



# BOARD OF COUNTY COMMISSIONERS GULF COUNTY, FLORIDA

1000 CECIL G. COSTIN, SR. BLVD., ROOM 302, PORT ST. JOE, FLORIDA 32456  
PHONE: (850) 229-6106/639-6700 • FAX: (850) 229-9252 • EMAIL: boccc@gulfcountry-fl.gov  
WEBSITE: www.gulfcountry-fl.gov

DATE AND TIME OF MEETINGS: SECOND AND FOURTH TUESDAYS AT 6:00 P.M., E.T.

## MEMORANDUM

To: All County Fire Departments, Search and Rescue  
From: Don Butler, County Administrator *DB*  
Subject: Use of County Vehicles  
Date: November 28, 2011

Please be aware that county owned vehicles can only be utilized in the performance of an official county function. Of late, we have received several complaints indicating a casual use of county vehicles which appear to be for personal transportation, not necessarily for a county purpose.

It is understood that vehicles must respond to incidents and proper training can only result with vehicle usage. Vehicle usage is always allowed for reasons that further the county cause.

Again, please understand that county vehicles cannot be used for personal transportation and cannot be driven to work or home and must be housed at a county facility.

If anyone has any questions, please contact me anytime.

Thanks

FLORIDA  
DATE 12-13-11 *DB*



**Gulf County Mosquito Control**  
**1001 Tenth Street**  
**Port St Joe, FL 32456**  
**(850) 227-1401 Office (850) 229-9521 Fax**

**MEMORANDUM**

**Date: November 29, 2011**

**To: Gulf Board of County Commissioners**

**From: Mark Cothran, Director GCMC** *MC*

**Re: Northwest Florida Regional Representative to the Florida Mosquito Control Association's Executive Board of Directors**

FYI...

During the November 2011 FMCA Annual Fall Meeting, I was elected by members of the Florida Mosquito Control Association to the position of Northwest Florida's Regional Representative to the FMCA's Executive Board of Directors.

With this appointment, I am one of eleven board members on the largest state organized mosquito control association in the country. I will be representing 20 mosquito control districts within 18 panhandle counties from Escambia over to Madison and Taylor. This association has direct influence with rules and laws pertaining to mosquito control with the Florida Department of Agriculture and Consumer Services and works hand in hand with the American Mosquito Control Association, Florida Coordinating Council for Mosquito Control, IFAS and others. It is an honor for me, to serve our county and other small counties as I progress in a leadership role with a large voice for small counties.

12-13-11 *OK*

**NOTICE  
TO RECEIVE SEALED BIDS  
BID NO. 1112-02**

The Gulf County Board of County Commissioners will receive bids from any person, company or corporation interested in providing the following:

**Sale of House - To Be Relocated  
6909 Highway 71, White City**

Proposals must be turned in to the Gulf County Clerk's Office at 1000 Cecil G. Costin, Sr., Blvd, Room 148, Port St. Joe, Florida, 32456, by 4:30 p.m., E.T., on Friday, December 16, 2011. The website [www.gulfcounty-fl.gov](http://www.gulfcounty-fl.gov) also will have specifications. Interested parties should contact Michael Hammond for additional information at (850) 227-1124.

Please indicate on the envelope **YOUR COMPANY NAME**, that this is a **SEALED BID** and include the **BID NUMBER**. Bids will be opened at the above location on Monday, December 19, 2011 at 10:00 a.m., E.T.

**Attest:**  
**/s/ Rebecca L. Norris, Clerk**

**BOARD OF COUNTY COMMISSIONERS  
GULF COUNTY, FLORIDA  
/s/ Warren J. Yeager, Jr., Chairman**

**Advertise: December 1 & 8, 2011  
Legal Ad  
Invoice: Gulf County Board of County Commissioners  
Ad# 2011-83**

County Clerk's Office  
1000 Cecil G. Costin, Sr. Blvd.  
Port St. Joe, Florida 32456  
Phone: (850) 227-1124  
Fax: (850) 227-1125

**BID SPECIFICATIONS**  
**BID NO. 1112-02**

- ADDRESS: 6909 Highway 71, White City
- 3 BEDROOMS/1 BATH
- PARCEL NUMBER: 02934-000R
- Bid will be for the home only.
- Home must be relocated within 45 days following sale. There will be a \$100 per day penalty for not removing building within timeframe.
- For Sale: As Is.
- Gulf County Board of County Commissioners retains the right to reject any and all bids.

**REQUEST FOR PROPOSALS**  
**BID #1112-03**

The Gulf County Board of County Commissioners will receive proposals from any qualified person, company, or corporation interested in providing the following:

**MISDEMEANOR PROBATION SERVICES**

Please place YOUR COMPANY NAME, SEALED BID, and the BID NUMBER on the outside of your envelope, and provide three copies of your proposal.

Bids must be submitted to and specifications may be obtained from the Gulf County Clerk's Office at 1000 Cecil G. Costin, Sr., Blvd., Room 148, Port St. Joe, Florida, 32456 by 4:30 p.m., E.T. on Friday, December 9, 2011. Bids will be opened at this same location on Monday, December 12, 2011 at 10:00 a.m., E.T. Specifications may also be viewed at [www.gulfcounty-fl.gov](http://www.gulfcounty-fl.gov).

There will be a mandatory pre-bid conference in the Robert M. Moore Administration Building, 1000 Cecil G. Costin Sr., Blvd., Port St. Joe, FL, 32456 at 10:00 a.m., E.D.T., Thursday, December 1, 2011.

Any questions concerning this bid should be directed to Lynn Lanier, Gulf County Deputy Administrator at (850) 229-6106 or (850) 227-8973. Gulf County enforces a Drug-Free Workplace Policy and is an Equal Opportunity / Affirmative Action Employer.

**BOARD OF COUNTY COMMISSIONERS**  
**Warren J. Yeager, Jr., Chairman**

BOARD OF COUNTY COMMISSIONERS  
GULF COUNTY., FLORIDA  
/s/ Warren J. Yeager, Jr., Chairman

Attest:

/s/ Rebecca L. Norris, Clerk

Ad Date: December 1 & 8, 2011

Ad #2011-84

Publish in Legals

Invoice: Gulf County BOCC

**REQUEST FOR PROPOSALS  
BID #1112-04**

The Gulf County Board of County Commissioners will receive proposals from any qualified person, company, or corporation interested in providing the following:

**DATA MANAGEMENT HARDWARE/SOFTWARE FOR MOSQUITO CONTROL**

Please place YOUR COMPANY NAME, SEALED BID, and the BID NUMBER on the outside of your envelope, and provide five (5) copies of your proposal.

Bids must be submitted to and specifications may be obtained from the Gulf County Clerk's Office at 1000 Cecil G. Costin, Sr., Blvd., Room 148, Port St. Joe, Florida, 32456 by 4:30 p.m., E.T. on Friday, December 9, 2011. Bids will be opened at this same location on Monday, December 12, 2011 at 10:00 a.m., E.T. Specifications may also be viewed at [www.gulfcounty-fl.gov](http://www.gulfcounty-fl.gov).

Any questions concerning this bid should be directed to Mosquito Control Director Mark Cothran at (850) 227-1401. Gulf County enforces a Drug-Free Workplace Policy and is an Equal Opportunity / Affirmative Action Employer.

**BOARD OF COUNTY COMMISSIONERS  
Warren J. Yeager, Jr., Chairman**

BOARD OF COUNTY COMMISSIONERS  
GULF COUNTY., FLORIDA  
/s/ Warren J. Yeager, Jr., Chairman

Attest:

/s/ Rebecca L. Norris, Clerk

Ad Date: December 1 & 6, 2011

Ad #2011-86

Publish in Legals

Invoice: Gulf County BOCC

2011 NOV 28 PM 4: 13

FILED  
CLERK OF COUNTY COMMISSIONERS  
GULF COUNTY, FLORIDA

## PUBLIC NOTICE

**A Public Hearing will be held at the Planning and Development Review Board (PDRB) meeting on Monday, December 19, 2011 at 8:45 a.m. EST, and at the Board of County Commissioners (BOCC) meeting on Tuesday, January 10, 2012 at 6:00 p.m. EST. Both public hearings will be held in the BOCC Meeting Room at the Robert M. Moore Administration Building, 1000 Cecil G. Costin Sr. Blvd., Port St. Joe, Florida. The public hearings will be to discuss and act on the following:**

1. Variance Application - by Ned Harman - for Parcel ID # 06314-075R - Located in Section 23 Township 9 South, Range 11 West, Gulf County, Florida - Replace an existing 4' dune walkover with a 6' dune walkover for handicap accessibility.
2. Public and Open Discussion
3. Staff

The public is encouraged to attend and be heard on these matters. Information prior to the meeting can be viewed at the Planning and Building Department at 1000 Cecil G. Costin Sr. Blvd., Room 312.

Ad #2011-87

Date: December 8, 2011 and December 15, 2011

Invoice: Gulf County Planning Department

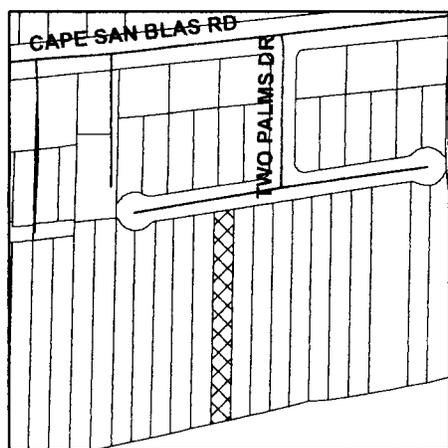
**Size: Headline no smaller than 18 point**

**Must be at least 2 columns wide by 10 inches long**

**Must not appear in the newspaper portions where legal notices and classified advertisements appear**

**MAP**

Ned Harman





# The City of Port St. Joe

December 2, 2011

Warren Yeager, Chairman  
 Gulf County Board of Commissioners  
 1000 Cecil G. Costin Sr. Blvd.  
 Port St. Joe, FL 32456

Re: Joint City/County Meeting

Dear Chairman Yeager:

The Port St. Joe City Commissioners and the Gulf County Commissioners held a joint meeting on February 24, 2011. At that meeting we all agreed to hold such meetings periodically to discuss city/county issues.

It has been over nine months since that joint meeting and I feel it is incumbent upon the two commissions to fulfill our agreement and meet again as soon as mutually convenient. I believe it good for city/county relations to discuss issues that affect our citizens.

By this letter I am requesting Charlie Weston and Don Butler to begin the scheduling process. I look forward to our meeting and thank you for your cooperation.

Respectfully,

Mel C. Magidson, Mayor  
 City of Port St. Joe

MCM/hm

cc: Charlie Weston, City Manager

**FLORIDA DEPARTMENT *of* STATE**

RICK SCOTT  
Governor

KURT S. BROWNING  
Secretary of State

November 15, 2011

Mr. William C. Williams, III  
1001 Cecil Costin Boulevard  
Port Saint Joe, FL 32456

Dear Mr. Williams,

Congratulations on your appointment as a member of the Board of Directors, Workforce Florida, Inc. Enclosed is your commission, and for your convenience, a card that identifies you as the holder of this position.

Sincerely,

Handwritten signature of Kurt S. Browning in black ink.

Secretary of State

Enclosures

INFORMATION  
12/13/11 2K

**EXECUTIVE DEPARTMENT**  
STATE OF FLORIDA



*In the Name and by the Authority of the*

**STATE OF FLORIDA**

*I, Rick Scott, Governor of Florida, by virtue of the authority vested in me by the Constitution and Laws of this State, do hereby commission*

**William C. Williams, III**

*who was duly appointed to be a member of the*

**Board of Directors,  
Workforce Florida, Inc.**

*for a term beginning on the Twenty-First day of October, A.D., 2011, until the Twenty-First day of March, A.D., 2014, according to the Constitution and Laws of the State and in the Name of the People of the State of Florida to have, hold and exercise the said office, and all the powers and responsibilities appertaining thereto, and to receive the privileges and emoluments thereof in accordance with the law.*



*In Testimony Whereof, I do hereunto set my hand and cause to be affixed the Great Seal of the State, at Tallahassee, the Capital, this the Fifteenth day of November, A.D., 2011, and of the Independence of the United States the Two Hundred and Thirty-Sixth year.*

**ATTEST:**

Secretary of State

Governor of Florida



## Florida Department of Transportation

RICK SCOTT  
GOVERNOR

1074 Highway 90  
Chipley, Florida 32428

ANANTH PRASAD, P.E.  
SECRETARY

November 4, 2011

Mr. Don Butler  
Gulf County Board County Administrator  
1000 Cecil Costin, Sr. Blvd.  
Port St. Joe, FL 32456

Re: S.R. 71 from the end of the concrete pavement to the Intercoastal Bridge, Gulf County.  
Financial Project Identification Number: 419305-1-52-01

Dear Mr. Butler:

The Florida Department of Transportation has retained the services of Brindley Pieters & Associates, Inc. as the design consultant for the above referenced project. Improvements include milling and resurfacing of the existing roadway, minor drainage improvements, and improvements to curb ramps to comply with Americans with Disabilities Act (ADA) requirements. No additional right-of-way is required to construct this project. The Department anticipates receiving bids for construction in Spring 2014.

The Department would like to provide you an opportunity to ask questions and submit comments concerning this project. A set of preliminary Phase II (60%) plans have been sent to Joe Danford, Director of Public Works, for review and comments.

Please feel free to review and provide any comments about this project to Mr. Danford by November 21, 2011.

Should you have any questions, please contact Alaina Webb, Florida Department of Transportation Project Manager toll free at 1-888-638-0250, extension 447, or via email at [alaina.webb@dot.state.fl.us](mailto:alaina.webb@dot.state.fl.us).

Sincerely,

John S. Golden, P.E.  
District Design Engineer  
Florida Department of Transportation

[www.dot.state.fl.us](http://www.dot.state.fl.us)

INFORMATION

DATE: 12-13-11 AB



For Immediate Release:  
December 01, 2011

Ian Satter, (850) 415-9205;  
[ian.satter@dot.state.fl.us](mailto:ian.satter@dot.state.fl.us)

## FDOT to test Bridge Load Rating

**Chipley** –The Florida Department of Transportation will perform a routine bridge load test on the County Road 30A structure located in Port St. Joe Wednesday, Dec. 7 from 7 p.m. to 4 a.m. to determine safe the carrying capacity of a bridge.

During testing, the westbound lane will be closed and the eastbound lane will temporarily close in 30 minute intervals. Traffic flaggers will direct traffic through the work zone.

Motorists are reminded to pay attention and to use caution when driving in work zones.

For more Florida Department of Transportation District Three information follow us on twitter at [www.twitter.com/myfdot\\_nwfl](http://www.twitter.com/myfdot_nwfl).

[www.dot.state.fl.us](http://www.dot.state.fl.us)  
*Consistent, Predictable, Repeatable*

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Progress Energy Florida, Inc.  
for approval of modification to make the  
current experimental Premier Power Service  
Rider, Rate Schedule PPS-1 permanent.

DOCKET NO. 110269-EI  
ORDER NO. PSC-11-0536-CO-EI  
ISSUED: November 17, 2011

CONSUMMATING ORDER

BY THE COMMISSION:

By Order No. PSC-11-0481-TRF-EI, issued October 25, 2011, this Commission proposed to take certain action, subject to a Petition for Formal Proceeding as provided in Rule 25-22.029, Florida Administrative Code. No response has been filed to the order, in regard to the above mentioned docket. It is, therefore,

ORDERED by the Florida Public Service Commission that Order No. PSC-11-0481-TRF-EI has become effective and final. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 17th day of November, 2011.



ANN COLE  
Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399  
(850) 413-6770  
www.floridapsc.com

RRJ

DOCUMENT NUMBER DATE

08444 NOV 17 =

FPSC-COMMISSION CLERK

INFORMATION

DATE 12-13-11 CC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any judicial review of Commission orders that is available pursuant to Section 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

TO: GULF COUNTY BOCC

FROM: JOHN DAVIS

DATE: DECEMBER 5, 2011

*J.D. January*

Effective 2/26, 2012, I will retire from Gulf County BOCC.

Thank you,

*John H. Davis*

RECEIVED  
GULF COUNTY BOCC  
771 NOV 30 AM 10:44  
Dec 5

INFORMATION  
12-13-11 *OK*

**Mel C. Magidson, Jr., P.A.**

**Attorney at Law**

528 6<sup>th</sup> Street • Post Office Box 340 • Port St. Joe, FL 32457

Phone (850) 227-7800 • Fax (850) 227-7878

December 5, 2011

Gulf County Board of Commissioners  
1000 Cecil G. Costin Sr. Blvd.  
Port St. Joe, FL 32456

Re: Variance request by Keith Vargo for 4525 Cape San Blas Road

Dear Commissioners:

I represent Mr. T.E. Moye, owner of property adjacent to 4525 Cape San Blas Rd., the property for which a variance has been requested. My client is adamantly opposed to the granting of this request and urges the Board of Commissioners to deny the variance.

The variance requested has been opposed by another adjacent property owner, Mr. Frederick (Chuck) Imm. I concur with his attorney, Clayton Studstill, in his assertion that there is no hardship, other than a self created one, that warrants granting a variance.

On behalf of my client, I urge you to deny any variance requested on the referenced property. Thank you for your attention to this matter.

Respectfully,



Mel C. Magidson, Jr.

MCM/hm  
cc: T.E. Moye

2011-12-05 11:15 AM  
Gulf County Board of Commissioners  
Port St. Joe, FL 32456

Lynn Lanier

From: The White House [eop-training-noreply@symplicity.com]  
Sent: Friday, December 02, 2011 5:36 PM  
To: commissioner3@gulfcounty-fl.gov  
Subject: Drugged Driving



OFFICE OF NATIONAL DRUG CONTROL POLICY  
Email Update

Dear Friends,

This December, we join President Obama and Director Kerlikowske in highlighting the importance of celebrating the holiday season safely by driving free of alcohol or other drugs. Please share the President's Proclamation recognizing National Impaired Driving Prevention Month with others as we reaffirm our commitment to the safety and well-being of all Americans.

This proclamation comes after a historic summit hosted by ONDCP that brought together Federal, state, local, industry, and non-profit organizations to discuss issues relating to the rising public health and safety threat of drugged driving. The October summit featured presentations on the latest data available on drugged driving and provided an opportunity to discuss prevention and enforcement efforts and additional actions that will help keep our roads safer. ONDCP also announced a partnership with Mothers Against Drunk Driving (MADD) to raise public awareness regarding the consequences of drugged driving. MADD has launched a national effort to provide support to the victims of poly-abuse (both alcohol and drugs) and drugged driving and to recognize law enforcement officers for their work to reduce drugged driving.

We wish you and your family a safe and healthy holiday season and remind you to always designate a sober driver. As always, please feel free to read and share the information below, as well as provide us with any feedback about topics of interest to you or how we can further improve our public engagement.

-ONDCP Office of Intergovernmental and Public Liaison

Tony Martinez  
Associate Director

INFORMATION  
12-13-11

Quinn Staudt  
Public Liaison Coordinator

202-395-5758

[mmartinez@ondcp.eop.gov](mailto:mmartinez@ondcp.eop.gov)

202-395-7453

[mgottlieb@ondcp.eop.gov](mailto:mgottlieb@ondcp.eop.gov)

Katie Greene

Deputy Associate Director

202-395-6652

[kgreene@ondcp.eop.gov](mailto:kgreene@ondcp.eop.gov)

Office of Intergovernmental and Public Liaison  
Office National Drug Control Policy  
Executive Office of the President  
[www.WhiteHouseDrugPolicy.Gov](http://www.WhiteHouseDrugPolicy.Gov)

*ONDCP seeks to foster healthy individuals and safe communities by effectively leading the Nation's effort to reduce drug use and its consequences.*

follow us on  
**twitter**

The White House · 1600 Pennsylvania Avenue, NW · Washington DC 20500 · 202-456-1111

Office of the Press Secretary

For Immediate Release

November 30, 2011

**Presidential Proclamation -- National Impaired Driving Prevention Month, 2011**

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

## A PROCLAMATION

Though we have made progress in the fight to reduce drunk driving, our Nation continues to suffer an unacceptable loss of life from traffic accidents that involve drugs, alcohol, and distracted driving. To bring an end to these heartbreaking outcomes, we must take action by promoting rigorous enforcement measures and effective substance abuse prevention programs. During National Impaired Driving Prevention Month, we recommit to preventing tragedy before it strikes by ensuring our family members and friends stay safe, sober, and drug-free on the road.

As we strive to reduce the damage drug use inflicts upon our communities, we must address the serious and growing threat drunk, drugged, and distracted driving poses to all Americans. Alcohol and drugs, both illicit and prescribed, can impair judgment, reaction time, motor skills, and memory, eroding a person's ability to drive safely and responsibly. Distracted driving, including the use of electronic equipment behind the wheel, can also put lives at risk. To confront these issues, my Administration is working to decrease the incidence of drugged driving by 10 percent over the next 5 years as part of our 2011 National Drug Control Strategy. We are collaborating with State and local governments to bolster enforcement efforts, implement more effective legislation, and support successful, evidence-based prevention programs. These ongoing initiatives are supplemented by our *Drive Sober or Get Pulled Over* campaign, which aims to deter impaired driving during the holiday season.

While enforcement and legislation are critical elements of our strategy, we know that the parents, educators, and community leaders who work with young people every day are our Nation's best advocates for responsible decisionmaking. Research suggests that younger drivers are particularly susceptible to the hazards of drugged driving. To help our families and communities build awareness about impaired driving, my Administration released a toolkit that includes information about drugged driving, discussion guides, and tip sheets for preventing driving under the influence of alcohol and drugs. These materials are available with a variety of other resources at: [www.TheAntiDrug.com](http://www.TheAntiDrug.com).

All of us have the power to effect change and work to end drunk, drugged, and distracted driving in America. In our homes and communities, we can engage our youth and discuss the consequences of drug and alcohol abuse. In our clinics and hospitals, health care providers can redouble their efforts to recognize patients with substance abuse problems and offer medical intervention. And in governing bodies across our country, State and local officials can explore new legal actions that will hold drugged drivers accountable and encourage them to seek treatment. As we come together with our loved ones this holiday season, let us renew our commitment to drive safely, act responsibly, and live drug-free.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim December 2011 as National Impaired Driving Prevention Month. I urge all Americans to make responsible decisions and take appropriate measures to prevent impaired driving.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of November, in the year of our Lord two thousand eleven, and of the Independence of the United States of America the two hundred and thirty-sixth.

BARACK OBAMA

**THE STUDSTILL LAW FIRM, PLLC**  
**CLAYTON B. STUDSTILL and LISA J. STUDSTILL**  
 ATTORNEYS AT LAW  
 326 Reid Avenue, Port St. Joe, FL 32456  
 Telephone (850) 323-0792  
 Facsimile (850) 648-6481  
 E-Mail [cstudstill@gmail.com](mailto:cstudstill@gmail.com)

1 DEC 5 PM 12:09 November 28, 2011

Board of County Commissioners for Gulf County Florida  
 1000 Cecil G. Costin, Sr. Blvd  
 Port St. Joe, FL 32456

Re: Application for setback variance for lands owned or controlled by Keith Vargo, as submitted by Southeastern Consulting Engineers, Inc.  
 Subject Property: 4525 Cape San Blas Road, Port St. Joe, FL 32456  
 Parcel Id No.: 06269-013R

To Whom It May Concern:

The Studstill Law Firm, PLLC has been retained by Mr. Frederick Charles Imm to oppose the petition for variance as requested by Mr. Keith Vargo (applicant) through his consulting engineer Mr. Jack Husband, P.E. Mr. Imm is known locally as Chuck Imm and has standing to object in this matter as he is an adjacent neighbor and homeowner to the subject property for which the setback variance is sought.

#### Abstract

The burden of proof is on the applicant. Gomez v. City of St. Petersburg, 550 So.2d 7 (2 DCA 1989). Therefore, if the owner presents no evidence that the property cannot be used without the variance, there must be a denial. Herrera v. Miami, 600 So.2d 561 (3 DCA 1992).

#### Summary

Mr. Vargo must prove the existence of hardship and/or the unique conditions required by the Gulf County Land Development Regulations in order to receive a grant of variance. Mr. Imm contends that this burden has not been met because:

1. The PDRB failed to follow the LDR's in recommending approval of this application.
2. The PDRB failed to account for the Policies and Objectives of the Gulf County Comprehensive Plan in recommending approval of this application.
3. The applicant suffers no hardship to which relief may be granted.
4. The applicant may develop the property without a variance.
5. The submitted drawings differ from the text of the request.

INFORMATION

DATE 12-13-11

**THE STUDSTILL LAW FIRM, PLLC**  
CLAYTON B. STUDSTILL and LISA J. STUDSTILL  
ATTORNEYS AT LAW

Re: Application for setback variance for lands owned or controlled by Keith Vargo,  
as submitted by Southeastern Consulting Engineers, Inc.  
Subject Property: 4525 Cape San Blas Road, Port St. Joe, FL 32456  
Parcel Id No.: 06269-013R

**Table of Contents**

- Pages 1-3 Analysis of the Vargo variance application considering the Gulf County Land  
Development Regulations
- Pages 3-5 Analysis of the Vargo variance application considering the controlling case law
- Pages 5-6 Analysis of the Vargo variance application considering the Gulf County  
Comprehensive Plan
- Page 6 Analysis of the Vargo variance application and its attachments

**THE STUDSTILL LAW FIRM, PLLC**  
 CLAYTON B. STUDSTILL and LISA J. STUDSTILL  
 ATTORNEYS AT LAW

On October 17, 2011, the Planning and Development Review Board (PDRB) heard the variance request and approved it contingent upon giving the adjacent neighbors an opportunity to comment. Mr. Imm was duly notified by the Planning and Building Department who shared their analysis related to the setback variance request in a letter dated November 2, 2011.

Gulf County adopted Unified Land Development Regulations (LDR's) in 1993 which were revised in 1996. Section 2.05.07 of the LDR's is titled VARIANCES – Requirements and Procedures. The introduction to the rule uses terms that are mandatory and not discretionary meaning that it is never appropriate to grant a variance unless and until all the requirements for the grant have been met. The rule states that “a variance from the terms of these regulations **shall not be granted** by the PDRB unless and until the following requirements or procedures are met...”

The rule continues with lettered and numbered paragraphs describing what must occur and be determined in order to properly find that a variance is appropriate in the specific situation. Those requirements are addressed below within the context, and order, of the original source – the Gulf County LDR's pages 11-23,24. Any emphasis and analysis added (in italics) is my own.

LDR Section 2.05.07 VARIANCES – Requirements and Procedures

- A. A written application for a variance (hardship relief) is submitted to the PDRB demonstrating that a hardship exists based on one of the following conditions:
1. That special conditions and circumstances exist which are peculiar to the land, structure or buildings involved and which are not applicable to other lands, structures or buildings in the same district;

*The applicant does not argue that this land is special or peculiar such that the setback rules should not apply to it. Therefore the PDRB must find that this land is ordinary and must not grant a variance from the setback requirements that are applicable to other lands in the district.*

2. That literal interpretation of the provisions of this Code would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of these regulations;

*The applicant does not argue, nor is he able to argue, that he has a right*

*protected broadly by the Constitution that he is not able to enjoy, or specifically that he is being treated unfairly by a strict application of the Code.*

3. That the special conditions and circumstances do not result from the actions of the applicant;

*In the Project Description submitted with the application for variance, the applicant is arguing that ignorance of the law is an excuse worthy of qualification for a variance. The landowner, his designer, and engineer, all had knowledge of or did discover the setback in a timely and reasonable fashion. The condition actually being claimed is that development of this second tier property will only have a view of the Gulf of Mexico if a variance is granted. There is no special condition or circumstance.*

*I have had the opportunity to speak to the designer, Seth Campbell of Paradise Drafting, who will testify that the original set of design drawings he produced for the applicant complied with all applicable building setbacks. In other words he designed the home to fit on the land without requiring a variance. If the home fits without a variance then it is never appropriate to grant a variance, as there is no particular hardship upon which relief may be granted.*

4. That granting the variance requested will not confer on the applicant any special privilege that is denied by these regulations to other lands, structures or buildings in the same district.

*A grant of variance to the setback requirement would absolutely confer on the applicant a special privilege that other landowners within the district and in a similar situations are denied and do not enjoy. The state of Florida has acknowledged waterfront landowners' right to a view in Section 403.9323(3). Similar protections do not exist for non riparian landowners. Gulf County regulations do not provide for a right to a view to second tier landowners.*

5. No non-conforming use of neighboring lands, structures or buildings in the same district, and no permitted or non-conforming use of land, structures or buildings in other districts shall be considered grounds for the issuance of a variance.

*In the November 2, 2011 letter, which summarized the PDRB meeting, the PDRB discussed the impact of FDEP permit requirements and other lands within the district. This rule exists because each and every piece of land is unique and Gulf County did not wish to be bound by precedent or create precedent that an applicant may rely upon. Each and every variance application must be considered on its own merits i.e. demonstrating a unique hardship. The applicant is not in a situation where the Florida Department of Environmental Protection (DEP) is conditioning the issuance of its Beaches and Coastal Systems (CCCL) permit on the receipt of a setback variance. The*

*applicant decided that this spot is where he wants to locate the home even with knowledge of the County LDR's. Additionally, and as stated in the November 2, 2011 letter, DEP often pushes development landward away from the beach. In my six years of DEP CCCL permitting experience in four counties, not once has an applicant been required to move a home laterally into a setback except where a resource needed avoidance, and only then when all possible landward movement had been met. There are no protected resources on this lot that cannot be taken by DEP/COE permit authorization.*

*Gulf County is not bound by precedent as the Rules do not allow for the creation of precedent as every piece of land is unique and every application must be judged on its own merits.*

- C. The PDRB shall make a finding that the requirements regarding hardship relief have been met by the applicant for a variance, that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land, building or structure.

*The PDRB failed to publish or make a finding of hardship. The specific language of the rule is definite and the criteria is mandatory (i.e. "shall make a finding" means "must comply with the criteria"). Without a finding of hardship no variance is justified. The record does not reflect any discussion of necessity or minimization. Any discussion of minimization would have ended with a determination that no variance is necessary for reasonable use of the land, building or structure. The lot is buildable as it currently exists.*

- D. The PDRB shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of these regulations, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

*The PDRB did not find that the grant of variance is "in harmony" with the purpose and intent of the regulations and therefore does not comply with the rule.*

Generally, a variance is authorized if due to circumstances **unique to the applicant's property itself** and not shared by other property in the area; there exists an undue and unnecessary hardship created by regulation.

**1. The hardship cannot have been self-created.**

In this case the hardship is self created. The hardship criteria found in the LDR is based on a long line of cases and has been strictly construed by the courts. Josephson v. Autrey, 96 So.2d 784 (Fla. 1957).

The criteria has been interpreted to mean three things:

a. A mere economic disadvantage due to the owner's preference as to what he would like to do with the property is not sufficient to constitute a hardship entitling the owner to a variance. Burger King v. Metropolitan Dade County, 349 So.2d 210 (3 DCA 1977); Metropolitan Dade County v. Reineng, 399 So.2d 379 (3 DCA 1981); Nance, supra; Crossroads Lounge v. City of Miami, 195 So.2d 232 (DCA 1967). If, however, the only allowable uses are economically impossible, then a variance would be allowed. Nance II.

b. Neither purchase of property with zoning restrictions on it, nor reliance that zoning will not change, will constitute a hardship. Friedland v. Hollywood, 130 So.2d 306 (DCA 1961); Elwyn v. Miami, 113 So.2d 849 (3 DCA 1959).

c. If a purchaser buys land with a condition creating a hardship upon it, the owner is only entitled to such variance as his predecessor in title was entitled. If the owner participated in an affirmative act which created the hardship (such as by purchasing only a substandard piece of a larger lot), then the hardship should be ruled self-created. Coral Gables v. Geary, 383 So.2d 1127 (3 DCA 1980).

The requirement that a variance hardship cannot be self-created is required by Gulf County code and Florida case law. In Re Kellogg, 197 F. 3<sup>rd</sup> 1116, 1121 (11<sup>th</sup> Cir. 1999). Josephson v. Autrey, 96 So.2d 784 (Fla. 1957) (superceded by statute on other grounds in Grace v. Town of Palm Beach 656 So.2d 945 (Fla. DCA 1995); Town of Ponce Inlet v Rancourt, 627 So.2d 586, 588 (Fla. DCA 1993).

The purchase of property with zoning restrictions on the property will normally not constitute a hardship. Friedland v. Hollywood, 130 So.2d 306 (DCA 1961); Elwyn v. Miami, 113 So.2d 849 (3 DCA 1959).

Namon v. DER 558 So. 2d 504 (Fla 3<sup>rd</sup> DCA 1990) and the cases cited therein address cases where property is purchased AFTER adoption of prohibitory regulations. The court in Namon recognized such pre-existing notice as applied to takings analysis in Florida cases, as follows: "Appellants are deemed to purchase the property with constructive knowledge of the applicable land use regulations. Appellants bought unimproved property. A subjective expectation that the land could be developed is no more than an expectancy and does not translate into a vested right to develop the subject property. See Graham v. Estuary Properties, Inc., 399 So.2d 1374, 1382, 1383 (Fla.), cert. denied sub nom. Taylor v. Graham, 454 U.S. 1083, 102 S. Ct. 640, 70 L. Ed. 2d 618 (1981).

"A 'reasonable investment-backed expectation' must be more than a 'unilateral expectation or an abstract need'"; Namon citing Claridge v. New Hampshire Wetlands Board, 125 N.H. 745, 485 A.2d 287, 291 (1984)

"A person who purchases land with notice of statutory impediments to the right to develop that land can justify few, if any, legitimate investment-backed expectations of development rights which rise to the level of

constitutionally protected property rights"; cf. Elwyn v. City of Miami, 113 So.2d 849, 852 (Fla. 3d DCA) "One who purchases property while it is in a certain known zoning classification, ordinarily will not be heard to claim as a hardship a factor or factors which existed at the time he acquired the property.", *cert. denied*, 116 849 (Fla. 1959).

As any hardship that may be found in this case is self created it fails to comply with the criteria of the LDR variance provision §2.05.07 (A)(3) and the request for variance must be denied.

## 2. Consistency with neighborhood and scheme of regulations.

Granting the variance must not adversely affect the zoning scheme as a whole. Granting of a variance is illegal, and beyond the authority of any local administrative body, where the proposed variance is not shown to be in harmony with, and not "in derogation of the spirit, intent, purpose, or general plan of [the zoning] regulations." Troup v. Bird, 53 So.2d 717 (Fla. 1951).

"A variance should not be granted where the use to be authorized thereby will alter the essential character of the locality, or interfere with the zoning plan for the area and with rights of owners of other property." Elwyn v. City of Miami, 113 So.2d 849 (Fla. 3rd DCA 1959).

The PDRB admits that neighbors are objecting to this application and have given them the opportunity to respond. This requested variance would certainly interfere with the rights of other property owners and Mr. Imm wishes to have those rights respected. The building setbacks from roadways are for public safety and to insure access in times of emergency. The County is charged with duty to protect the public health, safety, and welfare of its citizens and the maintenance and respect of zoning laws such as reasonable building setbacks are one way in which that duty is discharged.

The specific analysis of the Vargo variance application found on pages 1-3 of this document describe other criteria that is found in the LDR. My conclusion focuses on the lack of hardship and the cases that have interpreted what constitutes a hardship, but all variance standards must be met.

## 3. Consistency with Comprehensive Plan

Granting of a variance is illegal, and beyond the authority of any local administrative body, where the proposed variance is not shown to be in harmony with, and not "in derogation of the spirit, intent, purpose, or general plan of [the zoning] regulations." Troup v. Bird, 53 So.2d 717 (Fla. 1951). All development orders, including variances, must be consistent with duly adopted Comprehensive Plan policies, objectives and goals under Florida Statutes 163.3215 (which also establishes procedures to challenge variances on the grounds of consistency with comprehensive plan policies). Machado v. Musgrove, 519 So. 629 (Fla. 3<sup>rd</sup> DCA 1987). And the remedy awarded by courts if a

development order is found to be inconsistent with a comprehensive plan policy can include demolition of offending structures. Pinecrest Lakes v Shidel, 795 So. 2d 191 (Fla. 4<sup>th</sup> DCA).

The Gulf County Comprehensive Plan (Comp Plan) Chapter 1, Policy 1.7.6 encourages and enforces subdivision land development to provide for cul-de-sac or turnaround space. The subject property was subdivided when this Policy was not in effect, but the Plan must be considered in all applications. If this variance is granted, there will be even less room for service and emergency vehicles to operate. With the development of one more lot the level of service required on this road will increase by more than 25%.

The Comp Plan, Chapter 2, Policy 1.1.4 requires the County to implement LDR's establishing safe on site traffic flow.

The Comp Plan, Chapter 2, Objective 1.4 states that Gulf County shall protect existing rights-of-way from building encroachment.

#### The Variance Application

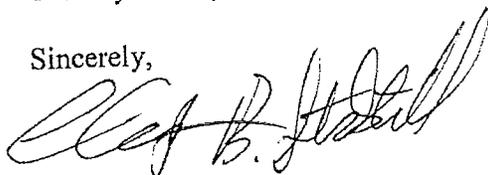
The application itself has several faults. The property has a Land-Use Designation of 1<sup>st</sup> Tier G. This also appears on the Property Appraiser website. The Vargo lot is clearly second tier with two homes immediately waterward of the property.

The variance requested is "ten feet from the easement boundary" but the drawings provided as part of the application clearly label the proposed home location as 8.28 feet from the right-of-way. Therefore this application for a setback variance to construct a multi-story structure does not just encroach on the minimum setback from the right-of-way (20 feet) but also encroaches into the building setback of 9.5 feet.

For the reasons described above, Mr. Frederick Charles "Chuck" Imm opposes Mr. Keith Vargo's petition for a variance and would request that the same be denied.

Thank you for your time and consideration in this matter.

Sincerely,



Clayton B. Studstill, Esq.