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ORDER OF THE ST. JOHNS COUNTY  
BOARD OF COUNTY COMMISSIONERS  
ST. JOHNS COUNTY, FLORIDA

RE: Lil Champ  
c/o George McClure, Esq.  
McClure and Whiteman  
P.O. Box 3504  
St. Augustine, FL 32085

RE: Appeal to Planning and Zoning Agency's determination  
regarding service station vs. convenience store.

ORDER REVERSING ACTION OF  
THE PLANNING AND ZONING AGENCY

The above-referenced applicant appeared before the Planning and Zoning Agency (PZA) on August 20, 1992 to appeal an administrative decision of the Planning and Zoning Department staff (Staff). Staff had denied approval of a clearance sheet requested by the applicant for construction of a service station. Staff had determined that the proposed building was a convenience store rather than a service station, and planned the sale of convenience goods beyond the zoning code's incidental standard as described in Section 6-1-74(1), and informed the applicant that an exception from the PZA would be necessary for the construction of a convenience store in a commercial highway tourist (CHT) zone.

*Order 1-2-92  
Re: Lil Champ vs. George McClure, Esq.*

The applicant appealed Staff's decision to the PZA, pursuant to section 11-9-3 of the Zoning Ordinance. On August 29, 1992, the appeal went before the PZA, and Staff's administrative decision was overruled by the PZA, and the appeal was granted. On August 25, 1992, approximately 68 residents of the area where the service station is proposed filed an appeal of the PZA's action. On September 22, 1992, the matter came before the St. Johns County Board of County Commissioners for a de novo hearing pursuant to section 11-9-6 of the Zoning Ordinance.

#### FINDINGS OF FACT

Having considered the appeal and supporting documents; the PZA determination dated August 31, 1992; the Planning and Zoning Department staff report dated August 10, 1992 and its supporting documents; statements from the appellant and from Lil Champ's representative, the Board of County Commissioners makes the following findings of fact:

1. The appeal of the PZA action was properly filed in a timely manner;
2. The appeal of the PZA determination regarding service station vs. convenience store has been fully considered after public hearing legally noticed to insure due process to all parties;
3. On December 5, 1991, the PZA had allowed Lil Champ to withdraw from the agenda its request for an exception to allow a convenience store on the site

proposed in the current matter for a service station;

4. On August 10, 1992, staff issued a comprehensive report on the matter, which includes the following findings, which are hereby adopted by the Board:

a. In June, 1992, Lil Champ submitted a request for a clearance sheet approval along with building plans for a 2600 sq. ft. service station on the subject site, and sales data from various other store location, claiming the subject request would have similar sales volumes of convenience goods and gasoline sales;

b. Staff rejected the clearance sheet, determining that the application was in fact for a convenience store, and planned the sale of convenience goods beyond the zoning code's incidental standard and informed Lil Champ that an exception for the convenience store in accordance with Zoning Ordinance sections 5-7-3 (a) and 6-1-74 would be required;

c. Section 6-1-74 of the Zoning Ordinance outlines what services may be rendered at a service station, which is a permitted use in a CHT zone. Included among the services is the following:

1. Sales of cold drinks; packaged foods, tobacco, and similar convenience goods for service station customers, but only as accessory and incidental to the principal business operation;
- e. Upon review of data from other Lil Champ stores in the area, the Staff determined that the principal business in each store was the sale of convenience goods rather than gasoline, in that the sale of convenience goods was more than the incidental sales required by the zoning ordinance; and
- f. Customarily, in similar matters, the PZA has found that where the retail sale of convenience goods appears to be more than incidental in service stations within CHT zoning districts, exceptions have been required for the sale of convenience goods.

ORDER

Now therefore, in consideration of the above, the Board hereby reverses the action of the PZA and grants the appeal to the PZA determination. Lil Champ will be required to apply for and receive an exception under the zoning ordinance prior to the receipt of a building permit for the construction of the proposed improvement.

Any appeal of this decision of the Board of County Commissioners may be made by filing a petition for writ of

certiorari with the Clerk of the Circuit Court of St. Johns County within 30 days.

BOARD OF COUNTY COMMISSIONERS  
OF ST. JOHNS COUNTY, FLORIDA

By: Fred Brinkhoff  
Its Chairman Fred Brinkhoff

Attest: Carl "Bud" Markel, Clerk

By: Antonio A. Grande  
Deputy Clerk

Copy to: George McClure, Esq.

**A RESOLUTION OF THE COUNTY OF ST. JOHNS, STATE OF  
FLORIDA, APPROVING A FINAL DEVELOPMENT PLAN FOR  
VILLAGES OF VILANO PHASE III-A, PURSUANT TO  
ORDINANCE NO. 85-26**

(09/22/92 - 8 - 3.1709)

ORDER - APPEAL TO PZA DETERMINATION REGARDING SERVICE STATION VS. CONVENIENCE STORE - LIL CHAMP, REPRESENTED BY GEORGE MCCLURE - the application was heard by the Planning & Zoning Agency on August 20, 1992 as an appeal to staff's determination that a request for a building permit was a convenience store which requires a zoning exception to be placed on the property currently zoned CHT - the PZA overturned staff's decision and determined the use of the structure (property) as described by the applicant's representative to be a 'service station' as defined in Section 6-1-74 of the Zoning Ordinance and therefore permitted within the CHT zoning on property located between Oak Street and Cedar Street on A1A North - the adjacent property owners and residents of the area filed an appeal of the Agency's action and request the Board of County Commissioners uphold the staff's determination: Proof of publication of a notice of public hearing for the purpose of appeal to the Board of County Commissioners for action taken by the Planning and Zoning Agency was received having been published in The St. Augustine Record on September 5, 1992. A court reporter was present at the request of the applicant. Napier reviewed that in October 1991 Lil Champ filed an application for an exception for a convenience store with beer and wine sales, this was on CHT zoned property on State Road A1A, between Oak and Cedar Street on Vilano Beach. The site plan at that time included a 2600 square foot convenience store and three pump islands for gasoline sales. The hearing on the application came before the Planning and Zoning Agency in December of 1991 but at the request of the applicant the application was withdrawn. In June of 1992 Lil Champ submitted a clearance sheet to obtain a building permit to construct what they called a service station on the same CHT site. The building plans for this facility were very similar to the plans submitted for the exception but in addition to the 2600 square foot building they did add one additional gasoline pump island for a total of four pumps with 12 hoses. After review staff concluded that the proposed facility did not meet the definition of a service station as defined in Section 6.174 of the Zoning Ordinance and actually constituted a convenience store with gasoline pumps. Staff denied the applicants request on the clearance sheet and they were advised that an exception would be required in a CHT district. The applicant filed an appeal which was heard by the PZA on August 20, 1992. The PZA overturned staff's decision and determined that the facility as described by the applicant at the hearing was a service station and therefore permitted in the CHT district. The adjacent property owner residents in the area have filed this appeal requesting the Board to uphold staff's determination. After review and public hearing staff recommends that the Board approve Draft B, Order Reversing Action Of The Planning and Zoning Agency. (3.1874) Attorney Linda Bryan, 97 Orange Street, was present representing a group of residents from the area surrounding the property in question. Bryan addressed various points regarding staff's determination and introduced Exhibit 1 (copy of before site plan), Exhibit 2 (copy of after site sketch). Bryan reviewed portions of the Code and provided a copy for the record. Bryan introduced Exhibit 3 (staff report) and Exhibit 4 (transcript of PZA hearing) and briefly discussed each. Bryan cited the following cases into the record: a copy of 663 Federal Supplement, page 536; a copy of the Code, Appeals Section 11-9-3; a copy of Allapattah Community v. City of Miami pages 387 and 393; a copy of 214 Southern Reporter, 2d Series, pages 374 and 375. Bryan continued by introducing Exhibit 6 (photographs) and explained the traditional interiors of service stations and convenience stores. Bryan presented Composite Exhibit 5 and reviewed the contents. Bryan cited Easton v. Appler pages 691 through 696 and also 293 Southern Reporter, 2d Series pages 366 through 369. Bryan reviewed information that she presented in Exhibit 7. (3.3196) Attorney George McClure, 81 King Street, representing Lil Champ, requested the record reflect that approximately 75 people stood in response to Ms. Bryan's request for an indication of public opinion on this matter. McClure pointed out that no where in the Zoning Codes does there appear a definition of a convenience store. McClure also pointed out questions of procedure in this matter that he feels are being ignored. Lengthy discussion ensued with Attorneys Bryan and McClure answering questions presented by the Board. (4.0862) Jewel Kutzer, 3385 Coastal highway, was present representing the North Shores Improvement Association, she stated that they protest the the proposed location of this Lil Champ Food Store with gasoline pumps. (4.1012) Steve Brody, a member of the Planning and Zoning Agency, stated that he thought it was obvious that the background of Lil Champ is not a gasoline station but a grocery store, a convenience store. (4.1102) David Bodner, 3145 Coastal Highway, presented a poster showing underground gas tanks and also commented on health and safety. (4.1270) Dick

Silver, 64 Seaside Capers Road, commented. (4.1316) Derek Schroder, 864 Queen Road, stated that property rights are very clearly defined under the Zoning Codes and it does permit a service station and sooner or later a service station will be in that location because it is a permitted use. (4.1390) Dante Salamone, 5225 Datil Pepper Road, commented on permits for underground tanks. (4.1469) Martha Liebel, 3920 Palm Street, questioned if in the new upcoming Comprehensive Plan this land will remain CHT zoned. (4.1533) Melva Roberson, 409 14th Street, commented. (4.1562) George McClure stated that he feels that some of the comments today are irrelevant; the issue present today before the Board does not deal with those matters. McClure also remarked on the comments made by Mr. Silver. (4.1645) Jewel Kutzer commented. (4.1672) Linda Bryan, stated that she feels the issue directed to the Board is one of code interpretation and staff's interpretation of the code is what carries the most weight. (4.1730) Motion by Herold, seconded by Balsavage, carried 7/0, to uphold Draft B, the Order Reversing Action Of The Planning And Zoning Agency.

(09/22/92 - 9 - 4.1737)

PUBLIC HEARING AND RESOLUTION ON AN APPLICATION FOR APPROVAL OF PROPOSED CHANGES TO THE JULINGTON CREEK DEVELOPMENT OF REGIONAL IMPACT: Proof of publication of public hearing on an application for approval of proposed changes to the Julington Creek Development of Regional Impact was received having been published in The St. Augustine Record on September 4, 1992. Napier reported that staff recommends approval. Bailey reported that the boat ramp that has always been a problem has been exchanged for 10 acres on Mills Field and it seems to be agreeable with everyone. Bailey also stated that the Friends of the Library were very happy about the selection and gift of the commercial property there. Discussion followed. Motion by Bailey, seconded by Floyd, carried 7/0, to adopt Resolution 92-160

#### RESOLUTION NO. 92-160

A RESOLUTION OF THE COUNTY OF ST. JOHNS, STATE OF FLORIDA, AMENDING THE DEVELOPMENT PLAN (MAP H), AND PHASING PLAN (MAP H-1); FINDING SUFFICIENT COMPLIANCE WITH RESOLUTION NO. 82-37, THE DEVELOPMENT ORDER FOR JULINGTON CREEK AS SUBSEQUENTLY AMENDED; FINDING THAT THE AMENDMENTS DO NOT CONSTITUTE A SUBSTANTIAL DEVIATION; PROVIDING FOR AN EFFECTIVE DATE

#### COMMISSIONERS REPORTS:

(09/22/92 - 9 - 4.2883)

Commissioner Herold requested setting a public hearing for an ordinance to provide that the 40/30/30 Plan cannot be changed without a referendum election. Discussion followed. Motion by Herold, seconded by Bailey, carried 7/0, to set a public hearing on October 13, 1992 at 9:00 a.m. to consider a proposed ordinance regarding the Tourist Development Council 40/30/30 Plan.

(4.3002)

Commissioner Roberts requested an update on the Welcome to St. Johns County, Home of PGA/ATP Tour signs. Meiszer stated there will be a total of four signs placed and they are being installed today. Roberts stated that he thinks more signs are needed; volunteered to loan or donate some money he has in his travel fund that he has not used.

(4.3130)

Commissioner Bailey reported on the Incorporation for the St. Johns Land Trust. Discussion followed. Bailey requested, and received, permission from the Board to present an ordinance regarding beach lighting to Mr. Sisco for review. Bailey requested a report from Florida Power and Light concerning the lines across Nine Mile Road.

(4.3322)

Commissioner Balsavage wanted to know if the commissioners could have parking spaces designated closer to their building. Balsavage requested support of the Board for a study to be done for a potential site for the Palm Valley Fire Department to have a permanent station. Discussion followed.