



MEMORANDUM

TO: Al Hadeed, Flagler County Attorney  
David M. Coffey, Flagler County Administrator  
Adam Mengel, Flagler County Planning Director

FROM: Jane West, Esquire  
Dennis Bayer, Esquire

DATE: December 13, 2018

RE: Notice of Appeal to Flagler County Planning and Development Board  
Bing's Landing Site Development Plan Approval

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On this 13<sup>th</sup> day of December, 2018, Appellants file this notice of appeal of:

Project Number: Project #2018090035

Parcel Number: 40-10-31-3150-00000-0180

Applicant: Captain's Bait, Tackle & BBQ, LLC [Application #3156]

Appellants: The Hammock Community Association; Marge Rooyakkers, Donna Richardson-Drevniok, Todd Swinderman, Barbara Harper, Dennis Clark, Carol Scott, Joy Ellis, Frank Carelli, Dr. Lynne Bravo Rosewater, John Mampe, Don Hoskins

Appellants, by and through undersigned counsel, Jane West and Dennis Bayer, hereby give notice of appeal of the decision of the Flagler County Planning and Development Board's approval of the above-referenced Project adopting a Site Development Plan for a total of 7.45 acres. This appeal is being filed pursuant to Section 3.06.05 of the Flagler County Land Development Code.

## I. PARTIES

The parties appealing the above approved Site Development Plan consist of one organization and eleven individuals listed as follows: (1) The Hammock Community Association; (2) Marge Rooyakkers, (3) Donna Richardson-Drevniok, (4) Todd Swinderman, (5) Barbara Harper, (6) Dennis Clark, (7) Carol Scott, (8) Joy Ellis, (9) Frank Carelli, (10) Dr. Lynne Bravo Rosewater, (11) John Mampe, (12) Don Hoskins.

### A. Basis for Standing

The appellants have standing to appeal the above approved Site Development Plan because they are all adversely affected and aggrieved by the decision to approve the Site Development Plan. Specifically, the Hammock Community Association is a nonprofit association whose members with full voting membership who both own real property and reside in The Hammock. The proposed Bing's Landing property falls within The Hammock, as such, all full voting members of the Association are impacted by the County's approval of the Bing's Landing Site Development Plan. The Association has as its stated purposes to promote park development and preserve park natural and historic features and to promote responsible growth management practices in the Hammock. The Board of the Association is tasked with acting as a conduit to resolve problems members experience in The Hammock, especially at the County level. The overall purpose of the Association is to support and assist all residents of The Hammock to live in harmony with their neighbors and with their natural surroundings. Members of the Association were present and spoke at the Planning Board hearing on November 13, 2018. The individual appellants and their addresses are as follows:

Barbara Harper	22 Avalon Drive, Palm Coast, FL 32137
Carol Scott	38 San Carlos Drive
Dennis Clark	5784 N Oceanshore Blvd
Don Hoskins	2 Lantarace Drive
Donna Richardson-Drevniok	6 Ocean Vista Lane
Frank Carelli	10 Cottonwood Trail
John Mampe	5788 N Oceanshore Blvd
Sharon Joyce Ellis	85 Ocean Oaks Lane
Dr. Lynne Rosewater	200 Ocean Crest Drive, Unit 815
Marge Rooyakkers	9 Madeira Ct
R Todd Swinderman	54 Ocean St

## II. BACKGROUND AND BASIS FOR APPEAL

Flagler County purchased the 7.45-acre park known as “Bing’s Landing” on State Road A1A in 1989 using Environmentally Sensitive Land (“ESL”) funds. Environmentally Sensitive Lands are defined in Florida Administrative Code 9J-5.003 and further defined by Flagler County in Policy 11-3 of the Flagler County Comprehensive Plan in the Conservation Element. Pursuant to Flagler County’s ESL Land Acquisition Manual, preserving unique historical features is a primary objective of the program. Bing’s Landing met the criteria for acquisition and the County paid \$1,005.024 - one of the highest per acre acquisitions the County has made under the ESL program.

Bing’s is a unique park that sits on the intracoastal waterway and features a boat launch, a fishing pier, a playground and most notably, the archeological dig of the Hernandez Mala Compra Plantation. Originally, a small concession operation existed back in 1990 that totaled 1,594 square

feet. The park is also a prime example of marmite oak hammock, also known as coastal hammock, which used to exist in a virtually continuous band just inland of the coast but has now been dissected into short strips by development. The vegetation at Bing's consists of Live Oaks and Cabbage Palms that are reflective of Maritime Hammock communities. The County's acquisition of the park was for two purposes: historic preservation of the archeological dig site and public recreational use.

On June 6, 2011 Flagler County approved of a lease agreement with Captain's BBQ to operate a concession with a bait and tackle shop at Bing's Landing. The lease was amended on September 1, 2011 by providing for an additional 5-year extension at the tenant's option with a County-optional additional 5-year term. The Tenant, Captain's Bait, Tackle and BBQ, LLC, made improvements to the concession building including a build-out of the interior space, installation of a HVAC system, adding an enclosed screen porch, expanding the food preparation area, adding an enclosed cooking area and providing outside site improvements including fencing, landscaping, handicapped-accessible parking and sidewalks. As a result of these improvements, the once small concession operation expanded to a total of 4,157 square feet.

On November 13, 2018, the Tenant applied for a Site Development Plan in a Public Use in the C-2 District that would not only further expand the building size to 5,200 square feet but would also relocate the entire building to the north of the existing structure and closer to the Mala Compra archeological dig site. The proposed relocation site is a treed area and as such, the application contemplates removing 71 inches of trees that are reflective of the Maritime Hammock community, including a 12-inch Oak and a 22-inch Oak and multiple Cabbage Palms. Furthermore, the applied for Site Development Plan contemplates impacting 2 acres, a significant portion of this relatively small park that sits on a mere 7.45 acres.

The approval of the Site Development Plan by the County constitutes a non-conforming use and the project fails to follow procedural due process and Environmentally Sensitive Lands criteria as follows:

1. Bings Landing was purchased with ESL funding as part of an effort to preserve access to the waterways and to protect the natural habitat and historical resources of the site.
2. The proposed expansion and relocation of the restaurant is not consistent with the original purposes of the ESL program as it elevates the level of commercial uses at Bing's landing.
3. The County staff has processed this site plan application as minor modification of an existing use. This position is incorrect as the existing lease did not authorize the current level of activity and the proposed new use represents a substantial increase in the level of commercial use and it locates the commercial use in a new location. As such, this is a non-conforming use under Section 3.02.04 of Flagler County's Land Development Code.
4. The application is incomplete as the septic capacity, parking requirements and archaeological impacts and other site issues are not adequately analyzed and have been left for future study.

### III. CONCLUSION

In conclusion, the County's approval of the Site Development Plan to Captain's Bait, Tackle & BBQ, LLC was improper and should be summarily reversed. Appellants respectfully request a stay of all administrative proceedings and request the County order the applicant to take no action until the pendency of this appeal is over, pursuant to Section 3.06.05 of the Flagler County Land Development Code.

Respectfully submitted,

**JANE WEST LAW, P.L.**



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