City of La Porte
Zoning Board of Adjustment Agenda

Notice is hereby given of a **Special Called Meeting** of the La Porte Zoning Board of Adjustment to be held on **Thursday, January 22, 2015, at 6:00 p.m.** at City Hall Council Chambers, 604 West Fairmont Parkway, La Porte, Texas, regarding the items of business according to the agenda listed below:

1. Call to order.

2. Roll call of members.

3. Consider approval of meeting minutes: December 11, 2014.

4. A public hearing will be held to consider Variance Request 14-93000012, a request by Ghandi Sailesh & Paresh, owner of the property located at 1251 S. 13th Street, further described as Reserve A, Home Porte. The applicant is seeking approval of a variance to allow construction of a new Home2Suites by Hilton hotel that encroaches 5 feet into the required 10-foot side (south) setback contrary to the provisions of Section 106-240 of the Code of Ordinances.
    a. Staff Presentation
    b. Applicant Presentation
    c. Public Comments
    d. Question and Answer

5. A public hearing will be held to consider Variance Request 14-93000013, a request by David Turner, owner of the property located at 11025 Houston Drive, further described as Lots 19 & 20, Block 2, Battleground Estates. The applicant is seeking approval of a variance to retain a 4-foot high 3-rail wood fence located in the front yard contrary to the provisions of Section 106-791 of the Code of Ordinances.
    a. Staff Presentation
    b. Applicant Presentation
    c. Public Comments
    d. Question and Answer

6. Administrative reports.

7. Board comments on matter appearing on the agenda or inquiry of staff regarding specific factual information or existing policy.

8. Adjourn.

A quorum of City Council members may be present and participate in discussions during this meeting. However, no action will be taken by the Council.

In compliance with the Americans with Disabilities Act, The City of La Porte will provide for reasonable accommodations for persons attending public meetings. To better serve attendees, requests should be received 24 hours prior to the meetings. Please contact Patrice Fogarty, City Secretary, at 281-470-5019.

CERTIFICATION

I certify that a copy of the Thursday, January 22, 2015 agenda of items to be considered by the Zoning Board of Adjustment was posted on the City Hall bulletin board on the ___ day of _____, 2015.

_____ Title: _____

Zoning Board of Adjustment
Minutes of December 11, 2014

Board Members Present: Rod Rothermel, Charles Schoppe, Nettie Warren (Alt 1), and Doug Martin (Alt 2)

Board Members Absent: Lawrence McNeal, Chester Pool, and T.J. Walker

City Staff Present: Planning Director Tim Tietjens, City Planner Eric Ensey, Assistant City Attorney Clark Askins, and Office Coordinator Peggy Lee

1. **Call to Order.**

   Chairman Rod Rothermel called the meeting to order at 6:00 p.m.

2. **Roll call of members.**

   Board Members Rod Rothermel, Charles Schoppe, Nettie Warren (Alt 1), and Doug Martin (Alt 2) were present for roll call.

3. **Consider approval of meeting minutes: November 13, 2014.**

   With no objection presented, the November 13, 2014, minutes were approved as written.

4. **A public hearing will be held to consider Variance Request #14-93000009, a request by Robert T. Britt, owner of the property located at 730 S. Carroll Street, further described as Lots 43-52, Block 22, Bay Front to La Porte. The applicant is seeking approval of a variance to allow construction of a 2,000 square foot garage/storage building contrary to the provisions of Section 106-741 of the Code of Ordinances.**

   Chairman Rothermel opened the public hearing at 6:01 p.m.

   A. **Staff Presentation**

      City Planner Eric Ensey presented staff's report on a variance request by Robert Britt to allow a 2,000 square foot garage/storage building to be built at 730 S. Carroll Street, which exceeds the 1,000 square foot maximum size allowed for accessory buildings.

      Public hearing notices were mailed to 17 property owners located within 200' of the subject tract. The City did not receive any responses from the mail-out.

   B. **Applicant Presentation**

      Robert Britt, 730 S. Carroll, was sworn in by Chairman Rothermel. Mr. Britt assured the Board that the garage he planned to construct would be aesthetically pleasing as it would resemble the primary structure, which has cedar siding on the front and hardi-plank on the sides and rear.

C. Public Comments

Windell and Cindy Gill, 714 S. Carroll, were sworn in by Chairman Rothermel. Mr. Gill noted that when he built his home on property he purchased from Mr. Britt, he was required to abide by city codes. Mr. Gill expressed opposition to the variance citing it does not meet the criteria established in the Code of Ordinance for granting a variance.

Cindy Gill stated the residential feel of the neighborhood was part of the reason they chose to build in that location.

D. Question and Answer

Staff responded to questions from the Board.

Motion by Charles Schoppe to approve Variance Request #14-93000009, allowing construction of a 2,000 square foot garage/storage building with a condition that the building exterior be finished with cedar along the front and hardi-plank on the sides and rear of the building to match the primary structure at 730 S. Carroll Street.

Second by Nettie Warren. Motion Carried.

Ayes: **Rothermel, Schoppe, Warren, and Martin**
Nays: **None**

Assistant City Attorney Clark Askins read from Section 106-196 of the Code of Ordinances: *Appeals from the Board of Adjustment.*

5. A public hearing will be held to consider Variance Request 14-93000010, a request by Juan Cantu, owner of the property located at 9413 Carlow Lane, further described as Lots 267-270, Block 15, Spenwick Place Sec 2. The applicant is seeking approval of a variance to allow construction of a 6-foot high fence located in the front yard on the property line contrary to the provisions of Section 106-791 of the Code of Ordinances.

Chairman Rothermel opened the public hearing at 6:20 p.m.

A. Staff Presentation

City Planner Eric Ensey presented staff's report on a variance request by Juan Cantu to allow construction of a 6-foot high fence located on the front property line at 9413 Carlow Lane.

Public hearing notices were mailed to 23 property owners located within 200' of the subject tract. At the meeting, Mr. Cantu submitted four written responses from his neighbors in favor of the request.

B. Applicant Presentation

Juan Cantu was sworn in by Chairman Rothermel. Mr. Cantu, 9413 Carlow Lane, addressed the Board. Mr. Cantu stated the fence is needed for security due to recent problems with cars being broken into and with trespassing on his property.

C. Public Comments

There were no comments from the public.

D. Question and Answer

Staff responded to questions from the Board.

Motion by Charles Schoppe to approve Variance Request #14-93000010 allowing construction of a 6-foot high chain link fence along the front yard property line and continuing for a distance of 25-feet along the east property line.

Second by Doug Martin. Motion Carried.

Ayes: Rothermel, Schoppe, Warren, and Martin
Nays: None

Assistant City Attorney Clark Askins read from Section 106-196 of the Code of Ordinances: *Appeals from the Board of Adjustment.*

6. A public hearing will be held to consider Variance Request 14-93000011, a request by Timothy Mouton, owner of the property located at 815 S. 5th Street, further described as north 14 feet of Lot 10, Lots 9 and 8, and the south 14 feet of Lot 7, Block 152, Town of La Porte. The applicant is seeking approval of a variance to allow construction of a canopy structure that will house a recreational vehicle that encroaches 2.2 feet into the required 5-foot setback contrary to the provisions of Section 106-771 of the Code of Ordinances.

Chairman Rothermel opened the public hearing at 6:34 p.m.

A. Staff Presentation

City Planner Eric Ensey presented staff's report on a variance request by Timothy Mouton to allow construction of a canopy structure encroaching 2.2 feet into the required 5-foot side setback at 815 S. 5th Street.

Public hearing notices were mailed to 14 property owners located within 200' of the subject tract. The City did not receive any responses from the mail-out.

B. Applicant Presentation

Sheila Parker, representing Timothy Mouton, 815 S. 5th Street, was sworn in by Chairman Rothermel. Ms. Parker explained the variance is needed because the canopy needs to be 12-feet wide to allow for the beams to be wide enough to support the cover.

C. Public Comments

There were no public comments.

D. Question and Answer

Staff responded to questions from the Board.

Motion by Charles Schoppe to approve Variance Request #14-93000011, allowing construction of a canopy structure encroaching 2.2 feet into the required 5-foot side setback at 815 S. 5th Street.

Second by Nettie Warren. Motion Carried.

Ayes: **Rothermel, Schoppe, Warren, and Martin**
Nays: **None**

Assistant City Attorney Clark Askins read from Section 106-196 of the Code of Ordinances: *Appeals from the Board of Adjustment.*

7. Administrative Reports

Planning and Development Director Tim Tietjens spoke about the various projects currently being developed in the City. Mr. Tietjens also advised the Board of the recent adoption of a comprehensive amendment to the Zoning Ordinance.

8. Board comments on matters appearing on agenda or inquiry of staff regarding specific factual information or existing policy.

There were no comments from the Board.

9. Adjourn

Motion by Charles Schoppe to adjourn.

Second by Nettie Warren. Chairman Rothermel adjourned the meeting at 6:45 p.m.

Respectfully submitted,

_____
Peggy Lee
Secretary, Zoning Board of Adjustment

Passed and Approved on _____, 2014.

_____
Rod Rothermel
Chairman, Zoning Board of Adjustment

City of La Porte, Texas
Planning and Zoning Commission

January 22, 2015

AGENDA ITEM 4

Consider approval of a Variance request
to allow construction of a new Home2Suites by Hilton hotel
that encroaches 5 feet
into the required 10-foot side (south) setback
Adjacent to the W. L Street right-of-way
for the property located at 1251 S. 13th Street
(Applicant: Ghandi Sailesh & Paresh).

Eric J. Ensey, City Planner

Planning and Development Department

City of La Porte, Texas

Planning and Development Department
Staff Report

ISSUE

Should the Board of Adjustment approve the requested variance by Gandhi Sailesh & Paresh to allow construction of a new hotel at 1251 S. 13th Street that encroaches 5 feet into the required 10-foot side setback contrary to the provisions of Section 106-240 of the Code of Ordinances (case #14-93000012)?

DISCUSSION

Applicant:
Gandhi Sailesh & Paresh.

Applicant's Request:
The applicant is seeking approval of variance request #14-93000012, to allow construction of a new hotel branded as a Home2Suites by Hilton. The proposed variance would allow for a 5-foot encroachment into the required 10-foot side (south) setback. The attached Exhibit A is a copy of the application and site plan showing the location of the proposed hotel building.

Subject Site:
The requested variance is for the property located at 1251 S. 13th Street, further described as Reserve A, Home Porte. The attached Exhibit B is an area map that shows the existing conditions of the site as well as the surrounding area.

Notice of Public Hearing:
Section 106-194 of the Zoning Ordinance stipulates the various requirements for public notice of the public hearing. This variance included all of the necessary code requirements for a public hearing including the following:

- Notice of public hearing was posted in the newspaper of general circulation ten days prior to the date of the hearing.
- Mailed notices were sent to all owners of property lying within 200 feet of the site ten days prior to the date of the hearing.
- A sign was posted on the site ten days prior to the hearing date.

Additionally, in compliance with state law, notice of the public hearing was posted at City Hall and on the City's website at least ten days prior to the date of the public hearing.

Background Information:
The subject site is 88,800 square feet (2.04 acres) in area and is located south of Fairmont Parkway on S. 13th Street. The site is currently zoned GC, General Commercial, District and is a vacant and undeveloped parcel. The following table summarizes the surrounding zoning and land uses:

	Zoning	Land Use
North	GC, General Commercial	Vacant parcel
South	GC, General Commercial	Vacant parcel
West	GC, General Commercial	Existing bar (1201 S. 16th Street)
East	GC, General Commercial	Existing hotel (1250 S. 13th Street)

Applicable Code Provisions:
Section 106-240, stipulates minimum building setbacks from adjacent rights-of-way. The following is an excerpt from that section as applicable to this variance request (see highlighted):

> **Sec. 106-240. Minimum building setback.**
> Except in a planned unit development, no building shall be located closer than ten feet from any existing or proposed street right-of-way.

Analysis:
The request is to allow for a 5-foot encroachment into side (south) setback to construct a new Home2Suites Hotel by Hilton. The subject property is platted as a corner lot with double frontage along S. 13th Street and W. L Street. S. 13th Street is an improved street and is where the proposed hotel will get access. On the other hand, W. L Street is unimproved and the city has no current plans to improve the right-of-way. The city has a process for vacating public rights-of-way. Property owners on both sides of the right-of-way have to be party to the vacation request as state law requires half of the right-of-way being vacated go to the adjacent properties. In this case the applicant has decided not to seek approval of a vacation.

Section 106-192 of the Zoning Ordinance states that the term "variance" represents a deviation from the literal interpretation of the code approved by the Board subject to the fact that enforcement of the provisions of the code would cause an unnecessary hardship because of circumstances unique to the subject property. The Board is authorized to grant a variance when the Board finds that a number of criteria are met. The following table outlines those criteria and staff's analysis of those criteria.

Criterion:	Staff Finding:
a. That the granting of the variance will not be contrary to the public interest.	*The proposed variance would allow for an improvement within the required 10' side (south) setback adjacent to unimproved W. L Street right-of-way. The city has no current plans to improve W. L Street.* *Notice was sent to all property owners within a 200-foot radius from the subject site in accordance with code requirements. At the time this staff report was drafted, no responses for or against the variance were received by staff.*
b. That literal enforcement of this chapter will result in unnecessary hardship because of	*The only argument for an exceptional physical situation would be the fact that the lot is a corner*

exceptional narrowness, shallowness, shape, topography or other extraordinary or exceptional physical situation unique to the specific piece of property in question. "Unnecessary hardship" shall mean physical hardship relating to the property itself as distinguished from a hardship relating to convenience, financial considerations or caprice, and the hardship must not result from the applicant or property owner's own actions.	*lot, and is therefore has double-frontage which requires different setbacks from a similar size lot that does not have two frontages. However, there are similar sized lots throughout the community that are double-fronted and are required to comply with this setback requirement. The variance seems to be a variance that relates to a matter of convenience.*
c. That by granting the variance, the spirit of this chapter will be observed.	*The authorization of the variance could be considered in the spirit of the chapter as the city does not have current plans or intent to improve the W. L Street right-of-way beyond what exists today. However, the site plan could be modified to comply with the required setback.*

Appeal Procedure:

Sec. 106-196. - Appeals from the board of adjustment.

Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment, or any taxpayer, or any officer, department, board, or bureau of the city may present to a court of record a petition for a writ of certiorari, as provided by V.T.C.A., Local Government Code § 211.011, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within ten days after the filing of the decision in the office of the board of adjustment.

ATTACHMENTS

Exhibit A: Application and site plan for the proposed improvements
Exhibit B: Area map

EXHIBIT A

City of La Porte
604 W. Fairmont Pkwy.
La Porte, TX 77571

Planning & Development Department

VARIANCE APPLICATION

Phone: 281.470.5058
Fax: 281.470.5005
www.laportetx.gov

1. PROPERTY OWNER CONTACT INFORMATION:

OWNER NAME: GANDHI SAILESH & PARESH PHONE 1: 832-766-3305
PHONE 2: _____ FAX #: _____
E-MAIL: TEXAS3809@GAMIL.COM
MAILING ADDRESS: 8710 SEAWALL BLVD, GALVESTON TX, 77554

2. *AGENT REPRESENTING PROPERTY OWNER (If Applicable):

AGENT / CONTRACTOR COMPANY: _____
PHONE 1: _____ PHONE 2: _____
E-MAIL: _____ FAX #: _____
MAILING ADDRESS: _____
CONTACT PERSON'S NAME: _____ PHONE: _____

3. PROPERTY DESCRIPTION:

HCAD PARCEL NO(s) 13-digit Tax ID(s): 129-192-001-0002

PROPERTY ADDRESS (If existing): 1251 S. 13th St.

PROPERTY LEGAL DESCRIPTION: RES A1 HOME PORTE

4. BASIS FOR VARIANCE REQUEST:

A "Variance" constitutes a deviation from the literal provisions of the Zoning Ordinance and is granted by the board when strict conformity to the Zoning Ordinance would cause an unnecessary hardship because of the circumstances unique to the property on which the variance is granted.

Check applicable box for Variance request based on exceptional:

- [x] Narrowness
- [ ] Shallowness
- [ ] Shape
- [ ] Topography
- [ ] Other extraordinary or exceptional physical situation unique to property: _____

5. APPLICATION CHECKLIST & SUPPORTING DOCUMENTATION (check boxes indicating items submitted with your application):

- [x] COMPLETE ITEMS 1-5 OF APPLICATION
- [x] SUBMIT $150 APPLICATION FEE (Non-Refundable)
- [x] ATTACH SEPARATE SHEET WITH INFORMATION HELPFUL IN CONSIDERING YOUR REQUEST: (Specify the facts involved, relief desired, and the grounds for the request.)
- [ ] WRITTEN AUTHORIZATION FROM PROPERTY OWNER TO ACT ON HIS/HER BEHALF (If applicable)

NOTE: It is the responsibility of the applicant to prove that his/her request meets conditions established for a Special Exception from the ZBOA.

PRINTED NAME: SAM GANDHI (Applicant) SIGNATURE: _____ (Applicant) DATE SUBMITTED: 12/11/2014

(STAFF USE ONLY): *APPLICATION NO:* 14-93000012

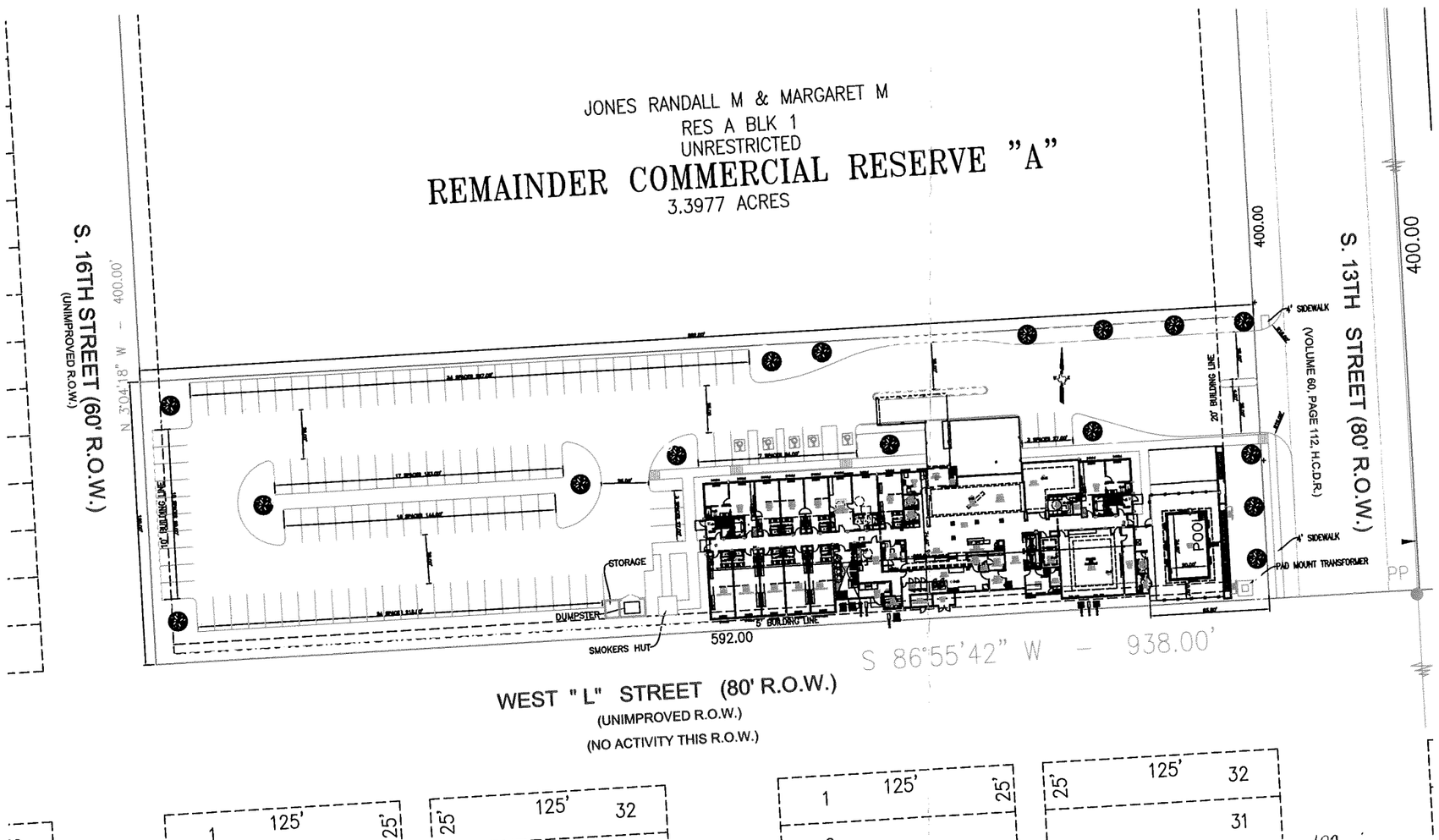
DATE APPLICATION REC'D.: 12/11/2014 *APPLICATION REC'D BY:* _____

- [ ] *SITE PLAN REC'D*
- [ ] *$150 APPLICATION FEE REC'D*
- [ ] *APPLICANT'S SUPPLEMENTAL INFO REC'D*
- [ ] *OWNER AUTHORIZATION*

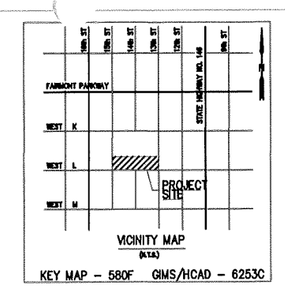
ZBOA MEETING DATE: 1/22/2015 *SPECIAL EXCEPTION GRANTED?* [ ] *YES* [ ] *NO*

EXHIBIT A

DISCOVERY OF ANY, ERRORS OR OMISSIONS IN THESE DOCUMENTS ARE TO BE BROUGHT TO THE IMMEDIATE ATTENTION OF CARNES ENGINEERING INC. PRIOR TO ANY CONSTRUCTION WORK OR PURCHASES. ALL DIMENSIONS AND CLEARANCES TO BE VERIFIED BY OWNER/CONTRACTOR PRIOR TO BEGINNING ANY CONSTRUCTION. CARNES ENGINEERING INC. IS NOT RESPONSIBLE FOR ANY CONSTRUCTION ISSUES WHICH MAY ARISE DURING OR AFTER THE CONSTRUCTION OF THIS BUILDING. THERE ARE NO GUARANTEES OR WARRANTIES SPECIFIC OR IMPLIED ASSOCIATED WITH THESE DESIGN DOCUMENTS.



SITE PLAN
SCALE: 1"=30'



NAME OF DEVELOPMENT: HOME 2 SUITES BY HILTON
TYPE OF DEVELOPMENT: 4- STORY 99 ROOM MOTEL 114 PARKING SPACE, COMMERCIAL
ZONING TYPE: GC
ADDRESS: SOUTH THIRTEENTH STREET
LEGAL DESCRIPTION: [illegible] PORTE SUBDIVISION, COMMERCIAL RESERVE "A"
BLOCK 1135, AND ABANDONED 16' PUBLIC ALLEY PER CITY OF LA PORTE ORDINANCE# 2004-2800
TOWN OF LA PORTE, 2.03 ACRES OUT OF THE JOHNSON HOUSTON SURVEY, A-35, LA PORTE, HARRIS COUNTY, TEXAS
AREA: 88,500 SQ.FT.~2.03 AC.
OWNER: BALAJI BUILDERS
DEVELOPER: SAM GANDHI
SCALE: 1"=30'
ENGINEER: D. SPENCER CARNES, P.E.

LANDSCAPING CALCULATIONS

TOTAL AREA DEVELOPED = 70,843
- COVERED AREA = 15,950
= 54,893 X .06 = 3,293
LANDSCAPING REQUIRED = 3,293 SQFT
LANDSCAPING PROVIDED = 3,576 SQFT

LANDSCAPING LEGEND

1. TREES TO BE LIVE OAK (3 INCH CALIPER MIN., 6 FEET IN HEIGHT MIN.)
2. SHRUBS TO BE INDIAN HAWTHORN, DWARF VARIETY (WHITE OF PINK), 5 GALLON OR BIGGER (18 INCH TALL MIN.) OR THE EQUIVALENT, HEDGEROW TO BE 3 FEET HIGH MIN. WITHIN 2 YEARS OF PLANTING.

TREE

SHRUB

3. 4' MIN. PLANTING STRIP PROVIDED ALONG REAR PROPERTY LINE ABUTTING RESIDENTIAL DISTRICT COMPOSED OF A COMBINATION OF TREES AND SHRUBS.

PARKING CALCULATIONS

4 SPACES MINIMUM PLUS 1PER ROOM AND 1 PER EMPLOYEE
98 ROOMS = 99 SPACES
4 EMPLOYEES = 4 SPACES
TOTAL REQUIRED = 107 SPACES
SPACES PROVIDED = 114

DETENTION

LESS THAN 3 ACRES (0.2 AC-FT/AC)
(2.04 Ac_i) (0.2 AC-FT/AC) = 0.41 AC-FT
REQUIRED = 0.41 AC-FT
PROVIDED 6" IN PARKING LOT= 0.57 AC-FT

BENCHMARK/FLOOD NOTES

1. THIS PROPERTY IS NOT WITHIN THE 100 YEAR SPECIAL FLOOD HAZARD AREA AS INDICATED BY F.E.M.A. COMMUNITY NO. 485487, PANEL 0045J, DATED NOVEMBER 06, 1996. ZONE X = C.
2. ALL BEARINGS AND COORDINATES ARE REFERENCED TO THE TEXAS STATE PLANE COORDINATE SYSTEM, SOUTH CENTRAL ZONE - USC & GS NORTH AMERICAN DATUM OF 1927. THE CITY OF LA PORTE SURVEY MARKERS L.P.S.M. NO. 33 AND L.P.S.M. NO. 35 ARE USED FOR BASIS OF BEARINGS.
3. GRADE AND CONTOUR LINE ELEVATIONS ARE BASED ON THE CITY OF LA PORTE SURVEY MARKER L.P.S.M. NO. 33, ELEVATION = 14.13 FEET, MSS SEA LEVEL 1929 DATUM, 1978 ADJUSTMENT. CONTOURS SHOWN AT ONE FOOT INTERVALS.
4. THE ENTIRE ALLEYS IN BLOCK 1135, BLOCK 1136 AND BLOCK 1137 AND THE PORTION OF 14TH STREET RIGHT-OF-WAY BETWEEN BLOCK 1136 AND BLOCK 1137 ALL IN THE TOWN OF LA PORTE, HARRIS COUNTY, TEXAS PERMANENTLY VACATED, ABANDONED AND CLOSED BY ORDINANCE 2004-2800, THE CITY OF LA PORTE, TEXAS.

SITE PLAN ACCURACY CERTIFICATE

I, D. Spencer Carnes, P.E., am registered under the laws of the State of Texas to practice the profession of engineering (or surveying) and hereby certify that the above plat or site plan is true and correct; and that all bearings, distances, angles, curve radiuses, and central angles are accurately shown on the plat.

D. Spencer Carnes, P.E.
Texas Registration No. 48041

CITY APPROVING AUTHORITY CERTIFICATE

This is to certify that the City of La Porte, Texas has approved this site plan and development of HOME2SUITES LA PORTE in conformance with the Ordinances of the City of La Porte.

Director, Planning Department

DIGITALLY SIGNED 12/11/2014
CARNES ENGINEERING INC. STATE OF TEXAS D.S. CARNES, JR. 48041 LICENSED PROFESSIONAL ENGINEER F-3751
FIRM No. F-003737
ENGINEER: D. SPENCER CARNES, P.E.

CARNES ENGINEERING, INC.
12605 I.H. 10 EAST
BAYTOWN, TEXAS 77520
(281) 385-1200
FAX (281) 385-0920
© 2014 Baytown, Texas
INFO@CARNESI.NET
WWW.CARNESENGINEERING.COM
DESIGN
ENGINEERING
INSPECTIONS

REV	DATE	BY	DESCRIPTION

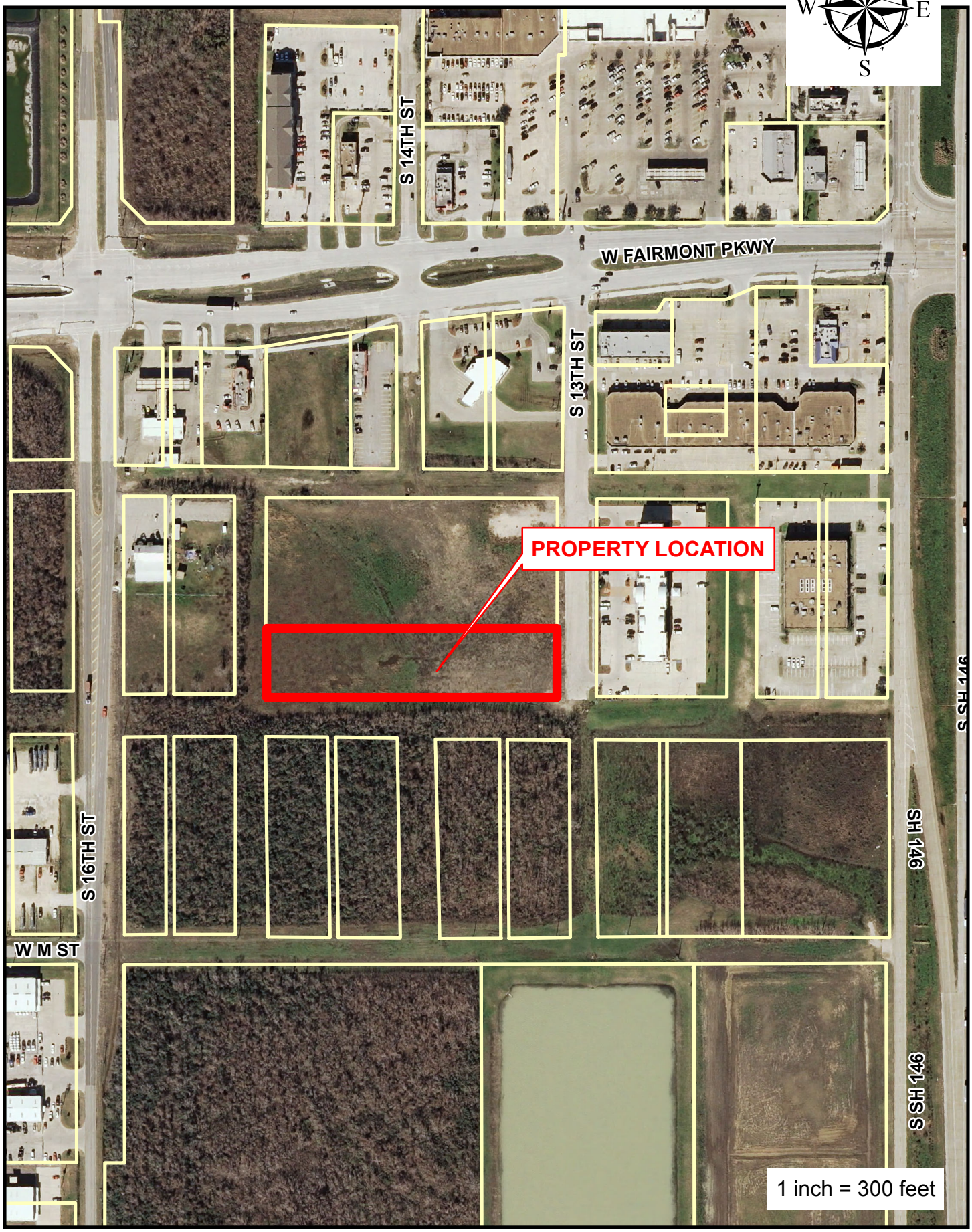
HOME2SUITES LA PORTE
13TH STREET
LA PORTE, TEXAS
HARRIS COUNTY

SITE PLAN

DESIGNED MM	SCALE AS NOTED	SHEET NO.
DRAWN MM	DATE 12/11/2014	C-1
CHECKED		
FILE		

AREA MAP

EXHIBIT B



City of La Porte, Texas
Planning and Zoning Commission

January 22, 2015

AGENDA ITEM 5

Consider approval of a Variance request
to retain a 4-foot high 3-rail wood fence in the front yard
for the property located at 11025 Houston Drive
(Applicant: David Turner).

Eric J. Ensey, City Planner

Planning and Development Department

City of La Porte, Texas

Planning and Development Department
Staff Report

ISSUE

Should the Board of Adjustment approve the requested variance by David Turner to retain a 4-foot high 3-rail wood fence located in the front yard along the property line at the subject property located at 11025 Houston Drive (case #14-93000013)?

DISCUSSION

Applicant:
David Turner.

Applicant's Request:
The attached Exhibit A is a copy of the application and site plan for the proposed improvements. The applicant is seeking approval of variance request #14-93000013, a requested variance to retain a new 4-foot high 3-rail wood fence in the front yard. The applicant constructed the fence without a permit.

Subject Site:
The requested variance is for the property located at 11025 Houston Drive, further described as Lots 19 & 20, Block 2, Battleground Estates. The applicant also leases 269 acres of land owned by the railroad adjacent to the subject site. The lease is for 10 years. The attached Exhibit B is an area map that shows the existing conditions of the site as well as the surrounding area.

Notice of Public Hearing:
Section 106-194 of the Zoning Ordinance stipulates the various requirements for public notice of the public hearing. This variance included all of the necessary code requirements for a public hearing including the following:

- Notice of public hearing was posted in the newspaper of general circulation ten days prior to the date of the hearing.
- Mailed notices were sent to all owners of property lying within 200 feet of the site ten days prior to the date of the hearing.
- A sign was posted on the site ten days prior to the hearing date.

Additionally, in accordance with state law, notice of the public hearing was posted at City Hall and on the City's website at least ten days prior to the date of the public hearing.

Background Information:
The subject site is 11,000 square feet in area, however the applicant also has a long-term lease with the Union Pacific Railroad on 269 acres of land adjacent to his property. The subject site is located in the Battleground Estates Subdivision off Houston Drive and is zoned R-1, Low Density

Residential, and contains an existing single family residential house. The following table summarizes the surrounding zoning and land uses:

	Zoning	Land Use
North	LI, Light Industrial	Union Pacific Railroad Property leased by the applicant
South	R-1, Low Density Residential	Vacant residential lot and existing single family residential (11030 Houston Dr.)
West	R-1, Low Density Residential	Vacant residential lot
East	R-1, Low Density Residential	Vacant residential lot

Applicable Code Provisions:
Section 106-333, stipulates residential area requirements, including setbacks in the R-1 District. The following is an excerpt from that section as applicable to this variance request (see highlighted):

> **Sec. 106-791. – Front yard areas.**
> No fences, structures, grading, or barrier hedges shall be permitted within any front yard areas except in the case of large lot residential lots, or in the case of lots with a front yard directly adjacent to the shoreline of Galveston Bay, as provided in section 106-792.

Analysis:
Section 106-791 of the Zoning Ordinance does not allow for fencing to be located in the front yard. The front yard is the area between the front of the principal building and the front lot line, which in a R-1 zone district is typically a 25 foot setback. The applicant is requesting approval of a variance to retain a fence within the front yard along the property line that was constructed without a permit.

Although there are not other similar front yard fences within the Battleground Estates Subdivision, the applicant has a unique situation in that he leases 269 acres of land adjacent to his property from the Union Pacific Railroad. According to Section 106-791, if the applicant owned more than one-acre of land then a variance would not be required. However in this case, the applicant does not own the land, he leases it.

Section 106-192 of the Zoning Ordinance states that the term “variance” represents a deviation from the literal interpretation of the code approved by the Board subject to the fact that enforcement of the provisions of the code would cause an unnecessary hardship because of circumstances unique to the subject property. The Board is authorized to grant a variance when the Board finds that a number of criteria are met. The following table outlines those criteria and staff’s analysis of those criteria.

Criterion:	Staff Finding:
a. That the granting of the variance will not be contrary to the public interest.	*Although there are no similar front yard fences in the Battleground Estates Subdivision, the applicant owns and leases land in excess of one acre in size. Should any other property owner in the subdivision accumulate enough adjacent lots to have over one acre, they would be allowed fencing in the front yard.* *Notice was sent to all property owners within a 200-foot radius from the subject site in accordance with code requirements. At the time this staff report was drafted, no responses for or against the variance were received by staff.*
b. That literal enforcement of this chapter will result in unnecessary hardship because of exceptional narrowness, shallowness, shape, topography or other extraordinary or exceptional physical situation unique to the specific piece of property in question. "Unnecessary hardship" shall mean physical hardship relating to the property itself as distinguished from a hardship relating to convenience, financial considerations or caprice, and the hardship must not result from the applicant or property owner's own actions.	*The unnecessary hardship that would warrant the granting of the variance in this instance could be considered the fact that with the adjacent 269 acres of leased land, the applicant has sufficient land that would, if owned and not leased, allow for a front yard fence. The applicant argues that the variance will provide security to his property from people who currently trespass across it, including pipeline companies and the railroad.*
c. That by granting the variance, the spirit of this chapter will be observed.	*The proposed fencing is consistent with the intent of the code in-so-much-as the applicant has more than one acre of land, which includes the property he owns by title and the adjacent 269 acres of property he leases. The code allows for front yard fencing on lots greater than one acre is size.*

Appeal Procedure:

Sec. 106-196. - Appeals from the board of adjustment.

Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment, or any taxpayer, or any officer, department, board, or bureau of the city may present to a court of record a petition for a writ of certiorari, as provided by V.T.C.A., Local Government Code § 211.011, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within ten days after the filing of the decision in the office of the board of adjustment.

ATTACHMENTS

Exhibit A: Application and site plan for the improvements
Exhibit B: Area map

EXHIBIT A

City of La Porte
604 W. Fairmont Pkwy.
La Porte, TX 77571

Planning & Development Department

VARIANCE APPLICATION

Phone: 281.470.5058
Fax: 281.470.5005
www.laportetx.gov

1. PROPERTY OWNER CONTACT INFORMATION:

OWNER NAME: David Turner PHONE 1: 281-352-5028
PHONE 2: FAX #:
E-MAIL: [redacted]
MAILING ADDRESS: 11025 Houston DR Laporte TX 77571

2. *AGENT REPRESENTING PROPERTY OWNER (If Applicable):

AGENT / CONTRACTOR COMPANY:
PHONE 1: PHONE 2:
E-MAIL: FAX #:
MAILING ADDRESS:
CONTACT PERSON'S NAME: PHONE:

3. PROPERTY DESCRIPTION:

HCAD PARCEL NO(s) 13-digit Tax ID(s): #080-013-000-0019
PROPERTY ADDRESS (If existing): 11025 Houston DR Laporte TX 77571
PROPERTY LEGAL DESCRIPTION: Battleground Estates sec1 Lts 19 & 20

4. BASIS FOR VARIANCE REQUEST:

A "Variance" constitutes a deviation from the literal provisions of the Zoning Ordinance and is granted by the board when strict conformity to the Zoning Ordinance would cause an unnecessary hardship because of the circumstances unique to the property on which the variance is granted.

Check applicable box for Variance request based on exceptional:

- ☐ Narrowness
- ☐ Shallowness
- ☐ Shape
- ☐ Topography
- ☑ Other extraordinary or exceptional physical situation unique to property: I Lease 269 Acres of Railroad Land that Runs up to the back of my Land & House

5. APPLICATION CHECKLIST & SUPPORTING DOCUMENTATION (check boxes indicating items submitted with your application):

- ☑ COMPLETE ITEMS 1-5 OF APPLICATION
- ☑ SUBMIT $150 APPLICATION FEE (Non-Refundable)
- ☑ ATTACH SEPARATE SHEET WITH INFORMATION HELPFUL IN CONSIDERING YOUR REQUEST: (Specify the facts involved, relief desired, and the grounds for the request.)
- ☑ WRITTEN AUTHORIZATION FROM PROPERTY OWNER TO ACT ON HIS/HER BEHALF (If applicable)

NOTE: It is the responsibility of the applicant to prove that his/her request meets conditions established for a Special Exception from the ZBOA.

PRINTED NAME: David Turner (Applicant) SIGNATURE: (Applicant) DATE SUBMITTED: 12-19-14

(STAFF USE ONLY): *APPLICATION NO:* 14-93000013

DATE APPLICATION REC'D.: 12/17/2014 *APPLICATION REC'D BY:*

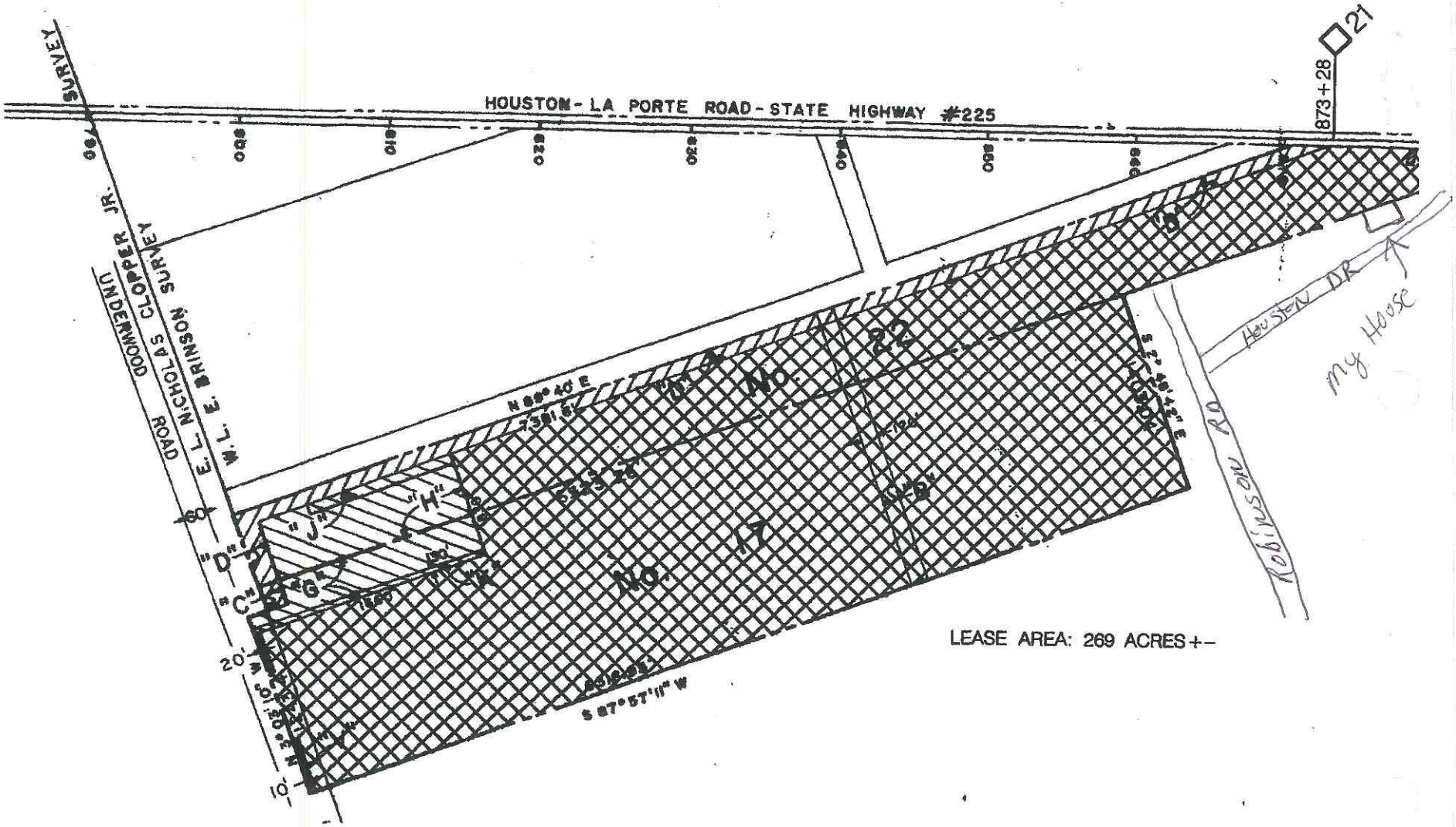
☐ *SITE PLAN REC'D* ☐ *$150 APPLICATION FEE REC'D* ☐ *APPLICANT'S SUPPLEMENTAL INFO REC'D* ☐ *OWNER AUTHORIZATION*

ZBOA MEETING DATE: *SPECIAL EXCEPTION GRANTED?* ☐ *YES* ☐ *NO*

EXHIBIT A

Gentlemen and Ladies

I am asking for a variance for fencing around my house. I have two lots at 11025 Houston Dr. I built a house four years ago and replaced the fence in the front yard that had been there for many years before. I lease 269 acres from Union Pacific Railroad behind my house and run cattle and horses along with two hay fields. I have had this lease for ten years. My drive is sometimes used for entrance from Pipeline and railroad therefore that is why I have the picket fence with gates. The only house on my side is to the west about 100 yards. No house across from me and There are woods on both sides. Enclosed are pictures. One can basically say that I live on the 269 acers. All of my farm equipment and trailers and hay are kept on lease land behind my house



SCALE: 1" = 1000'

LEGEND

EXHIBIT A

EXHIBIT A

Union Pacific Railroad Company

BUILDING AMERICA™

Bill Number **252538157**
Audit Number [redacted]
Customer Number 2997
Folder Number 0215272
Bill Date 12/07/2011
Date Printed 12/09/2011

16TH STREET INVESTMENTS LLC
10105 NORTH P STREET

C/O DAVID TURNER
LA PORTE TX 77571

Please contact the following for questions regarding :

- Payment Status : (402) 544 - 0211, or Fax (402) 501 - 0027
- All other questions or comments regarding the agreement, including rental amount, termination notices and change of address -
  Manager: Rebecca Hoffman, RHOFFMAN@UP.COM, (402) 544-8570

Bill Description:
Location of Agreement: STRANG, TX
Primary Purpose of Agreement: Lease of Land for Agricultural Purposes

Description	Period		Amount
	From	To	
LS-Rent	01/01/2012	12/31/2012	[redacted]
Payable upon Receipt		Total Due :	[redacted]

To assure proper credit to your account, detach and return this portion with check payable to:

SEND PAYMENTS TO :
Union Pacific Railroad Company
12567 Collections Center Drive
Chicago, IL 60693

Bill Number **252538157**
Audit Number [redacted]
Customer Number 2997
Folder Number 0215272

Payable upon Receipt [redacted]

Please include the bill number on your check!

EXHIBIT A

September 23, 2014
Folder: 02152-72

U.S. CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DAVID TURNER
16TH STREET INVESTMENTS LLC, DAVID TURNER
10105 NORTH P STREET
LA PORTE TX 77571

Dear Mr. Turner:

Reference is made to that certain Lease dated January 30, 2003, between UNION PACIFIC RAILROAD COMPANY (Lessor) and 16TH STREET INVESTMENTS LLC, DAVID TURNER (Lessee) covering a portion of the Lessor's property at Strang, Texas. Said Lease is identified in the Lessor's records as Audit No. 227997.

In accordance with the provision of Section 3 of the Lease, this letter is to advise you that effective January 01, 2015 ('Effective Date'), the rent shall be Three Thousand Ninety Dollars ([redacted] annually.

You will be billed at your new lease rate on the next billing cycle.

Also, attached is a **Real Estate Environmental Lessee Questionnaire** for you to complete and return to me.

Sincerely,

Rebecca Hoffman

Rebecca Hoffman
Senior Manager - Real Estate
(402) 544-8570
rhoffman@up.com

EXHIBIT A

Folder: 02152-72
Audit: [redacted]

SUPPLEMENTAL AGREEMENT

THIS SUPPLEMENTAL AGREEMENT is entered into on the _____ day of _____, 20___, between **UNION PACIFIC RAILROAD COMPANY** ("Lessor") and **16TH STREET INVESTMENTS LLC**, a Texas limited liability corporation, whose address is 10105 North P Street, La Porte, Texas 77571 ("Lessee").

RECITALS:

By instrument dated January 30, 2003, Lessor and Lessee, or their predecessors in interest, entered into an agreement ("Basic Agreement"), identified as Audit No [redacted] at Strang, Texas.

AGREEMENT:

IT IS AGREED between Lessor and Lessee to modify the Basic Agreement as follows:

Article 1. **EFFECTIVE DATE.**

This Supplemental Agreement is effective January 01, 2006.

Article 2. **SUBSTITUTION OF PRINT.**

The print dated January 04, 2006, attached as Exhibit 'A', shall be substituted for the print dated January 18, 2003, attached to the Basic Agreement.

Article 3. **AGREEMENT SUPPLEMENT.**

Nothing in this Supplemental Agreement shall be construed as amending or modifying the Basic Agreement unless specifically provided herein.

IN WITNESS WHEREOF, the parties have executed this Supplemental Agreement as of the day and year first written.

UNION PACIFIC RAILROAD COMPANY **16TH STREET INVESTMENTS LLC**

By: _____
Manager - Real Estate

By: _____
Title: _____

NOTE: To add additional property to lease area

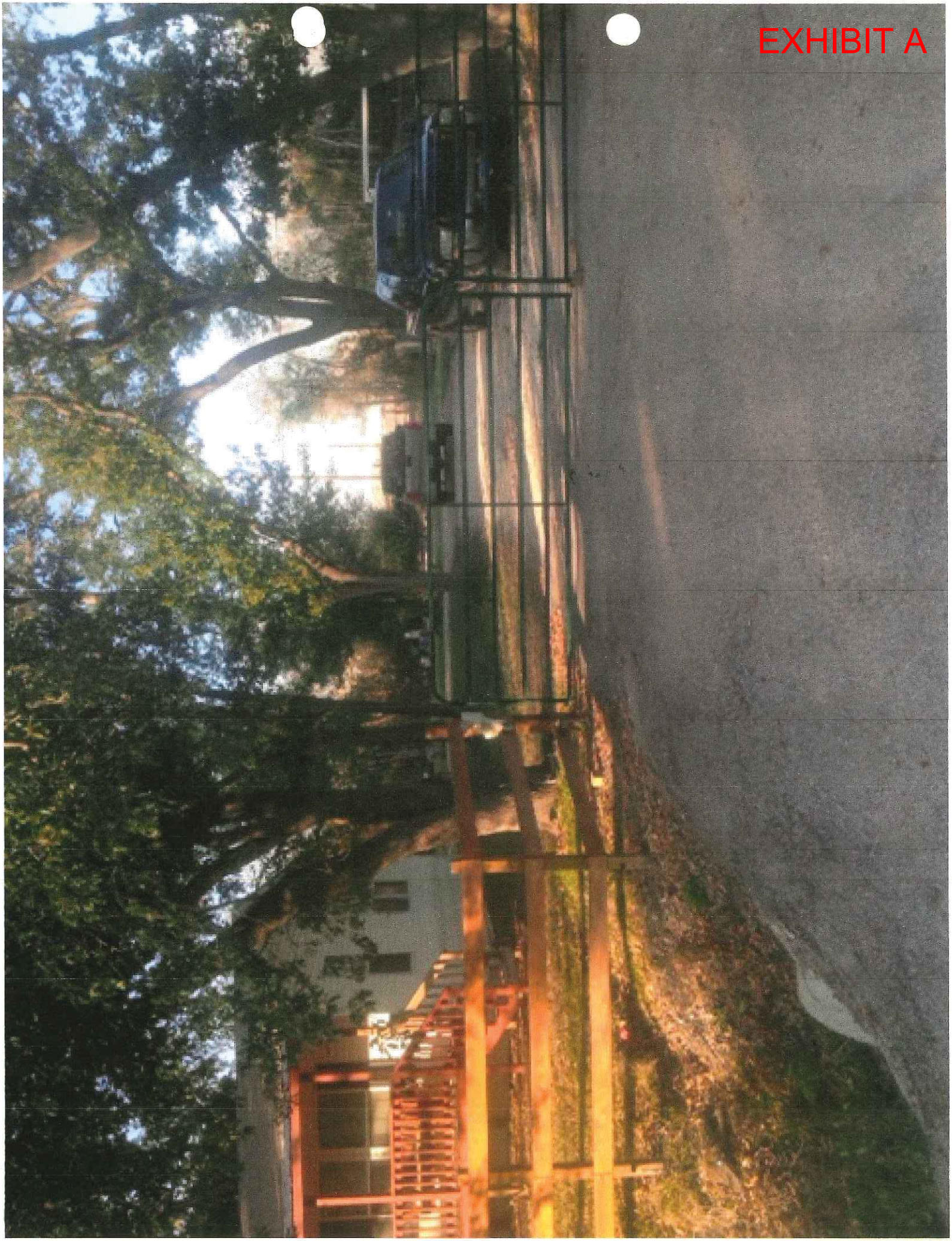
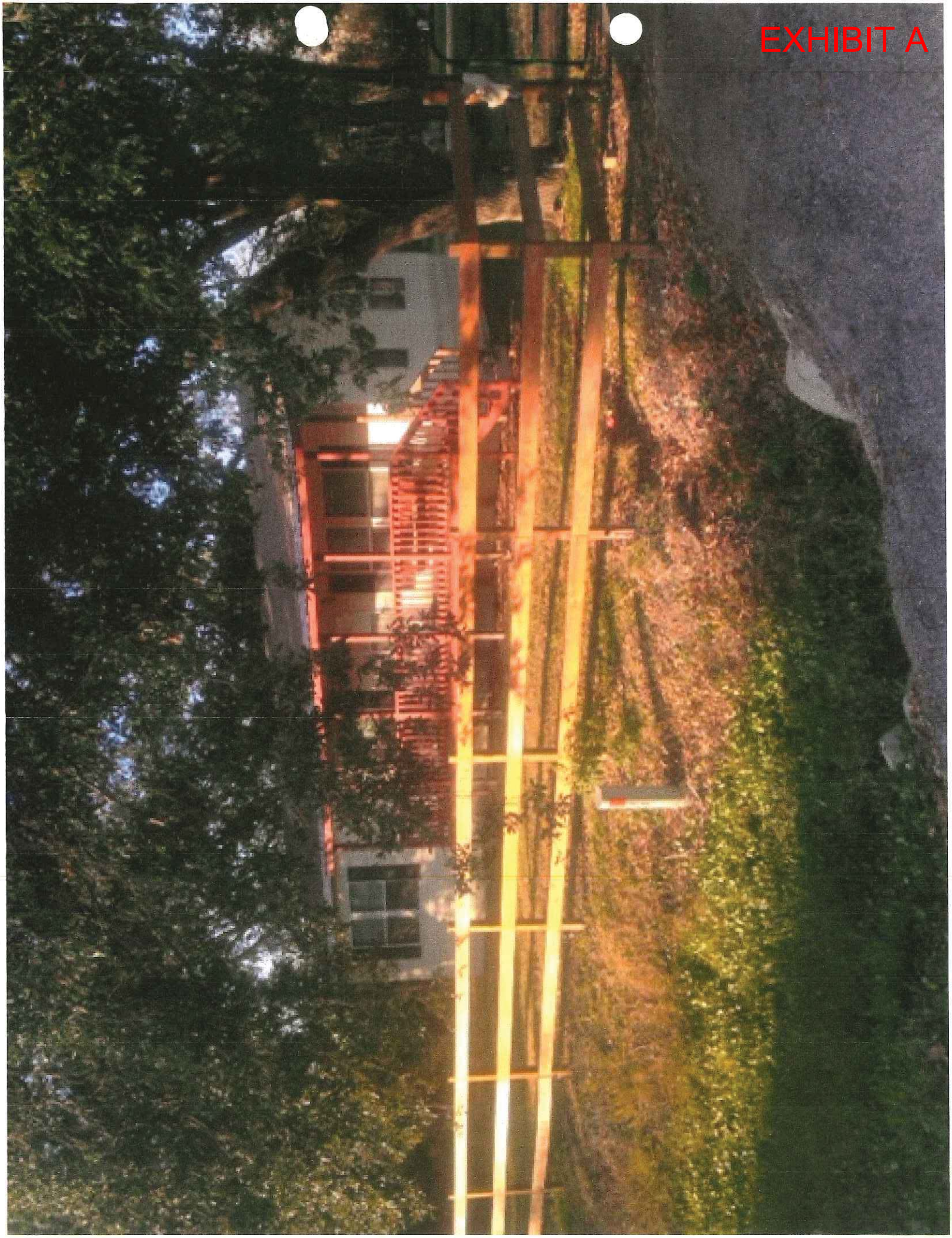


EXHIBIT A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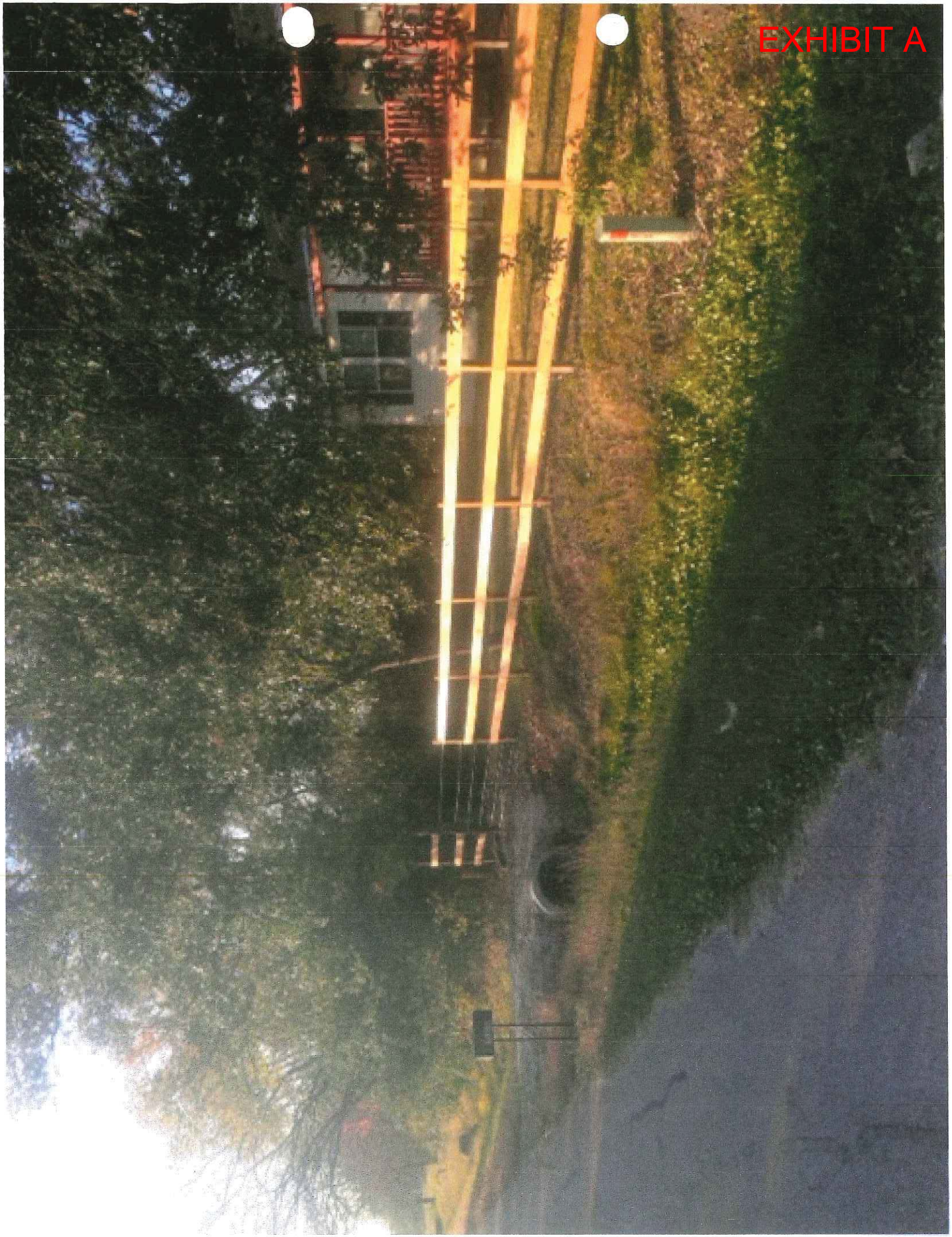
EXHIBIT A

EXHIBIT A

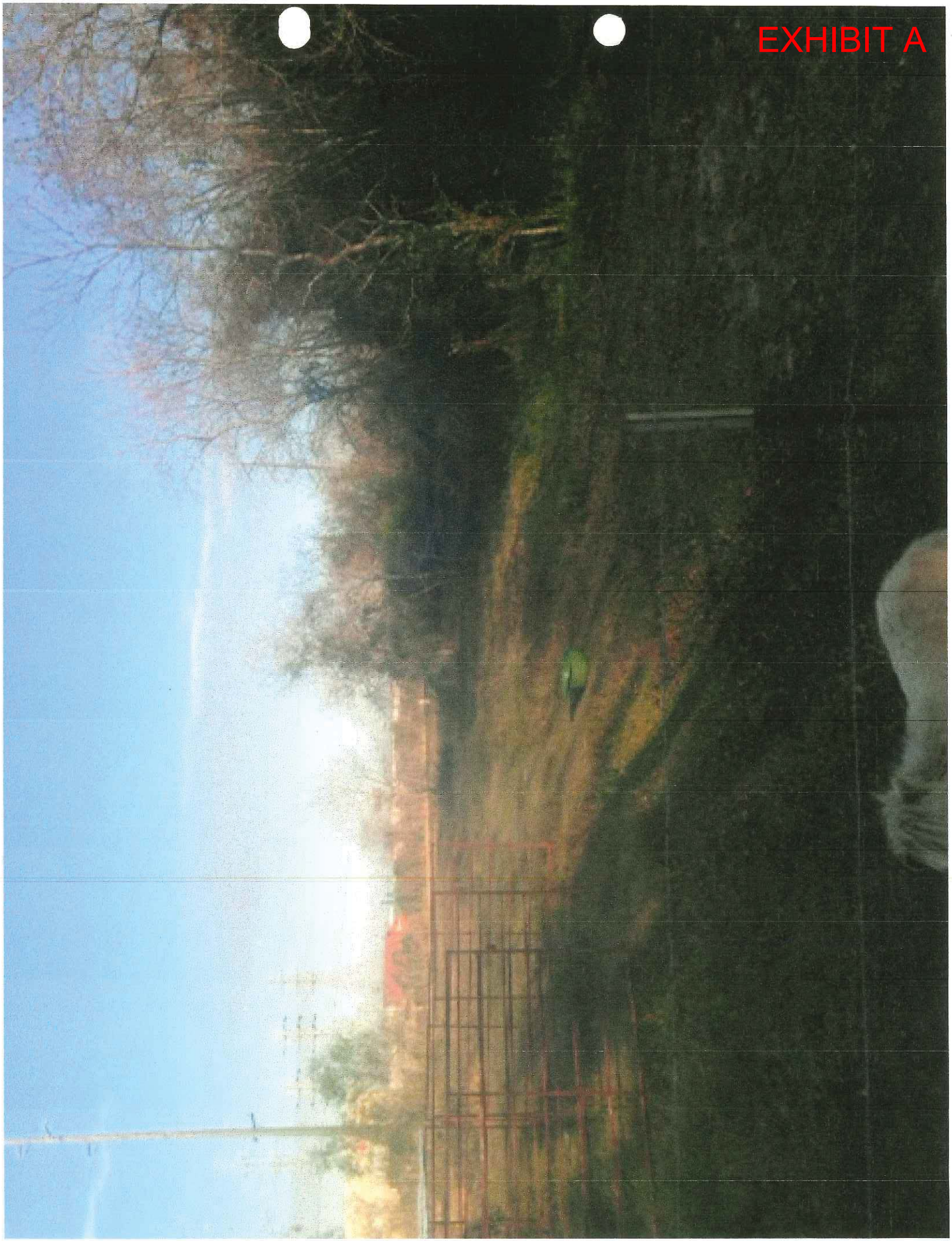
EXHIBIT A

EXHIBIT A

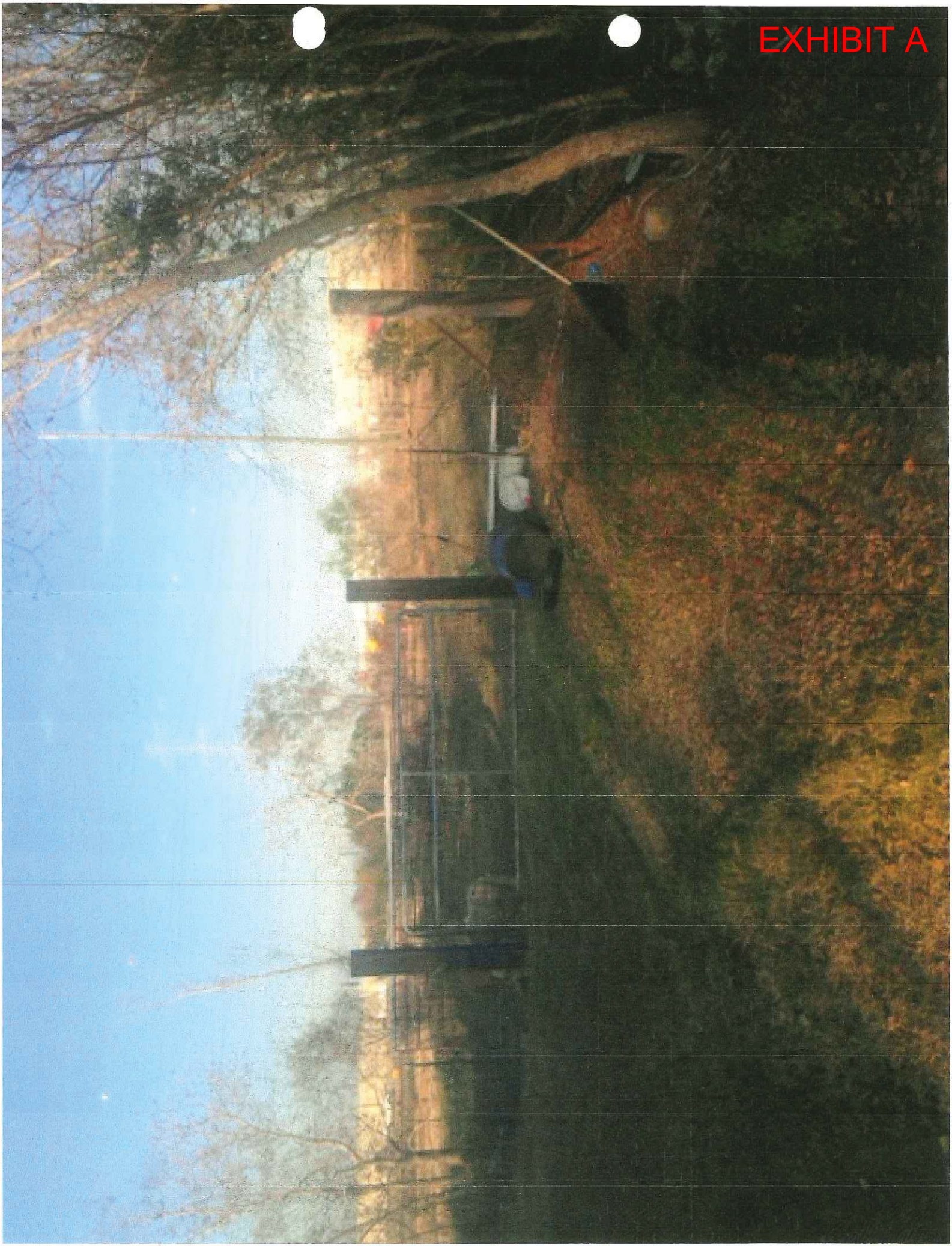
EXHIBIT A

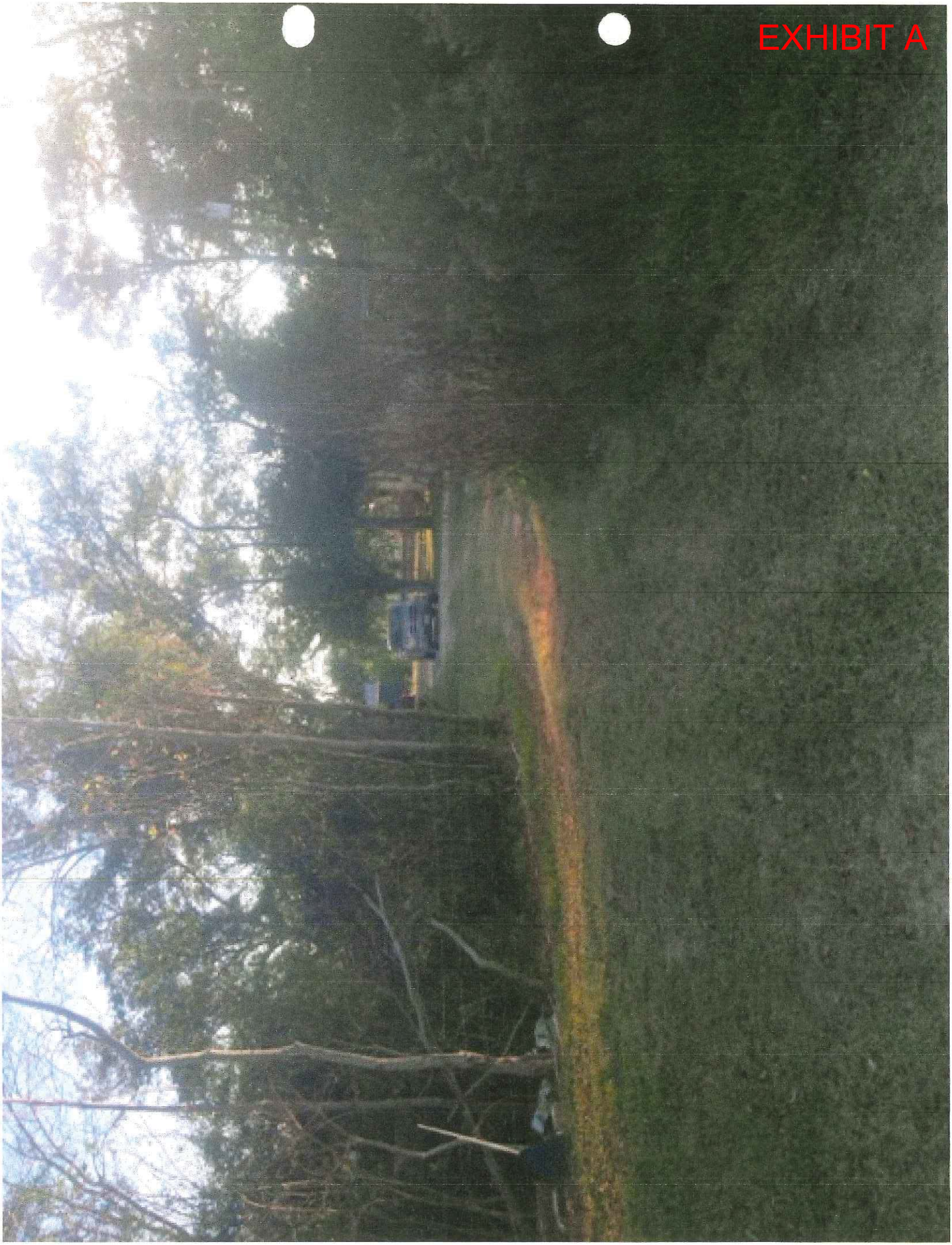
EXHIBIT A

EXHIBIT A

City of La Porte

Established 1892

December 5, 2014

TURNER DAVID E
11025 HOUSTON DR
LA PORTE, TX 775719543

CERTIFIED MAIL: # 7013 1710 0001 3412 2272

RE: 11025 HOUSTON DR
LTS 19 & 20 BLK 2
BATTLEGROUND ESTATES SEC 1
HCAD # 080-013-000-0019

Dear TURNER DAVID E,

On DEC 4, 2014, the Inspection Services Division of the City of La Porte inspected the above referenced property and found it to be in violation of the City's Code of Ordinances.

SEE VIOLATION ON ATTACHED DOCUMENT.

As the owner and/or occupant of the property, you are hereby given notice to abate the violation within 10 days of receipt of this notice. Failure to abate the violation within the specified time will result in further action to ensure compliance with the City's Code of Ordinances. Further action could include issuance of a formal citation and subsequent prosecution in the Municipal Court of the City of La Porte.

Should you have any questions concerning this notice or your options, you may call the Inspection Department of the City at the following number #281-470-5073.

Respectfully,

TAMMY NOEL
Inspector

XC: Via Regular Mail

604 West Fairmont Parkway • La Porte, Texas 77571 • (281) 471-5020 • Fax (281) 470-5005

EXHIBIT A

VIOLATION DETAIL

CASE NUMBER 14-00004633
PROPERTY ADDRESS 11025 HOUSTON DR

VIOLATION: FENCE-PLACEMENT
DESCRIPTION: CE-CHAP 106, ART V
LOCATION:

QUANTITY: 1
DATE: 12/04/14

NARRATIVE :
MUST REMOVE FRONT YARD FENCE FROM SITE WITHIN 10 DAYS

ORDINANCE DESCRIPTION :
In accordance with the City's Code of Ordinances as adopted by Ordinance 97-2198, the fence location is in violation of Division 4 regulations.

CORRECTIVE ACTION REQUIRED :
To abate this violation, the placement of the fence must comply with applicable regulations.

AREA MAP
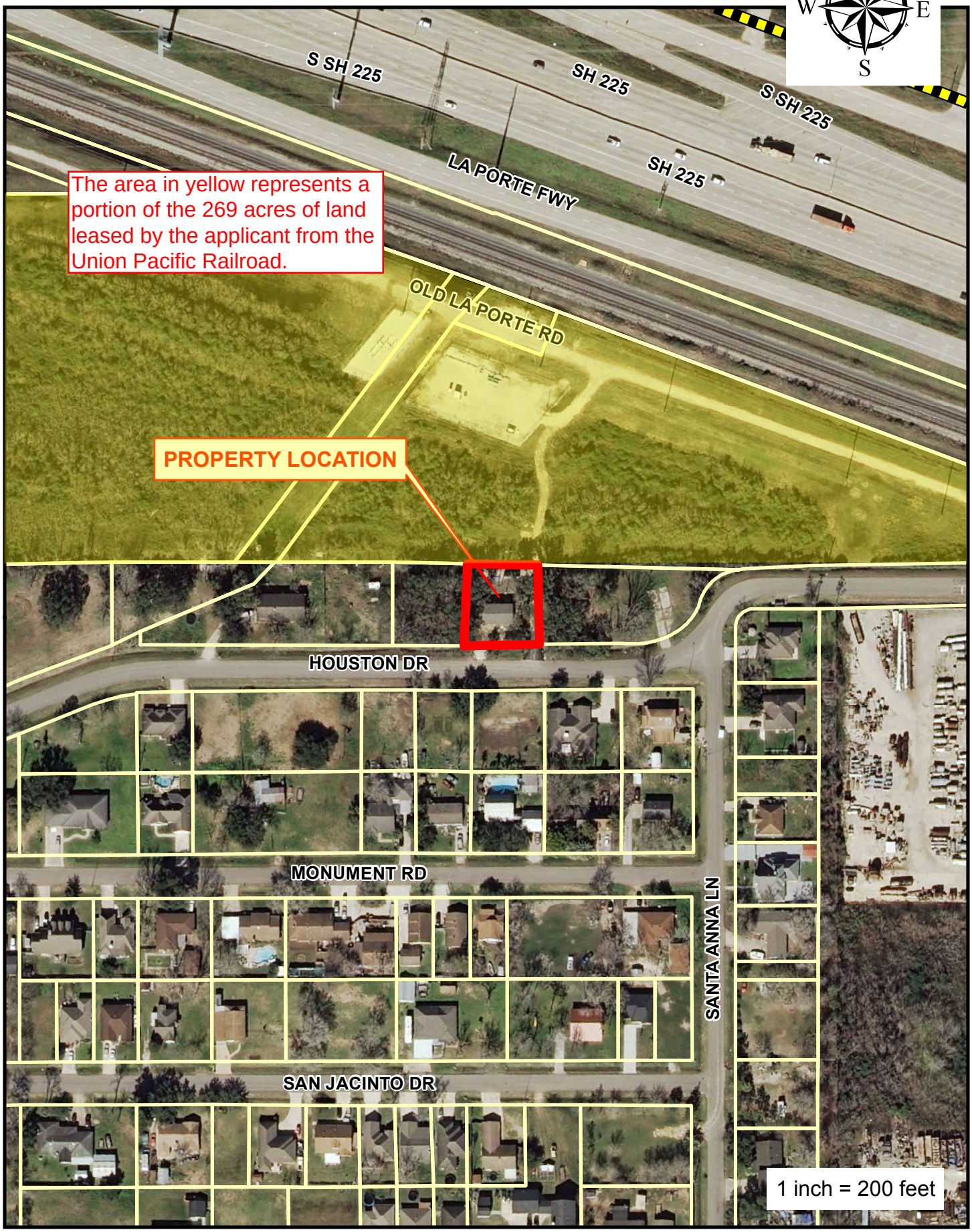
EXHIBIT B