

Gautier Planning Commission

Regular Meeting Agenda

August 7, 2014

GPC #14-14-AP

5598 Carrie St: Staff Appeal

VII. NEW BUSINESS

A. QUASI-JUDICIAL

1. REQUEST FOR AN APPEAL TO STAFF DETERMINATION OF SECTION 13.3, NONCONFORMING USE, REGARDING A RENTAL MOBILE HOME IN R-1 ZONING DISTRICT, 5598 CARRIE ST (JASON DIAMBRA, OWNER) (GPC CASE #14-14-AP)

**CITY OF GAUTIER
STAFF REPORT**

To: Chairman and Members, Planning Commission

From: Erica Greene, City Planner

Through: Chandra Nicholson, Planning & Economic Development Director

Date: July 25, 2014

Subject: Appeal to Staff Decision Regarding Allowing a Mobile Home to be used as rental property in the R-1 Low Density Single Family Residential zoning district (GPC Case No. 14-14-AP)

REQUEST:

The Economic Development/Planning Department has received an Appeal to Staff Decision from Jason Diambra contesting the determination of a “cessation of use” pursuant to Section 13.3.1 for his nonconforming mobile home, and argues that the nonconforming statues should continue. The lot is located at 5598 Carrie Street, PID #85260024.000. The application fee of \$100 was paid on July 11, 2014. All public notice requirements have been met.

BACKGROUND:

The request property is a rental dwelling located in the R-1 Low Density Single Family Residential zoning district which only allows for single-family detached dwelling units and related recreation facilities which complement the area.

The property owner purchased the property as a nonconforming use in 2009. The property is a late 1960’s model. The owner has maintained all utilities in his name.

DISCUSSION:

The enforcers of the city’s unified development ordinance are specifically charged with not encouraging the continuation of nonconforming uses. The code permits a nonconforming use to continue until such time as the dwelling **“becomes vacant for any reason, for a period in excess of sixty (60) consecutive days. Any subsequent use shall conform to the regulations of this Ordinance for the district in which it is located”** (Section 13, below).

The code enforcement officer documented the mobile home for sale by commercial realty and contacted the realtor on or about May 1, 2014. The officer informed the realtor that the area was R-1 and because the property had been vacant for 60 days, the mobile home must be moved and could not be re-occupied in the district. The code officer verified that there was an active water account. However, no water was used in March and April and 200 gallons were used on May 1st. The realtor confirmed this and stated to the code officer that the maintenance guy was cleaning the mobile home that day.

After communications with the realtor, the property owner contacted the code officer and was advised of the same. Mr. Diambra subsequently filed an appeal on May 27th. However, all application items were not received until July 11th. The code officer finds that utilities have not been in use and there has been a cessation of use as a dwelling for at least four months. It is this determination that is the subject of the appeal.

General Features:

Location: Lot 35, Driftwood Park Subdivision (See Exhibit A)

Principal Arterial: Highway 90

Gross Lot Acreage: approximately 0.00 acres

Potable Water and Wastewater Services: Existing from City

Zoning and Land Use:

Current zoning of the applicant's property: R-1 Low Density Single Family Residential

Current Surrounding Zoning: R-1 Low Density Single Family Residential

Current Surrounding Existing Land Use: Very Low to Low Density Residential to the north, east and west (See Exhibit C)

Comprehensive Plan Future Land Use Designation: Single Unit Residential (See Exhibit D)

DETERMINATION OF APPLICABLE LAW:

SECTION 13.3: Nonconforming Use of Structures and Premises

A nonconforming use shall not be expanded, extended or enlarged in floor area, or changed to another nonconforming use. Structures housing a nonconforming use may be improved or extended to an extent which does not exceed fifty (50) percent of the market value as appraised by the Jackson County Tax Assessor's appraisal on record.

13.3.1 Termination of Nonconforming Use

A nonconforming building, structure, dwelling, or land use or portion thereof, existing at the time of adoption of these regulations which is or hereafter becomes vacant for any reason, for a period in excess of sixty (60) consecutive days any subsequent use shall conform to the regulations of this Ordinance for the district in which it is located.

SECTION 3.7: Appeals

Persons aggrieved with decisions of administrative staff or decisions of the Planning Commission may appeal the decisions

3.7.1 Appeal of Administrative Decision

Appeals from written administrative decisions of the Economic Development Director in the administration and enforcement of the provisions of this Ordinance shall be heard by the City Planning Commission. A "Notice of Appeal" in the form of a letter with necessary documentation shall be filed within ten (10) days from the date of the decision with the Economic Development Director outlining the circumstances and the ground of the appeal. The Economic Development Director shall place the Notice of Appeal on the agenda of the Planning Commission meeting. Appropriate fees shall apply.

Upon hearing such appeal the Planning Commission may, in conformance with the provisions of these regulations, reverse or affirm, or may modify, wholly or partially, any order, requirement, decision, or determination of the Economic Development Director and/or his staff.

RECOMMENDATION:

The planning commission shall utilize Section 13.3 in their determination of the appropriateness of the appeal.

Based on the appropriateness of the request and the information provided, the Commission may:

- a) Reverse the Staff determination to not allow the conforming use to continue;
- b) Affirm the Staff determination that a cessation of use has occurred.

ATTACHMENTS:

1. Applicant's Exhibit 1 – Application
2. City's Exhibit A – Location Map
3. City's Exhibit B - Existing Zoning Map
4. City's Exhibit C – Existing Land Use Map
5. City's Exhibit D – Future Land Use Map

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GAUTIER, MISSISSIPPI
ECONOMIC DEVELOPMENT/PLANNING DEPARTMENT
PUBLIC HEARING APPLICATION

Public Hearing Number

PERMIT REQUESTED:

<u>TO BE HEARD BY GAUTIER PLANNING COMMISSION:</u>		<u>FEE:</u>
Change in Zoning District	_____	\$300.00
Major Development	_____	No Fee
Home Occupation	_____	\$100.00
Variance (greater than 30%)	_____	\$100.00
Appeal to Staff Decision	<u>X</u> _____	\$100.00

<u>TO BE HEARD BY ECONOMIC DEVELOPMENT/PLANNING DIRECTOR ON STAFF REVIEW:</u>		<u>FEE:</u>
Home Occupation	_____	\$100.00
Variance (30% or less)	_____	\$100.00

See Attachment for Application Procedure

Name of Applicant: JASON DIAMBRA
 Name of Business: _____ Phone: 497-0526 / 326-5984
 Business Address: _____ Mailing Address (if Different): 713 Rays Rd
 Reason for request, location and intended use of Property: Appeal of Staff Decision
5598 Carrie St. Continual use as rental property.

ATTACHMENTS REQUIRED AS APPLICABLE:

- X 1. Diagram of intended use, showing dimensions and distances of property, building with setbacks, parking spaces, entrances and exits.
- X 2. Legal descriptions and street address.
- X 3. A detailed project narrative.
- X 4. Copy of protective covenants or deed restrictions, if any.
- NA 5. Copies of approvals, or requests for approval, from other agencies, such as, but not limited to, the Mississippi State Department of Health, U.S. Army Corp of Engineers, Mississippi Department of Environmental Quality and Department of Marine Resources.
- NA 6. Any other information requested by the Economic Development/Planning Director and/or members of the Site Plan Review Committee.

Signature of Applicant: [Signature]
 Date of Application: 7/9/14

FOR OFFICE USE ONLY	
Date Received	<u>7/10/14</u> Verify as Complete _____
Fee Amount Received	<u>100.00</u> C# <u>3400</u>
Initials of Employee Receiving Application	<u>JB</u>

Gautier, Mississippi

PROCEDURE FOR PUBLIC HEARING APPLICATION

- A. A Public Hearing conducted by the Gautier Planning Commission is required on the following applications for permits:
 - (1) Home Occupations (*if appealed, or if Economic Development/Planning Director chooses to hold public hearing.*)
 - (2) Variances (*other than those for off-street parking spaces and setbacks from property lines that are 30% or less*)
 - (3) Zoning applications that would change the City of Gautier Zoning Map if approved.
 - (4) Wireless Telecommunication Facilities.
- B. Complete front of the application form.
 - (1) Applicant must be owner of property or agent of the owner.
- C. Submit fee to cover publication and handling costs as follows:
 - (1) To Be Heard by Gautier Planning Commission:
 - (a) Change of Zoning Districts.....\$300.00
 - (b) Major Development.....No Fee
 - (c) Home Occupations\$100.00
 - (d) Variance.....\$100.00
 - (e) Appeal to Staff Decision.....\$100.00
 - 2) To Be Heard by Economic Development/Planning Director as Staff Review:
 - (a) Home Occupations\$100.00
 - (b) Variance\$100.00
- D. Public Notice will be published in a local paper of general circulation not less than fifteen (15) days prior to the date for the public meeting before the Planning Commission. All property owners, within the appropriate notification distance from the property under consideration, will be notified by first class mail. Such notices will be mailed not less than fifteen (15) days prior to the public hearing. If action is needed before the City Council, the Economic Development/Planning Director will submit the findings of fact and the recommendations of the Planning Commission to the City Clerk not later than one (1) week prior to the next available Council meeting.
- E. The Gautier City Council will act on the application at the next available time on their agenda before final approval or rejection of application.
- F. If approved, application for the proper permit for the use intended, shall be made through the City of Gautier Economic Development/Planning Department.

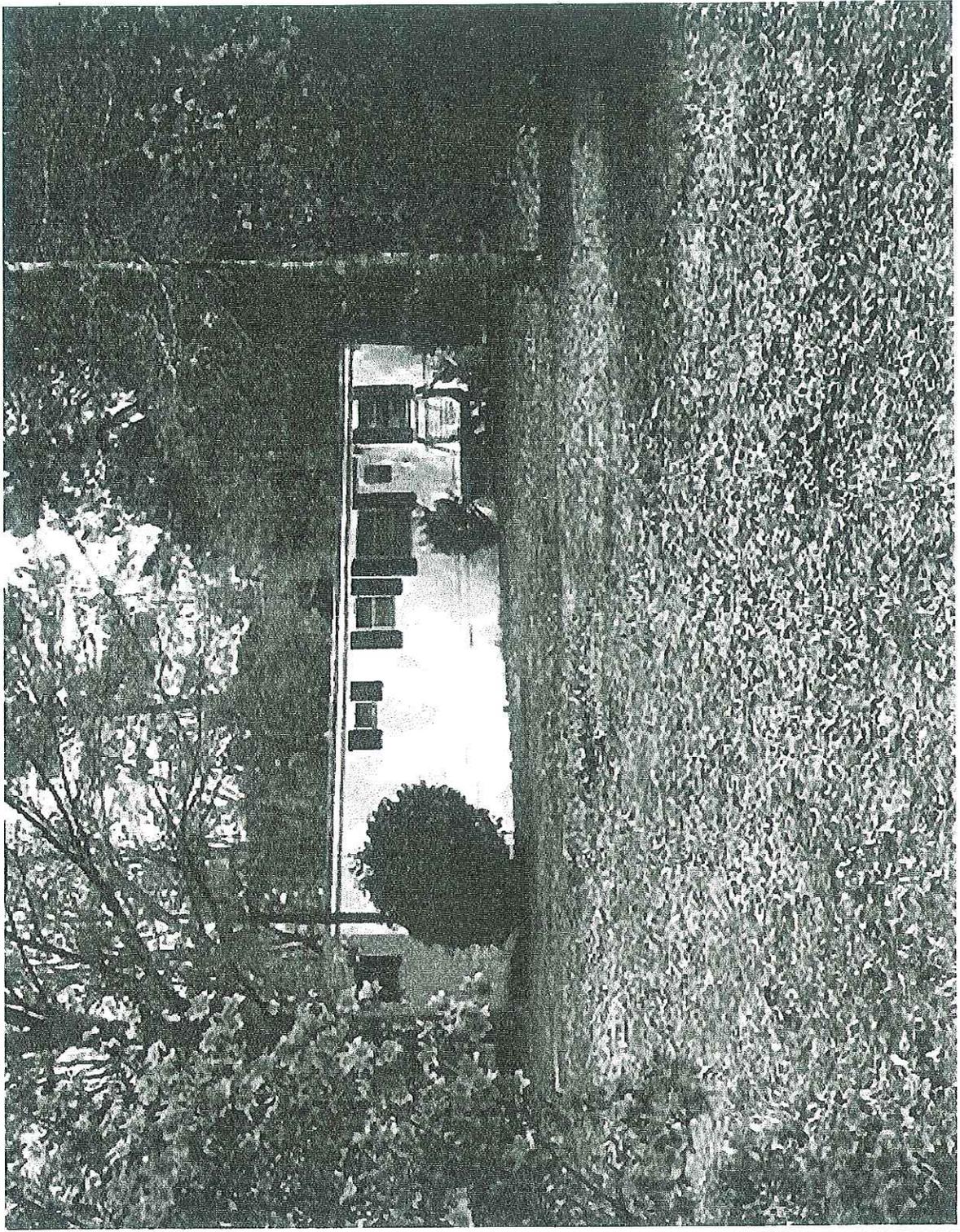
Dear Planning Commission Members,

My name is Jason Diambra and my wife and I are the owners of the property in question at 5598 Carrie Street. We bought the property back in 2009 as an investment in our neighborhood. We have lived in this same neighborhood since 2000 and in the Gautier area since 1999. After we purchased the property we spent four to five thousand to clean it up remodel it clean up the yard and bring everything up to code so it could be rented. We have always kept the place neat and clean even when vacant. The utilities have been kept in our name so they have always been paid and kept current. Basically the only reason that we are having to appeal this decision to you is that the neighbor that lived next door died and his place went into probate. The yard was subsequently overgrown and unkept and attracted the attention of the city. My wife and I have recently bought a piece of property around the corner from ours to build a new house and put the Carrie St. property up for sale to pay for it. The inspector who was in charge of doing the notices for the property next door saw our realtor's sign and gave us a call to let us know we had to have something done within sixty days, and the property had to be reinspected with each departure of any occupant. To be completely honest with you I thought when we spoke on the phone this was going to be an attempt to hit me up for money but to his credit he was straight up and was just letting me know the rules. This call took place on May 2nd and we came to the understanding that I have to have the place sold or rented by July 1st. A couple of weeks later I put in for the place to be inspected for occupancy and was told that even though my utilities were always paid and kept current there had been no constant use for over sixty days and they would not allow inspection. This was strange to me because there has been several times this property was vacant over sixty days because I just don't let anybody move in. I live in this neighborhood and raise my children here. There have been several times that we would rather lose two or three months rent rather than let some knuckleheads move in. Now whatever the rules are they are being enforced because the neighbors yard was unkept, if the property was not in probate and the grass was cut I wouldn't be here today.

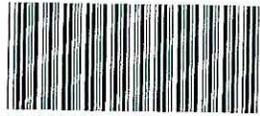
Here lies the problem. Now after I was told I had sixty days which was already going to cost me eight or ten thousand of the asking price so I could get it sold in a hurry, now the city is trying to shut me out of the entire thirty-five or forty thousand dollar value of this property. To be honest with you we are within about fifteen to twenty thousand of breaking even on this property. But, it would be a hell of a note for the city to say thank you for investing in the neighborhood in which you live, spending money to keep everything clean and current for the last five years and keeping the trash out of the neighborhood so if we make you move this mobile home you can sell the property and maybe you can break even. Thanks. From what I understand from the city, if I wanted to, I can't even move in my own house. If I sold the one I live in and wanted to live there while we were building the new one I can not. If I wanted to let my oldest daughter who is going to start college in a year live there I can't, if I wanted to let my father live there where we could keep an eye on him since he is aging I can't. I want the commission members to understand I am not a wealthy man. My wife works days and I work nights so we can stay on top of our kids, and we have a business on the side that we work hard at to try and get ahead. If I had money just laying around the outcome of this appeal would not be that big of a deal, but I got a kid getting ready to start college and two about to get braces. I simply can't afford to get hit for thirty-five thousand because a neighbor died. Not in this wonderful economy. I know you see a lot of cases and appeals but please realize the seriousness of your decision. I know the city is trying to get

new houses built to bring up property values and tax revenues, but by costing me thirty-five thousand it would be counter active because this means the new house we were going to build would be at least three to five years out while trying to recover. I have worked too hard since the storm to be knocked back four or five years. If the city feels they have no choice but to enforce the current regulations across the board how about they cut me a check for thirty grand and turn the property into a neighborhood park for all the kids. This works for everyone. Anyway, thank you for your time and upcoming decision.


7/9/14



LUCKETT LAND TITLE, INC.
918 Washington Avenue
Ocean Springs, Mississippi 39564



200917424 2 PGS

Terry Miller
CHANCERY CLERK
RECORDING FEE: \$14.00
#200917424 BK:1587 PG:268-269
09/02/2009 11:06 AM 2 PGS
KCOULTER, DC Rcpt#012314

Prepared by: LUCKETT LAND TITLE, INC.
918 Washington Avenue
Ocean Springs, Mississippi 39564
(228) 875-0176

Return to: LUCKETT LAND TITLE, INC.
918 Washington Avenue
Ocean Springs, MS 39564
(228) 875-0176

STATE OF MISSISSIPPI
COUNTY OF JACKSON

WARRANTY DEED

For and in consideration of the sum of Ten Dollars (\$10.00), and other good and valuable consideration, cash in hand paid, the receipt of which is hereby acknowledged, we,

DOROTHY A. SCOTT
2465 Highway 15 South
Ovett, Mississippi 39464
601-649-4706

do hereby sell, convey and warrant unto

JASON M. DIAMBRA and TAMMY S. DIAMBRA
713 Roys Road
Gautier, Mississippi 39553
228-326-5984

not as tenants in common, but as joint tenants with right of survivorship in either, the property situated and being in JACKSON County, State of MISSISSIPPI, described as follows, to wit:

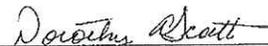
Lots 34, 35 and 36, Driftwood Park Subdivision, as per map or plat thereof on record in the office of the Chancery Clerk of Jackson County, Mississippi, in Plat Book 5, Page 39.

INDEXING: Lots 34-36, Driftwood Park S/D, Jackson County, MS

Ad valorem taxes have been prorated as of the date of this conveyance, and are hereby assumed by the Grantees herein.

This conveyance is subject to any and all restrictions, easements and reservations affecting said property of record in the office of the Chancery Clerk of JACKSON COUNTY, Mississippi..

WITNESS THE SIGNATURE of the undersigned on this the 20th day of August, 2009.


DOROTHY A. SCOTT, Grantor

STATE OF MISSISSIPPI

COUNTY OF JACKSON

Personally came and appeared before me, the undersigned authority, in and for the above named County and State, the within named Dorothy A. Scott., who acknowledged to me that she signed and delivered the above and foregoing instrument on the day and date therein mentioned.

GIVEN under my hand and seal of office on this the 20th day of August, 2009.



Barbara Jean Mason
NOTARY PUBLIC

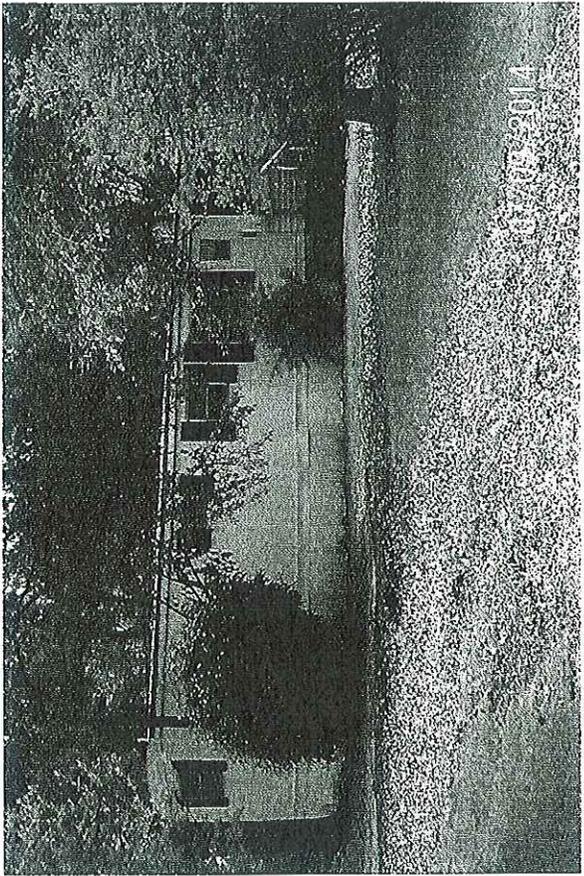
My Commission Expires:

My Commission Expires Sept 8, 2010

PREPARED BY:

LUCKETT LAND TITLE, INC.
918 Washington Avenue
Ocean Springs, MS 39564
228-875-0176.

bjm



13.2.6 Major Damage to Nonconforming Structures

Should a nonconforming structure be destroyed or damaged by any means to an extent that would be in excess of fifty percent (50%) of the true value as determined by the Jackson County Tax Assessor it shall not be reconstructed or use made of except in conformity with the provisions of these ordinances, however, this provision shall not apply to any nonconforming use which at the time of destruction or damage is owned by the same persons or entity who was the owner at the time of the passage of the Unified Development Ordinance, dated December 7, 2010.

SECTION 13.3: Nonconforming Use of Structures and Premises

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SECTION 13.4: Catastrophic Provisions

In the event of a natural disaster, which is determined by the State of Mississippi or the United States Government; any damaged nonconforming uses may be continued, where such continuance is declared to be in the public interest by the City Council.

SECTION 13.5: Outdoor Advertising and Structures

When any commercial advertising structure or billboard, being an outdoor sign whereby the advertising content is for lease or rent, that is legally in existence either as a conforming sign or a nonconforming sign that is required to be removed for public purposes, just compensation shall be paid for the removal thereof according to the terms and conditions as found in the laws of the State of Mississippi controlling outdoor advertising.

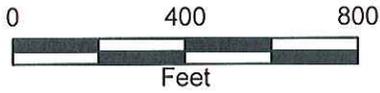
SECTION 13.6: Nonconforming Lots of Record.

In any district in which single-family dwellings are permitted, a single-family dwelling and customary accessory buildings may be erected on any single nonconforming lot of record at the effective date of adoption or amendment of this ordinance, notwithstanding limitations imposed by other provisions of this ordinance. Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership. Variance of yard requirements shall be obtained only through action of the Planning Commission.

EXHIBIT A

Location Map 5598 Carrie Street Staff Appeal

City Of Gautier
Economic Development/Planning



4

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GIS Division

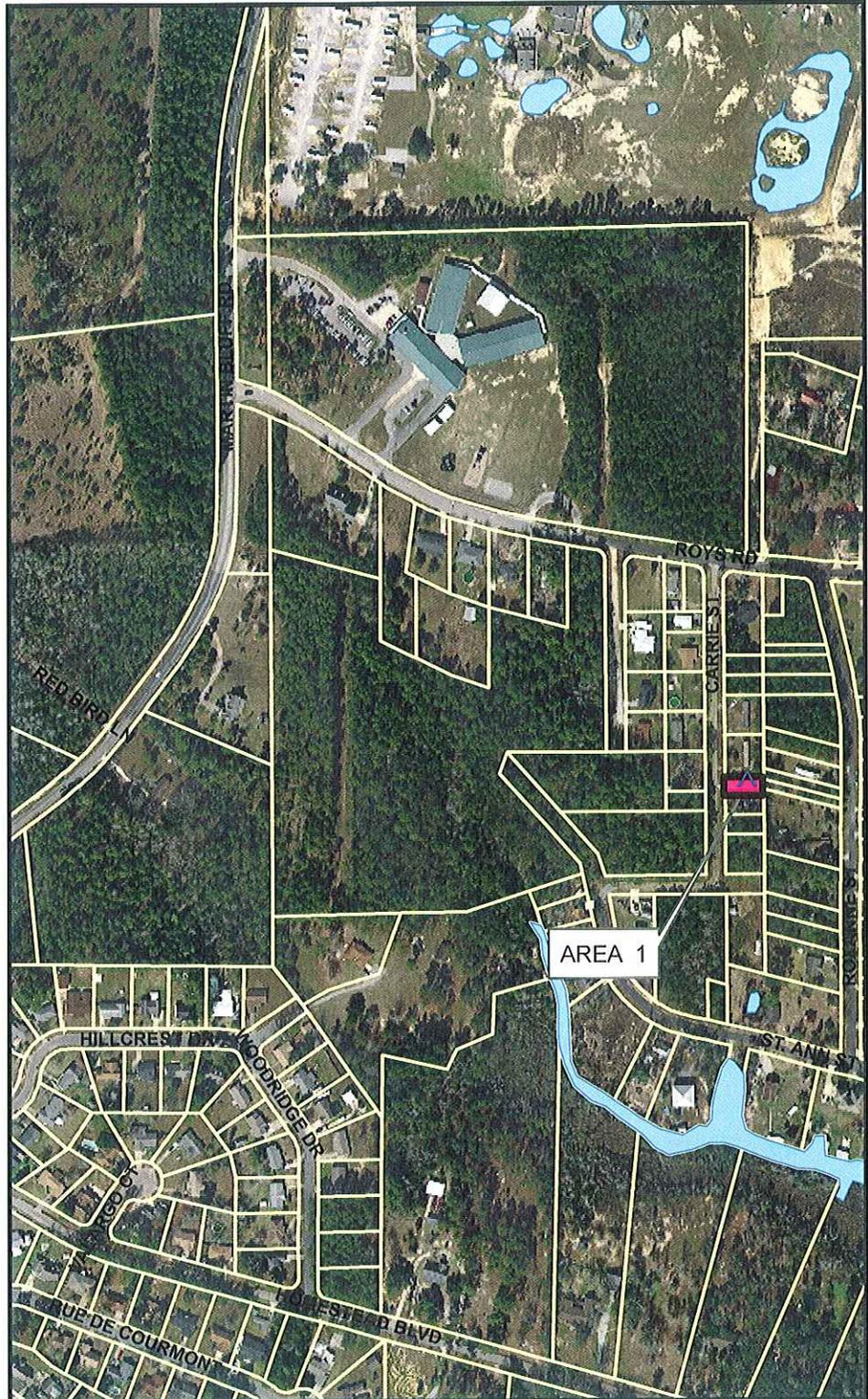
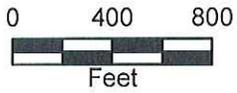


EXHIBIT B

Existing Zoning Map

City Of Gautier
Economic Development/Planning



4

Prepared by the
City of Gautier
GIS Division

Legend

- AG Agricultural
- PL Public/Semi-Public
- PUD Planned Unit Development
- R-1 Low Density Residential
- R-2 Multi-Family Residential
- R-3 Mobile Home District
- MUM
- TC
- MURC-1
- MURC-2
- MURC-MW
- C-1 Neighborhood Commercial
- C-2 Community Commercial
- C-3 Highway Commercial
- I-2 Industrial

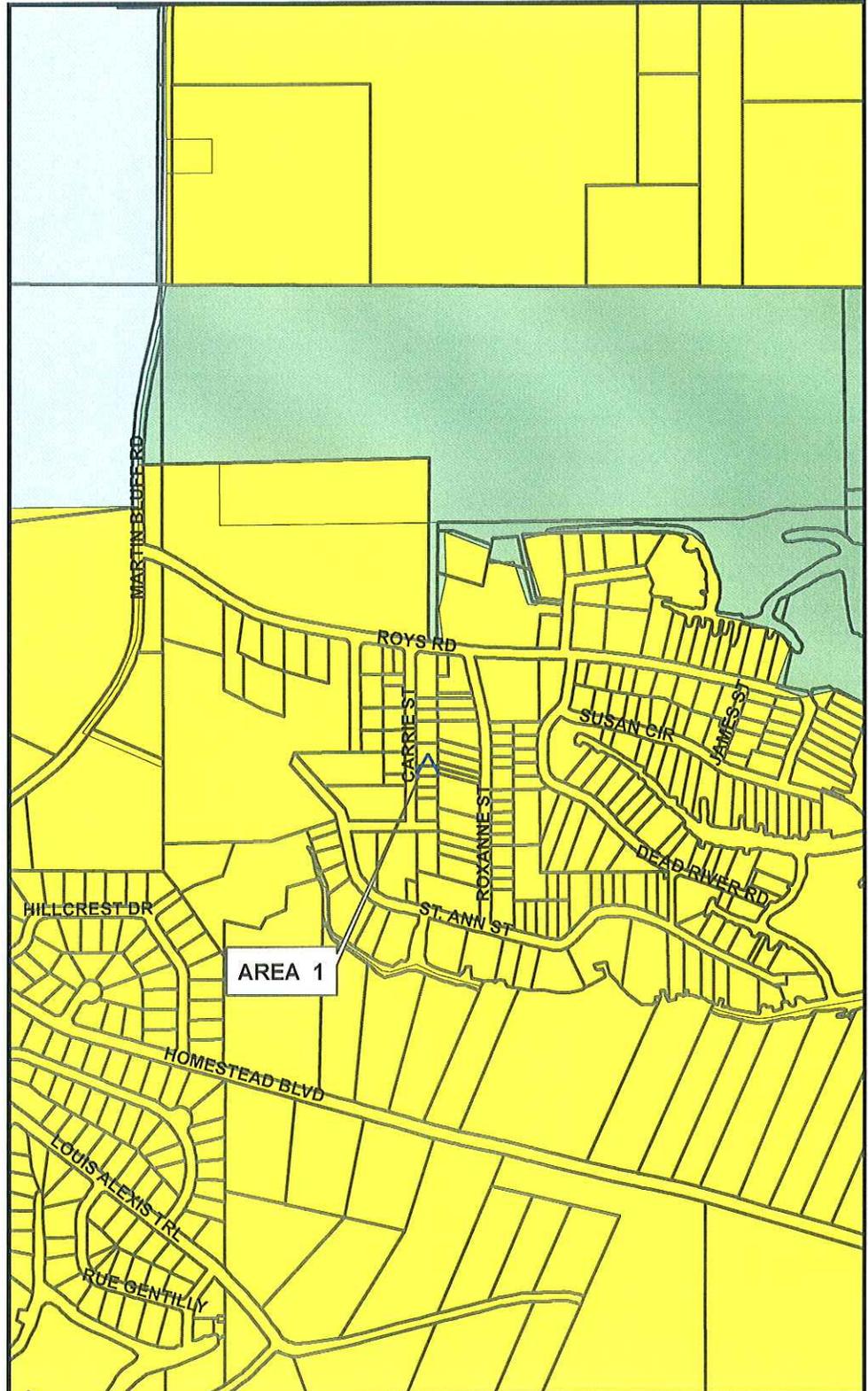
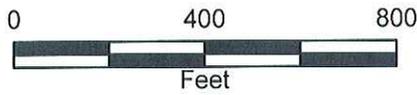


EXHIBIT C

Existing Land Use Map

City Of Gautier
Economic Development/Planning



4

Prepared by the
City of Gautier
GIS Division

Legend

EXISTING LAND USE

-  Commercial-Retail
-  Conservation
-  Civic
-  Industrial
-  Marina/Fish Camps
-  High Density Residential
-  Mobile Home
-  Mobile Home Park
-  Medium Density Residential
-  Office
-  Recreation
-  Very Low to Low Density Residential
-  Utility
-  Vacant

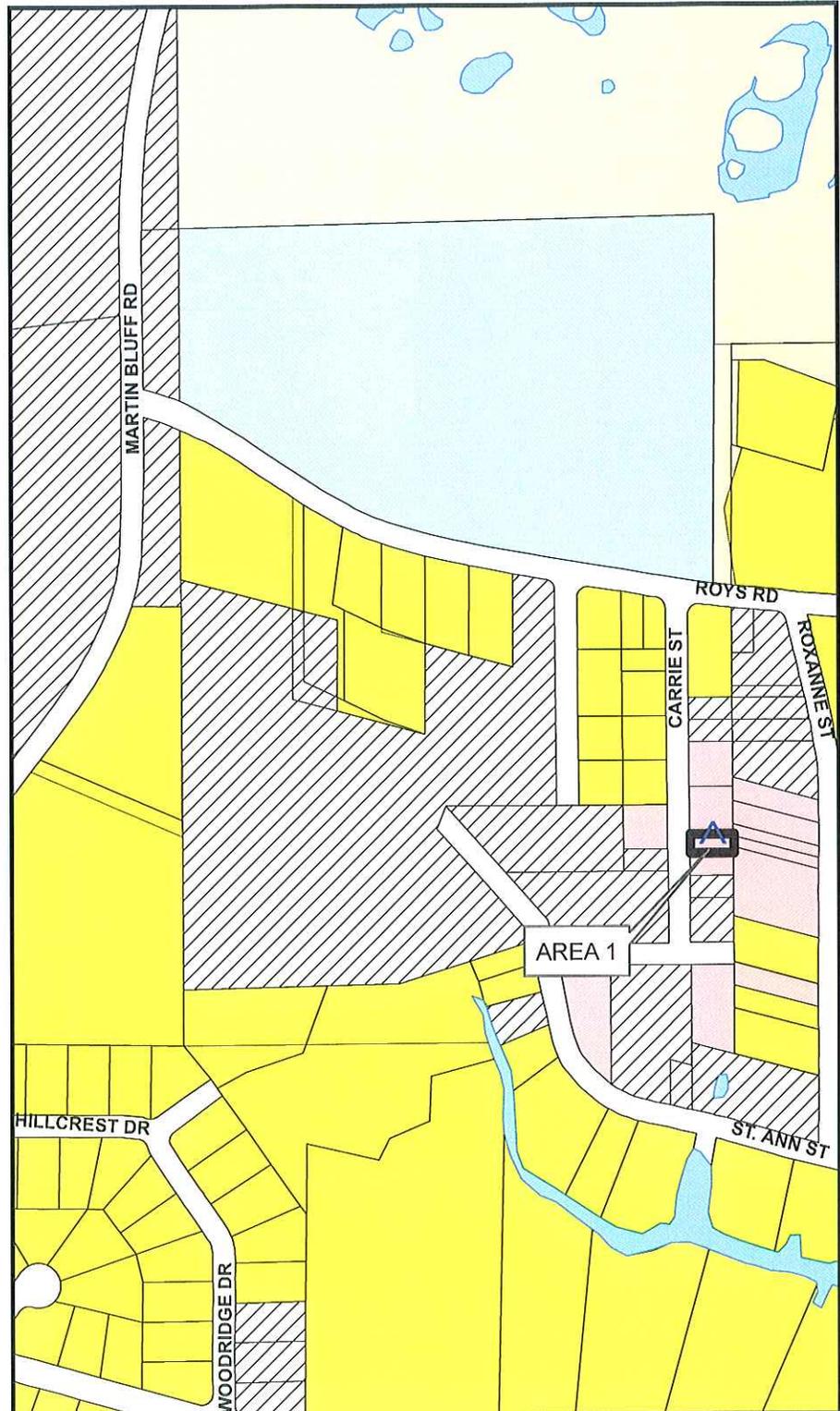
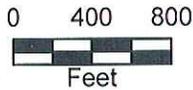


EXHIBIT D

Future Land Use Map

City Of Gautier
Economic Development/Planning



4

Prepared by the
City of Gautier
GIS Division

Legend

-  Civic
-  High Impact Commercial
-  Conservation
-  High Density Residential
-  Industrial
-  Low Density Residential
-  Medium Density Residential
-  Mobile Home Residential
-  Low Impact Commercial
-  Recreational
-  Recreational Commercial
-  Regional Scale Commercial
-  Mixed Use Residential
-  Town Center
-  Very Low Density Residential

