

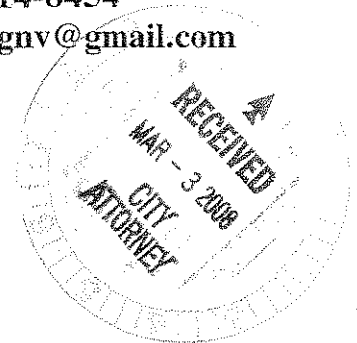
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**JOSEPH W. LITTLE
LAWYER
3731 N. W. 13th Place
Gainesville, FL 32605**

February 29, 2008

**352-372-5955 (Home)
352-214-8454
Littlegnv@gmail.com**

The Honorable Frederick D. Smith, Chief Judge
Alachua County Courthouse
201 E. University Avenue
Gainesville, FL 32601



Re: Petition for Writ of Certiorari

Dear Judge Smith:


Enclosed herewith is a petition for writ of certiorari I filed today. Attached to the writ is the order rendered February 6, 2008 and major portions of the record. Also attached is a video DVD of Development Review Board meetings conducted January 29, 2008 and February 24, 2008. I have not yet had these DVD's transcribed.

I wish to inform you that I will be out of town all next week. Therefore, if you should believe I need to provide a transcript of the DVD before you can make a ruling on the adequacy of the petition, please let me know and I will order it immediately upon my return.

I also enclose a copy of Summons in Certiorari prescribed by Fla. R. Civ. Procedure 1.630. If you determine to issue the summons, please ask your judicial assistant to conduct me and I will pick up copies of the summons from your office, assemble them with the petition and deliver to the sheriff to serve. If you wish to direct the sheriff to serve yourself, I will supply additional copies of the petition with attachments.

In the meantime, I am providing courtesy copies of the petition to the City Attorney and the 300 Club.

Respectfully submitted,


Joseph W. Little
Fla. Bar No. 196749

Enc.
cc: Marian Radson, Esq.
300 Club Inc.

**IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT OF
FLORIDA, IN AND FOR ALACHUA COUNTY, FLORIDA**

**Joseph W. Little, Lucille A. Little,
Walter Andrew Nolan, Amy G. Nolan,
Keith D. White, and Melanie White,
Petitioners,**

Case No. 2008 CA

W

vs.

**300 Club, Inc., City of Gainesville,
Florida, and City of Gainesville
Development Review Board**

PETITION FOR WRIT OF CERTIORARI AND

1. This is an action in the nature of a petition for certiorari to the City of Gainesville, Florida and the City of Gainesville Development Review Board pursuant to Fla. R. Civ. P. 1.630.
2. This Court has jurisdiction pursuant to Article V, Section 5(b) Florida Constitution.

PARTIES

3. Joseph W. Little and Lucille A. Little are natural persons who own and reside upon residential property in the City of Gainesville, which lies within 400 feet of property owned by Defendant 300 Club, Inc. that is the subject of this litigation.
4. Walter Andrew Nolan and Amy G. Nolan are natural persons who own and reside upon residential property in the City of Gainesville, which lies within

400 feet of property owned by Defendant 300 Club, Inc. that is the subject of this litigation.

5. Keith D. White and Melanie White are natural persons who own and reside upon residential property in the City of Gainesville, which lies within 400 feet of property owned by Defendant 300 Club, Inc. that is the subject of this litigation.
6. The 300 Club Inc. is a Florida non profit corporation whose principal address is 3715 N.W. 12th Ave, Gainesville, Fl 32605. This party is hereinafter referred to as 300 Club.
7. The City of Gainesville, Florida is a Florida municipality organized pursuant to Article VIII §2 Florida Constitution or preceding provisions and the laws of the State of Florida. This party is hereinafter referred to as City.
8. The City of Gainesville Development Review Board is an agency of the City of Gainesville created pursuant to law and possessing authority to make final quasi-judicial decisions for the City. This party is hereinafter referred to as Board.

FACTS COMMON TO ALL COUNTS

9. The decision in this matter was rendered on February 6, 2008 by a letter from City to 300 Club stating: "the Development Review Board approved your application with conditions." A copy is attached.
10. 300 Club owns a parcel of property with street address 3715 N.W. 12th Avenue, Gainesville, Fl. 32605.

11. 300 Club's property identified above is zoned Conservation under the zoning laws of City.
12. 300 Club operates a private tennis and swimming club on the property identified above.
13. Except by invitation or permission, use of 300 Club's facilities is limited to members, families of members and guests of members.
14. Use of 300 Club's property and facilities is not routinely open to members of the general public.
15. Members of the 300 Club pay membership fees for the use of the 300 Club's facilities.
16. The 300 Club property was annexed into City in or about 1961 and was initially zoned R1-a, which was a single family residential zoning.
17. Under City's zoning code at the time of annexation, the 300 Club's private recreational use of its property was accepted as a legal nonconforming use in the R1-a zoning category.
18. In or about 1981 City made a deliberate legislative decision to rezone 300 Club's property to Conservation.
19. The use of 300 Club's property described above is a legal nonconforming use in the Conservation zone.
20. The 300 Club property is surrounded on all sides by properties zoned RSF-1, a single family residential category

21. Under City's Code Sec. 30-346(a) it is City's intent that nonconforming uses "shall not be enlarged upon, expanded, intensified or extended."
22. Under City's Code Sec. 30-346(a) certain improvements may be permitted to a nonconforming use if the improvements satisfy prescribed criteria including: "Will not have an adverse impact on the surrounding neighborhood and general public."
23. Under City's Code Sec. 30-346(d)(6) Board may grant an applicant authority to make improvements to nonconforming uses if the improvements "comply with the dimensional and other requirements of adjacent zoning districts."
24. All uses must conform to the standards of performance prescribed in City's Code Sec. 30-345, including sound standards , Sec. 30-345(6), and lighting standards, Sec. 30-345(8).
25. Under City's land use code, 300 Club's proposed "improvements" to its nonconforming use requires approval from Board.
26. 300 Club has six existing lighted tennis courts and three existing unlighted tennis courts.
27. 300 Club determined to add lights on three unlighted tennis courts so that members could play tennis on those courts after dark.
28. As a nonconforming user in a Conservation zone, 300 Club is not entitled by right to install lights on the three unlighted courts as a matter of right.
29. Pursuant to the Ordinances of City 300 Club filed an application with Board requesting authority to install lights on the 3 unlighted tennis courts.

30. At the time it filed its petition, 300 Club had no established right that Board must approve its application to install the lights.
31. Board scheduled a special meeting on January 31, 2008 to conduct a quasi-judicial hearing on the 300 Club's request for authority to extend its nonconforming use by adding lights on the three unlighted courts to permit members to play tennis on them after dark.
32. Under City's code of ordinances, the burden of proof to establish the conditions for obtaining authority to make improvements and extensions to its nonconforming use is upon 300 Club.
33. Owners of property withing 400 feet of the boundaries of 300 Club's property are by law entitled to notice of the petition and to participate in Board's proceedings.
34. City sent notices to owners of property lying within 400 feet of the boundaries of 300 Club property.
35. Owners of four residential properties responded requesting that the special use permit be denied.
36. Petitioners herein filed written objections with Board and one member of each petitioning family objected in person at Board's January 31, 2008 quasi-judicial hearing on 300 Club's application for authority to extend its nonconforming use.
37. Stephen Boyes is a member of Board. Stephen Boyes is hereinafter referred to as Boyes.

38. Boyes made an *ex parte* site visit to the site of the 300 Club prior to Board's January 31, 2008 special quasi-judicial hearing on the 300 Club petition.
39. Boyes met with one or more representatives of the 300 Club in his *ex parte* site visit to the 300 Club.
40. From his *ex parte* actions Boyes concluded that City had wrongly rezoned 300 Club's property from R1-a to Conservation in the early 1980s without reason.
41. From his *ex parte* actions Boyes concluded that City's purportedly improper actions deprived 300 Club of the right to make use of its property such as lighting the tennis courts.
42. From his *ex parte* actions Boyes concluded that City's purportedly improper actions had caused the 300 Club to incur expenses it should not have been required to incur.
43. From his *ex parte* actions Boyes concluded that City's purportedly improper actions otherwise prohibited 300 Club from using its property as it wished.
44. From his *ex parte* actions Boyes concluded that 300 Club would have been permitted to use its property as it wished had City not mistakenly rezoned the property to Conservation.
45. Nothing in the record of Board's proceedings provides evidence that City took any improper or mistaken action in rezoning the 300 Club property to Conservation except for member Boyes' testimony in the meeting.

46. Nothing in the record of Board's proceedings provides evidence that an improper or wrongful zoning action by City in regard to 300 Club's property caused 300 Club to incur unnecessary expenses except for member Boyes' testimony in the meeting.
47. City did not act improperly or mistakenly in rezoning the 300 Club property to Conservation but made a deliberate legislative decision to do so made pursuant to lawfully prescribed procedures.
48. Petitioners were not given notice of Boyes' plan to make a site visit to the 300 Club property and to meet with 300 Club's representatives.
49. Petitioners were not present to hear the *ex parte* discussion between Boyes and the 300 Club representative or to present counter information to Boyes
50. In Board's January 31, 2008 meeting Boyes announced that he had made a site visit to the 300 Club property.
51. 300 Club's agent's testimony acknowledged that Boyes had had the "benefit of a walk through" of the 300 Club property.
52. In Board's January 31, meeting Boyes was an advocate for granting 300 Club's application.
53. Prior to 300 Club's presentation of its application, Boyes' inquired, "Why is the zoning Conservation?"
54. Prior to 300 Club's presentation of its application, Boyes' stated to Board that City "should have zoned the property correctly."
55. Prior to 300 Club's presentation of its application, Boyes' stated to Board that the plan board could "correct the zoning."

56. Nothing in the record of Board's action on 300 Club's application establishes that 300 Club's zoning is not correct, except for Boyes' testimony.
57. Board's staff made a recommendation that the application be granted with several conditions, including limiting the height of lighting poles to 30 feet, requiring an automatic shut off of lights at 9:00pm, and certain vegetation requirements.
58. Acting as 300 Club's advocate, Boyes asked 300 Club's representative whether there were conditions that the 300 Club "didn't like."
59. Upon hearing 300 Club's desire to change the pole height to 50 feet and the shut off time to 9:30pm, Boyes made and voted for motions to change the staff's recommendations to satisfy 300 Club's wishes.
60. Boyes argued to Board that the "only reason" 300 Club does not have an approved site plan is that City rezoned the 300 Club property.
61. To the extent that Boyes' statement means that the 300 Club would have been entitled to put up the lights that were the subject of the application in an R1-a zone without special authorization, it is false.
62. A motion was made to approve 300 Club's application to include changes to staff's recommended conditions that: increased the recommended pole height from 30 feet to 50 feet as desired by 300 Club; changed the recommended 9:00pm lights shut off time to 9:30pm as desired by 300 Club; and eliminated the requirement for a tree survey.

63. Advocating 300 Club's position, Boyes argued to Board that the "bottom line" was that when 300 Club's facility was built it was a conforming use and had an approved site plan, that 300 Club met its site plan requirements, and that City changed the zoning.
64. The record in Board's file in this matter contains no evidence to establish the truth of the facts Boyes stated to Board in his argument for approval of the motion except for Boyes' statements.
65. The content of Boyes' statements is false in regard to any mistaken or wrongful acts taken by City in rezoning 300 Club's property.
66. The content of Boyes' statement is false in regard to any implication that 300 Club would have had a right to erect the lights on its unlighted tennis court's without seeking a special authority.
67. Boyes' statements were highly prejudicial to the interests of Petitioners and influenced Board's decision.
68. Board approved 300 Club's application with the changes in staff's recommendation stated above.
69. After Board took action on 300 Club's application, Boyes' made a motion to refer the zoning of the 300 Club property to the Plan Board with a recommendation that the Conservation zoning be reviewed.
70. 300 Club has the right to file a rezoning application to the Plan Board without the support of Board.
71. Petitioners are opposed to rezoning 300 Club's property and are prejudiced by Board's action.

72. Boye's motion to recommend that the Plan Board review Conservation zoning of the 300 Club property was not an item on Board's published agenda for the January 31, 2008 special *quasi-judicial* hearing and Petitioners herein had no advance notice and no advance opportunity to prepare a response to it.
73. In support of his motion to refer rezoning of 300 Club's property to the Plan Board, Boyes argued to Board that City had improperly rezoned 300 Club's land to Conservation.
74. Apart from Boyes' unsupported statement, the record of Board's proceeding contains no evidence to support Boyes' statement that City had improperly rezoned 300 Club's property.
75. In support of his motion to refer rezoning to the Plan Board, Boyes argued to Board that City had made a mistake in rezoning 300 Club's land to Conservation.
76. Apart from Boyes' unsupported statement, the record of Board's proceeding contains no evidence to support Boyes' statement that City made a mistake in rezoning 300 Club's land to Conservation.
77. In support of his motion to refer rezoning to the Plan Board, Boyes argued to Board that City had "blatantly" changed the zoning of 300 Club's land "with no apparent reason."
78. Apart from Boyes' unsupported statement, the record of Board's proceeding contains no evidence to support Boyes' statement that City "blatantly" rezoned 300 Club's land "with no apparent reason."

79. In support of his motion to refer rezoning to the Plan Board, Boyes argued to Board that City's mistaken action had cost 300 Club a lot of money.
80. Apart from Boyes' unsupported statement, the record of Board's proceeding contains no evidence to support Boyes' statement that City had mistakenly cost 300 Club a lot of money.
81. In support of his motion to refer rezoning to the Plan Board, Boyes argued to Board that because 300 Club was a nonprofit organization and provided a "public service," City should correct its error.
82. The record of Board's proceedings establishes that 300 Club is a private club owned and used by its fee paying members.
83. The record of Board's proceedings is devoid of any evidence that 300 Club provides free services of any kind to the general public and no evidence that members of the general public have any right to use the facilities without 300 Club's special permission.
84. Staff recommended that Board not approve Boyes' motion to refer rezoning of 300 Club's property to the Plan Board.
85. Board deferred acting on Boye's motion to a later meeting.
86. The agenda for Board's next regular meeting on February 14, 2008 did not include notice that the Board would act on Boyes' motion to recommend that the Plan Board review the Conservation zoning of 300 Club's property.
87. At the commencement of Board's regular meeting of February 14, 2008 Boyes requested Board to act on his motion that was not on the published agenda to recommend that the Plan Board review the Conservation zoning of

300 Club's property before taking action on regularly agendaed items to be heard.

88. In support of his motion, Boyes argued to Board that 300 Club is a nonprofit organization that "serves the public and city" with tennis and swimming.
89. Except for Boyes' statements, there is no evidence in the record to support Boyes' statement that 300 Club's property "serves the public and city" in the sense of being open for use by members of the public without special consent of the 300 Club.
90. 300 Club is a private club that provides services for its fee paying members and is not open to members of the general public without special consent.
91. In support of his motion, Boyes argued to Board that it is "unfair" that 300 Club as a nonprofit organization should be forced to deal with having to be a nonconforming use.
92. Except for Boye's statement, there is no evidence in the record to establish why it is unfair that the 300 Club comply with the lawful conditions imposed upon its nonconforming use in the Conservation zone in which it resides.
93. It is not unfair to require 300 Club to conform to the zoning requirements in the Conservation zone in which its property resides.
94. In support of his motion, Boyes argued to Board that "it was an oversight by the city."

95. Except for Boyes' statements, there is no evidence in the record to support Boyes' statement that any action City has taken in regard to the 300 Club was an "oversight" on City's part.
96. City's rezoning of 300 Club's property to Conservation was not an oversight but was a deliberate legislative decision to do so made pursuant to lawfully prescribed procedures.
97. Board approved Boyes' motion to refer review of the zoning of 300 Club's zoning to the Plan Board.
98. Board's action is prejudicial to Petitioners herein who must now be prepared to object to Plan Board proceedings outside regular zoning procedures.

Count I

BOARD'S DECISION PROCESS WAS IRREPARABLY TAINTED BY BOYES' *EX PARTE* ACTIVITIES WITH AND ON BEHALF OF THE 300 CLUB, DEPARTED FROM THE ESSENTIAL REQUIREMENTS OF LAW, AND DEPRIVED PETITIONERS OF THE IMPARTIAL DECISION-MAKING PROCESS REQUIRED BY THE DUE PROCESS CLAUSES OF THE FLORIDA AND UNITED STATES CONSTITUTIONS.

99. Petitioners replead and reallege paragraphs 1-98 herein.
100. Petitioners allege that Board's decision was irreparably tainted by Boyes' *ex parte* site visit and meeting with one or more 300 Club representatives and the advocacy he thereafter undertook on behalf of 300 Club in violation of the requirement that *quasi-judicial* decisions be made with strict neutrality and impartiality based upon credible and relevant evidence in the record obtained from proper sources, and thereby departed from the essential

requirements of law by depriving Petitioners of an impartial decision based strictly on the law and relevant facts.

101. Petitioners allege that Board's decision was irreparably tainted by Boyes' repeated unsupported statements that City had acting improperly, mistakenly, and with no apparent reason in rezoning 300 Club's property causing it to suffer costs, which statements wrongly focused the substance of Board's *quasi-judicial* hearing away from the law that pertains to 300 Club's application onto irrelevant issues of a rezoning that occurred decades before, and thereby departed from the essential requirements of law by depriving Petitioners of an impartial decision based strictly on the law and relevant facts.
102. Petitioners allege that Board's decision to grant 300 Club's application and to include the changes to staff's recommendations desired by 300 was irreparably tainted by Boyes' *ex parte* site visit and meeting with one or more 300 Club representatives, the advocacy he thereafter undertook on behalf of 300 Club, and his unsupported statements that City had acting improperly, mistakenly, and with no apparent reason in rezoning the property, and thereby deprived Petitioners of an unbiased decision process and departs from the essential requirements of law.
103. Petitioners allege that Board's decision to grant Boyes' motion to refer a recommendation to the Plan Board that it undertake a review of the zoning of 300 Club's property was irreparably tainted by Boyes' *ex parte* site visit and his *ex parte* meeting with one or more 300 Club representatives, the advocacy he thereafter undertook on behalf of 300 Club, his unsupported

statements that City had acting improperly, mistakenly, and with no apparent reason in rezoning the property, and his unsupported and false statements that 300 Club was providing public services to the public and the City, and thereby deprived Petitioners of an impartial decision process and departed from the essential requirements of law.

104. The manner in which Board conducted the hearing departed from the essential requirements of law and deprived Petitioners of rights protected by the due process clauses of the Florida and United States constitutions.
105. Petitioners have a clear right to the relief they seek.
106. Without the requested relief, Petitioners will suffer irreparable injury.

WHEREFORE Petitioners demand a writ of certiorari to City to quash Board's *quasi-judicial* decision rendered on February 6, 2008 to grant 300 Club's application with conditions, because said decision was taken in violation of the standards that (1) quasi-judicial decisions be taken by a strictly neutral decision-maker, (2) quasi-judicial decisions be based upon evidence presented by the parties, witnesses and staff as prescribed by law, (3) decision-makers not be witnesses or refer to evidence that is outside the record, (4) quasi-judicial decision makers not become the advocate for a party in the proceeding; and (5) otherwise departed from the essential requirements of law to deprive Petitioners of rights protected by the due process clauses of the Florida and United States constitutions.

WHEREFORE Petitioners also demand a writ of certiorari to City to quash Board's *quasi-judicial* decision commenced on January 31, 2008 and completed in on February 14, 2008 to make a recommendation to the Plan Board that it review

the Conservation zoning of 300 Club's property because said decision was taken in violation of the standards that (1) quasi-judicial decisions be taken by a strictly neutral decision-maker, (2) quasi-judicial decisions be based upon evidence presented by the parties, witnesses and staff as prescribed by law, (3) decision-makers not be witnesses or refer to evidence that is outside the record, (4) quasi-judicial decision makers not become the advocate for a party in the proceeding; and (5) otherwise departed from the essential requirements of law to deprive Petitioners of rights protected by the due process clauses of the Florida and United States constitutions.

WHEREFORE Petitioners also request other appropriate relief including an award of costs for this action.

Count II

PETITION FOR WRIT OF CERTIORARI

107. Petitioners reallege paragraphs 1-98 herein.
108. Petitioner had the burden of proving that its proposed improvements to its nonconforming use satisfies the General Performance Standards prescribed by Sec. 30-345, City's Code of Ordinances.
109. Code Sec. 30-345(8)a. prescribes in part:
 - a.Directional luminaries such as floodlights, spotlights, sign lights and area lights shall be so installed and aimed that they illuminate only the task intended and that the light they produce does not shine directly onto neighboring properties or roadways. Building facade lighting, sports lighting and other applications using floodlights shall have glare shielding (external or internal shields) to prevent light trespass and light pollution. All lighting shall be designed, hooded or

shielded to direct light so that no illumination source or glare creates nuisance to any adjoining property or unreasonably interferes with the lawful use and enjoyment of any adjoining property.

110. The record contains no competent substantial evidence to establish that 300 Club's requested improvements to its nonconforming use satisfies the anti-glare requirements of Sec. 30-345(8)a.
111. 300 Club's expert testified that glare from lights could transmit up to one-quarter mile away.
112. 300 Club's expert testified that glare could "bother" people even though the amount of light measured on the ground could not be read by a light meter.
113. 300 Club's expert testified that he could not tell the Board at exactly what distance from 300 Club's proposed installation you will have a direct line of sight into the lights.
114. Code Sec. 30-345(8)a. prescribes, in part:
 - a. The maximum lighting intensity permitted for the security of the areas described above, for permitted outdoor land uses, or pole heights, other than those located in off-street parking facilities, may be increased by the appropriate reviewing board through site plan review, or the board of adjustment by obtaining a special exception if site plan review is not required, provided that the applicant establishes that such an increase meets the following standards: a. the increase in intensity is reasonably required for security purposes for the use or for conducting the permitted outdoor use; b. the increase in intensity will not result in a nuisance to adjoining properties and does not interfere with the lawful use and enjoyment of adjoining properties; and c. necessary screening will be erected or exists and maintained to reduce the impact of the increase in intensity on adjoining properties.

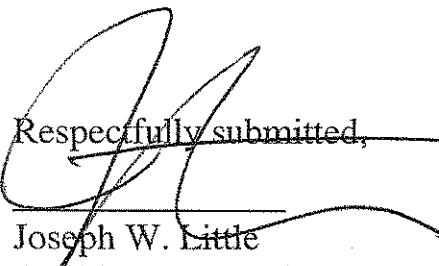
115. Code Sec. 345(8)c. and d. prescribe:
- c. Outdoor recreational lighting. Lighting installations for outdoor recreational uses (including pole heights) shall be designed in accordance with IESNA standards, as outlined in report number RP-6-88, or any update thereto.
 - d. Height. The maximum height of light fixtures, except as otherwise regulated by this section, shall not exceed 30 feet.
116. The IESNA standards that apply to 300 Club's proposed lighting use were not read into the record.
117. The record contains no competent substantial evidence that Board was provided copies of or informed of the IESNA standards that must be applied to make a lawful decision to grant 300 Club authority to improve or extend the lighting in its nonconforming use.
118. The IESNA standards that must be satisfied to grant the 300 Club a special permit exception to the maximum pole height of 30 feet prescribed by Code Sec. 345(8)d were not read into the record or otherwise produced for review by Board or Petitioners.
119. The record contains no competent substantial evidence that Board was provided copies of or informed of the precise IESNA standards that must be applied to make a lawful decision to grant the 300 Club an exception to the maximum pole height of 30 feet prescribed by Code Sec. 345(8)d.
120. The record contains no competent substantial evidence that 300 Club's proposed use qualified for an exception to the maximum pole height of 30 feet prescribed by Code Sec. 345(8)d.

121. Code Sec. 30-345(6) prescribes:
 - (6) Sound. All uses and activities shall not exceed the sound pressure levels set forth in Chapter 15 (Noise) of this Code of Ordinances.
122. The prescribed sound pressure levels were not read into the record.
123. The record provides no competent substantial evidence to establish that 300 Club's requested use satisfies the anti-noise requirements of Sec. 30-345(6).
124. The record provides no competent substantial evidence to establish that 300 Club carried its burden to establish that it has met the legal requirements for obtaining the special use authority it sought.

WHEREFORE Petitioners demand a writ of certiorari to City to quash Board's *quasi-judicial* decision rendered on February 6, 2008 to grant 300 Club's application with conditions because proof that 300 Club's application satisfied all conditions prescribed by law is not supported by competent substantial evidence in the record and the decision departed from the essential requirements of law.

WHEREFORE Petitioners also request other appropriate relief including an award of costs for this action.

Respectfully submitted,


Joseph W. Little
Florida Bar No. 196749
Counsel for Petitioners
3731 N.W. 13th Place
Gainesville, Florida 32605
352-214-8454
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