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PRESSMAN AND ASSOC., INC.

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Submittal and Request for Appeal

Regarding: Petition BA-10-6 APP, heard October 5th, 2010
The property owner being Main and Waldo Investments, LLC;
(Agent: Pressman & Assoc., Inc.), The Board of Adjustment's written order made
October 26th, 2010; Order received by the applicant on November 7th, 2010.

To the Honorable Mayor and the City Commissioner's of the City of Gainesville:

Decision to be Appealed: The denial of the appeal of an administrative
determination as to classifying the proposed ice making and dispensing machine as a use
in the Standard Industrial Classification as IN 2097 (Manufactured Ice) instead of a retail
use for zoning purposes.

Board of Adjustment's First Motion: The Board of Adjustment's first motion
was to deny the administrative appeal to over turn the zoning administrator's original
decision, that being that the proposed use is classified as IN2097 (Manufactured Ice) is
not allowed in the MU-1 Zoning District.

Board of Adjustment's Second Motion: 4-0 to "submit a referral to the City
Commission, the City manager, the City Attorney's office and staff, requesting a speedy
review of a text change submitted by the applicant that would address the manufacturing
and sale of ice in the MU-1 zoning district with appropriate development standards.

Support of this Appeal

1) It is impossible for the Board of Adjustments (BOA) to on one hand deny the appeal as
it was presented, and yet on the other hand unanimously support the
same use - and then in fact to advocate for it's "speedy review" with the entire leadership
structure of the City. That communication clearly shows that the Board members
approved and support the use as proposed.

2) The fact that the BOA ventured far into zoning considerations as a criterion, advocated
and pursued by the zoning staff, is a clear demonstration that the BOA

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went far beyond their consideration of the simple and specific issue at hand: how the use as proposed meets the parameters of the definitions listed in the City code.

3) The staff incorrectly adjudged the direction of this issue and relayed and communicated that error to the Board. The zoning staff's July 22, 2010 letter clearly indicates that as a "new use" (referring to the proposed use) "...not envisioned by the 19876 SIC, the City's Land Development Code...allows staff to make a determination of zoning compliance for new industries". It was clearly and completely presented that the use proposed clearly existed prior to 1987.

4) The zoning staff injected and emphasized repeatedly, in our opinion, exaggerated and expanded fears and uncertainties that the proposed use would have widespread detrimental affects on the city as a whole. These fears raised are baseless and have not surfaced in any other single jurisdiction in the State. These injected uncertainties, in our opinion, drove the Board away from an approval of this issue.

5) Several of the Board members refused to recognize that the presented direction for the use and review of SIC category 5999, Headlined "Misc. Retail Stores", of which lists "Ice Dealer's-Retail" was entirely correct and directly appropriate for interpretation of the proposed use. In this regard, it was further rejected by some members that the specific example, "Ice Dealer" – retail", which clearly represents the use as proposed, was germane and specifically addressed this use. This proposed use is primarily for the retail sale of a product. It is similar to a retail standing distilled or fresh water dispenser or atm or a car wash. It is important to note that the staff did not include this specific category in any of the write up of the BOA's denial order review.

6) Several of the Board members chose to refer to the following examples as appropriate and acceptable to adjudge the proposed use under the headline of "Manufactured Ice", including examples of "Block Ice, Ice plants, -operated by public utilities - or dry ice". This category on the face of its review, does not apply to the proposed use. The Major Group this category is listed under in the SIC is defined as, "establishments manufacturing or processing foods or beverages for human consumption". This category refers to the production of products. There is no retail component in this definition.

Thank you for your attention and consideration.