thus  
 20 avoiding the need for an amendment to the code.

### REVIEW CONSIDERATIONS

21

22

23

24 In accordance with the Land Development Code, the Board of Adjustment is authorized to hear  
 25 appeals regarding a specific property where a person has a legal interest (affected person). The  
 26 appeal must be taken to the Board of Adjustment by the affected person within 20 days from the  
 27 date of the notice of the final administrative action by an administrative officer regarding any  
 28 land development code or building chapter provision (chapters 6 and 30), which affects a specific  
 29 property where the affected person has a legal interest, when that decision is adverse to his/her  
 30 interest or by the applicant within 20 days from the time the building inspector refuses to issue  
 31 any permit after application therefore has been duly made. Each notice of final administrative  
 32 action shall include an explanation of the affected person's right to appeal and give the time  
 33 period (20 days) for filing a petition for appeal to the board.

34

35 All petitions for appeal containing or attaching the requisite information described in this  
 36 paragraph shall be filed with the secretary of the board on forms prescribed by the board and  
 37 shall be accompanied by all of the papers constituting the record upon which the action was  
 38 taken. In addition, all petitions for appeal must include:

- 39
- 40 a. An explanation of how the petitioner's substantial interest is affected by the administrator's  
 41 decision;
- 42
- 43 b. A statement of how and when the petitioner received notice of the administrator's decision;

1  
2 c. A statement of all disputed issues of material fact or a statement that there are no disputed  
3 issues of material fact;

4  
5 d. A concise statement of the ultimate facts alleged, including specific facts that the petitioner  
6 contends would warrant reversal by the board or would warrant modification of the  
7 administrator's decision; and

8  
9 e. A statement of relief sought by the petitioner, stating precisely the remedy the petitioner  
10 seeks from the board.

11  
12 The board shall hear and determine all appeals promptly after giving to all parties at least ten  
13 days' written notice of the time and place of the hearing, as is stated in this section.

14  
15 a. Timely filed petitions stating there are no disputed issues of material fact shall be processed  
16 and heard as follows:

17 i. The board secretary shall schedule a quasi-judicial hearing of the matter before the board  
18 after giving all parties at least ten days written notice of the time and place of the hearing.

19  
20 ii. All parties shall submit to the secretary of the board any documentary evidence intended  
21 to be introduced at the hearing on their behalf at least five business days prior to the  
22 hearing.

23  
24 iii. At the hearing, the board shall provide all parties the opportunity to present written or  
25 oral evidence in support of the documentary evidence submitted on their behalf including  
26 the petition.

27  
28 iv. If during the course of the proceeding a disputed issue of material fact arises then, unless  
29 waived by all parties, the proceeding under this subsection (5)a. shall be terminated and a  
30 proceeding under subsection (5)b., below, shall be conducted.

31  
32 **CONCLUSIONS OF LAW**

33  
34 1) The Board of Adjustment is authorized by Section 30-354(h), Gainesville Code of  
35 Ordinances, to review and approve or deny appeals of decisions issued by an  
36 administrative official.

37  
38 2) The City of Gainesville Board of Adjustment provided proper procedural due process to  
39 all parties in consideration of a request to overturn an administrative decision that the  
40 proposed use is classified as IN2097 which is not allowed in the MU-1 zoning district.

41  
42 **ORDER**

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1 Based upon the foregoing findings of fact and conclusions of law, the Board of Adjustment at its  
2 meeting of October 5, 2010, voted 3 -1 to deny the request to overturn an administrative decision  
3 that the proposed use is classified as IN2097 which is not allowed in the MU-1 zoning district.  
4

5 In a second motion, the Board of Adjustment voted 4 - 0, to "submit a referral to the City  
6 Commission, the City Manager, the City Attorney's Office and staff, requesting a speedy review  
7 of a text change submitted by the applicant that would address the manufacturing and sale of ice  
8 in the MU-1 zoning district with appropriate development standards.  
9

10 Dated this 26 day of October, 2010, nunc pro tunc \_\_\_\_\_, 2010  
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15 Laura Dukes  
16  
17 Laura Dukes  
18 Chair, Board of Adjustment



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BEFORE THE CITY COMMISSION  
CITY OF GAINESVILLE, FLORIDA

IN THE MATTER OF AN APPEAL OF A DECISION OF THE BOARD OF  
ADJUSTMENT UNDER ADMINISTRATIVE REVIEW, filed by Pressman and  
Associates, Inc., agent for Main and Waldo Investments LLC, PETITIONERS  
PETITION No. BA-10-6 APP (Legistar No. 100547).

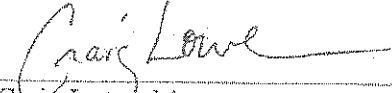
ORDER

The City Commission of the City of Gainesville held a hearing on December 2, 2010 to consider the appeal, filed on November 16, 2010, by Pressman and Associates, Inc., agent for Main and Waldo Investments LLC (Petitioner), appealing the Final Order of the Board of Adjustment dated October 26, 2010 under Petition BA-10-6 APP (incorrectly referred in Order as Petition BA-10-05 APP). The Final Order denied the Petitioner's appeal of an administrative decision of the Planning Manager that classified the proposed ice making and dispensing machine as a use in the Standard Industrial Classification as IN 2097 (Manufactured Ice). At the hearing on December 2, 2010, the City Commission considered the evidence and testimony placed in the record before the Board of Adjustment at its hearing and heard oral argument by the Petitioner and City staff.

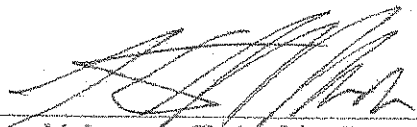
Based on the record set forth above, the City Commission concludes that due process was afforded the parties, the Board applied the correct law, and the decision of the Board was

1 supported by competent substantial evidence. The Final Order of the Board of Adjustment is  
2 thereupon affirmed.

3 Dated this 16<sup>th</sup> day of December, 2010.

4   
5 \_\_\_\_\_  
Craig Lowe, Mayor

6 Attest:

7   
8 \_\_\_\_\_  
9 Kurt M. Lannon, Clerk of the Commission

10  
11 Copies furnished to:  
12  
13 Pressman and Associates, Inc.  
14 Erik Bredfeldt, Director, Planning and Development Services  
15  
16