Gautier Planning Commission

Regular Meeting Agenda

April 07, 2016

GPC #16-06-AP

D&S Marine – 1105 Highway 90 - Staff Appeal

VII. NEW BUSINESS

A. QUASI-JUDICIAL

1. D&S MARINE - 1105 HIGHWAY 90 - REQUEST FOR AN APPEAL OF A STAFF DECISION OF UDO SECTION 5.2.2., USES PERMITTED BY RIGHT AND CONDITIONAL USE, REGARDING THE USE DESIGNATION OF A BUSINESS IN A C-3 HIGHWAY COMMERCIAL ZONING DISTRICT (GPC CASE #16-06-AP)

QUASI-JUDICIAL PROCEDURES

1. Announcement of Matter. Read the matter title to be considered.

2. Swear the Witnesses. All witnesses, parties, citizen participants and City Staff who plan to speak at the hearing shall collectively be sworn at the beginning of the hearing by the City Attorney

3. Ex Parte Disclosure. All members must disclose on the record any ex parte communications, to include any physical inspections of the subject property. The disclosure should include with whom any communication has taken place, a summary of the substance of the communication, and the date of the site visit, if any. If anyone has received written communications, the writing must be presented, read into record or a copy provided to all participants, and made a part of the official record.

4. Applicant Presentation.

5. Questions directed to Applicant. The applicant should answer any questions by the public, the Planning Commission, or others.

6. Staff Presentation. This includes presentation of the staff report into the official record.

7. Objections from Applicant. Confirm whether there are objections from the applicant regarding the staff report or development order.

8. Questions directed to Staff. The staff answers any questions by the public, the Planning Commission, or others.

9. Public Comments. Members of the public should be allowed to make comments regarding the application.

10. Applicant rebuttal/final comments

11. Staff rebuttal/final comments

12. Call for final questions.

13. Close public portion of the hearing.

14. Motion & Deliberation. Planning Commission makes a motion, and debates and deliberates regarding the application and development order.

15. Vote.

16. Close the quasi-judicial proceeding.

CITY OF GAUTIER
STAFF REPORT

To: Chairman and Members, Planning Commission

From: Chandra Nicholson, Planning & Economic Development Director

Date: April 1, 2016

Subject: Appeal to Staff Decision Regarding the Use Designation of a Business in a C-3 Zoning District, 1105 Highway 90 (GPC Case No. 16-06-AP)

REQUEST:

The Economic Development/Planning Department has received an Appeal to Staff Decision from Danny Senseney of D&S Marine regarding the Use Designation of a Business in a C-3 Highway Commercial Zoning District. The business is located at 1105 Highway 90 PID #81831540.050. The application fee of $100 was paid on February 16, 2016.

BACKGROUND:

The owner of the business in questions, Danny Senseney, operated a boat related business at 1105 Highway 90 under a different name prior to 2014. The business received numerous code enforcement complaints/notices due to property maintenance and care, blocking of exits, blocking of parking spaces, etc.

On August 13, 2013, the City of Gautier sent a letter (see attached Exhibit F) to the owner informing him he was operating outside of the use designated on his Privilege License and listing numerous other violations that needed to be corrected. The City determined the business to be operating more as a "Junkyard" than as a retail business. The letter informed the owner that he needed to come into compliance or further action would be taken.

In December 2013 in response to the Code Enforcement Violations, the owner approached the City about changing business locations and changing his business model to more of a retail business. He had a vision of selling mostly new merchandise, but would continue to sell some used merchandise. He wanted to sell fishing poles, tackles, etc. He planned to relocate to 2029 Highway 90 (the former NFL Hardware building) where he would have more room for his business.

In January 2014, the Gautier Planning Commission recommended approval of a Conditional Use for "Marine Sales and Service" in a TCMU, Town Center Mixed Use Zoning District so the business could be relocated to 2029 Highway 90 (the former NFL Hardware building). This move would have allowed the business to have more room. The City Council approved Planning Commission's recommendation, but the owner never received a New Business Permit or

Privilege License for the 2029 Highway 90 location, because he never completed the list of requirements.

In November 2014, the business owner requested to renew the Privilege License for 1105 Highway 90, but never received a valid Privilege License.

In May of 2015, the owner applied for a new business permit for "D&S Marine" to be located at 1105 Highway 90. A standard site inspection was performed for the new business and a list of comments were sent that would need to be resolved/addressed before a New Business Permit could be issued. One of the items to be addressed was the use designation and what was allowed within the C-3 District. See attached Exhibit G for the list of comments that were sent on June 12, 2015 and Exhibit E for some of the photos that were taken during the Site Inspection.

On September 8, 2015 the City sent a cease and desist letter to 1105 Highway 90 for operating a business without a license and gave 15 days or the City would proceed with legal proceedings to "enjoin" the owner from operating the business within the City.

On September 21, 2015, the City received a letter from Mr. Senseney's attorney (see exhibit I) stating that the owner did not agree with the Use Designation of either a Junkyard or Commercial Warehouse and asked to proceed with permitting without a Public Hearing. The case was then turned over to the City Attorney.

Mr. Senseney's attorney indicated to the City attorney that an appeal would be filed. On January 25, 2016, the City received a letter from Mr. Senseney's attorney (see Application, exhibit #1) stating that a Staff Appeal would be filed. An application for Staff Appeal was not received until February 16, 2016. See Exhibit 1 for the Owner's attorney correspondence.

General Features:

- Location: 1105 Highway 90 (See Exhibit A)
- Principal Arterial: Highway 90
- Gross Lot Acreage: approximately 0.37 acres
- Potable Water and Wastewater Services: Existing from City

Zoning and Land Use:

- Current Zoning of the Applicant's Property: C-3 Highway Commercial

- Current Surrounding Zoning: North, East, West: C-3 Highway Commercial; South: C-2 Community Commercial (See Exhibit B)

- Current Surrounding Existing Land Use: North, East, West: Highway Commercial; South: Very Low to Low Density Residential (See Exhibit C)

- Comprehensive Plan Future Land Use Designation: North, East, West: Low Impact Commercial; South: Mobile Home Residential (See Exhibit D)

DISCUSSION:

Staff performed a Site Inspection in May of 2015 to determine the Primary Use of the property (see exhibit E & G).

Staff has determined that the business in question most closely fits the definition of a "Junkyard" or "Warehouse, Commercial". Junk Yards are not currently allowed in a C-3 District and a Commercial Warehouse would require a Conditional Use Permit. The owner has appealed Staff's Decision. The owner states that he is operating as "Marine Sales and Service" or a "Boat Yard".

The business in question is located in a C-3 Highway Commercial Zoning District. UDO Section 5.2.2, Uses Permitted by Right and Conditional Uses, lists the following Uses that will be discussed below:

Table No. 4: Uses Permitted in Non Residential, Public Land and Town Center Districts							
		C-1	C-2	C-3	I	PL	TC
	Boat Yard		c	P	C		
	Junkyard				C		
	Marine Sales and Service			P			C
	Warehouse, Commercial			C	P		

The UDO defines the above listed uses in Article II as follows:

> **BOAT YARD:** A premise or site used as an industrial establishment for the provision of all such facilities as are customary and necessary to the construction, reconstruction, repair, or maintenance and accessory sale of boats, marine engines, or marine equipment, supplies, or services of all kinds including, but not limited to, rental of covered or uncovered boat slips, or dock space or enclosed dry storage space, lifting or launching services.
>
> **JUNKYARD:** A place where waste and discharge of salvaged materials including inoperable vehicles, boats and other small engines are bought, sold, exchanged, baled, packed, disassembled or handled, including auto wrecking yards, used lumber yards, house wrecking yards, and places or yards for storage of salvaged inoperable vehicles, house wrecking and structural steel materials, and equipment.
>
> **MARINE SALES AND SERVICES:** A commercial use that sells and services pleasure boats, yachts, personal water crafts and other marine vessels.

WAREHOUSE, COMMERCIAL: A facility characterized by extensive storage of finished products with frequent heavy trucking activity but not involved in manufacturing or production processes.

Most businesses have multiple "Uses", but the Primary Use Designation is determined by the Majority Use. All other uses are considered Accessory Uses. For example for a New Car Lot, the Primary Use would be "Automobile Dealership", but would probably have Accessory Uses such as "Used Cars Sales", "Specialty Retail Shop", "Automobile Service Center, Minor", etc.

The property does not appear to be able to support outdoor sales of boats. Boats are currently parked in front of the building in areas that should be designated for public parking, including ADA parking. The boats/empty boat trailers parked along the side of the building have no room to access them without encroaching on the neighboring property. The interior of the building could be remodeled to create an indoor showroom for boat sales, but the current set-up does not support boat sales as the Primary Use.

The owner has stated that he occasionally works on boats for friends but he tries to limit repair of boats for his business, so boat service/repair would not be considered the Primary Use of the business.

The designation of "Marine Sales & Services" is not suitable, because the business's primary use is not the sale or service of pleasure boats, yachts, personal watercraft and other marine vessels.

A Boat Yard traditionally is a waterside based business that dry docks large boats for maintenance and repairs. D & S Marine does not fit the description for a traditional Boat Yard, nor does the Primary Use consist of construction, reconstruction, repair, or maintenance of boats, marine engines, or marine equipment, supplies, or services, so the designation of "Boat Yard" would not be a suitable use determination for D & S Marine

The owner has stated that most of his sales are on-line or from Craig's List and are shipped out to his customers. Staff observed many inoperable boats on-site. The boats were being stripped of parts and the parts were being stockpiled as is. The parts stockpiled to be sold did not appear to be clean and the stockpiled boat gas tanks observed, still had gas and/or gas residue in the tanks.

In addition, a retail business traditionally receives their merchandise from a 3rd party wholesaler. When retail merchandise is received by a retailer, the merchandise is clean and properly packaged for immediate sale on-site. Since D & S Marine is obtaining a majority of their merchandise from on-site inoperable boats and then shipping the parts out to customers, the business would not be considered an on-site retail business.

Based on the owner's statements and the site conditions observed (see Exhibit E), Staff determined that the business was operating as either a "Junkyard" or a "Commercial Warehouse".

A “Junkyard” is not currently allowed in a C-3 District and a “Commercial Warehouse” would be allowed in the district as a Conditional Use.

DETERMINATION OF APPLICABLE LAW:

SECTION 3.6: Appeals

Persons aggrieved with decisions of administrative staff may appeal the decisions.

3.6.1 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 and the City Council. A Staff Decision Appeal shall be filed on the appropriate application form in the Department of Economic Development outlining the circumstances and the grounds of the appeal. The Economic Development Director shall send the appeal application to the City Attorney for a Review of Legal Sufficiency. Once cleared by the City Attorney, 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 shall make a recommendation to City Council to reverse, modify, or affirm, wholly or partially, any order, requirement, decision, or determination of the Economic Development Director and/or his staff.

Upon receiving a recommendation from the Planning Commission, the appeal shall be placed on the next available City Council meeting agenda. The City Council shall render a decision to reverse, modify, or affirm the staff decision.

RECOMMENDATION:

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

a) Recommend to Affirm the Staff Decision and Designate the business as a “Junkyard”; or

b) Recommend to Affirm the Staff Decision and Designate the business as a “Warehouse, Commercial”; or

c) Recommend to Reverse the Staff Decision and Allow the Business to be designated as “Marine Sales and Service”;

d) Recommend to Reverse the Staff Decision and Allow the Business to be designated as a “Boat Yard”;

e) Modify the Staff Decision, wholly or partly.

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
6. City's Exhibit E – Photos
7. City's Exhibit F – Notice of Violation Letter (operating outside of use designation & list of violations) 8-13-13
8. City's Exhibit G – New Business Permit Application Comments Letter 6-12-15
9. City's Exhibit H – Cease and Desist Letter 9-8-15
10. City's Exhibit I – Owner's Attorney Response to Exh H above 9-21-15

EXHIBIT 1

GAUTIER, MISSISSIPPI

ECONOMIC DEVELOPMENT/PLANNING DEPARTMENT

PUBLIC HEARING APPLICATION

Public Hearing Number

16-06-AP

TO BE HEARD BY GAUTIER PLANNING COMMISSION:		FEE:
Zoning Change	_____	$300.00
Zoning Change (Comp.)	_____	$300.00
Major Development	_____	No Fee
Variance	_____	$100.00
Appeal to Staff Decision	X	$100.00

TO BE HEARD BY ECONOMIC DEVELOPMENT/PLANNING DIRECTOR ON STAFF REVIEW:		FEE:
Administrative Waiver	_____	$100.00

Name of Applicant : Danny Senseney

Name of Business: D&S Marine Phone: Kelly Cash 228-896-8960

Property Address: 1105 Hwy 90 Mailing Address (if Different): _____

E-Mail Address: c/o kelly@tindellawfirm.com

Reason for request, location and intended use of Property: Boat Yard and/or Marine Sales and Service

ATTACHMENTS REQUIRED AS APPLICABLE: all previously provided additional copies can be provided upon request

N/A 1. Diagram of intended use, showing dimensions and distances of property, building with setbacks, parking spaces, entrances and exits.

✓ 2. A detailed project narrative.

N/A 3. Copy of protective covenants or deed restrictions, if any.

N/A 4. 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.

N/A 5. Any other information requested by the Economic Development/Planning Director and/or members of the Technical Review Committee.

Signature of Applicant: Danny Senseney Date of Application: 2-16-2016

FOR OFFICE USE ONLY

Date Received 2-16-16 Verify as Complete 2/17/16

Fee Amount Received 100.00 Initials of Employee Receiving Application RM

PLANNING COMMISSION/COUNCIL MEETING DATES/DEADLINES

Council Meeting date is dependent on the action taken by the Planning Commission. If the Planning Commission does not render a recommendation at the first meeting date, then the Council Meeting date will be adjusted accordingly.

APPLICATION DEADLINE	PLANNING COMMISSION DATE	COUNCIL MEETING DATE
2016		
November 18, 2015	January 7	January 19
December 15, 2015	February 4	February 16
January 19	March 3	March 15
February 16	April 7	April 19
March 15	May 5	May 17
April 19	June 2	June 21
May 17	July 7	July 19
June 21	August 4	August 16
July 19	September 1	September 20
August 16	October 6	October 18
September 20	November 3	November 15
October 18	December 1	December 20
2017		
November 15, 2016	January 5	January 17
December 20, 2016	February 2	February 21
January 17	March 2	March 21
February 21	April 6	April 18
March 21	May 4	May 16
April 18	June 1	June 20
May 16	July 6	July 18
June 20	August 3	August 15
July 18	September 7	September 19
August 15	October 5	October 17
September 19	November 2	November 21
October 17	December 7	December 19

Mayor
Tommy Fortenberry

Council
At Large Mary F. Martin
Ward 1 Johnny Jones
Ward 2 Hurley Ray Guillotte
Ward 3 Gordon T. Gollott
Ward 4 Scott D. Macfarland
Ward 5 Adam D. Colledge

City of Gautier
Gautier, Mississippi

Interim City Manager
Robert G. Ramsay

City Clerk
Wendy S. McClain

3330 Highway 90
Gautier, MS 39553
Phone: (228) 497-8000
Fax: (228) 497-8028
Email: gautier@gautier-ms.gov
Website: www.gautier-ms.gov

December 6, 2011

Danny Senseney
1105 Highway 90
Gautier, Mississippi 39553

Reference: 1105 Highway 90, Gautier, Mississippi 39553

Mr. Senseney,

The property referenced above remains in violation of the City of Gautier, Unified Development Ordinance (UDO) as follows:

1. Business signs were not approved and installed in accordance with the UDO, Article XII. Signs need to be removed from building and privacy fence
2. The operation of the approved business is for retail sales and boat parts
3. All boats and vehicles must be removed from the State, right-of-way and parked within property boundaries.
4. The grass cut and maintained in accordance with the UDO, Article XVI
5. Clear ingress/egress from the building shall comply with the International Fire Code.

Code Enforcement is requesting your cooperation complying with the above requirements by December 12, 2011. Failure to comply with City's UDO requirements is punishable by fines as imposed by the municipal judge, with each day constituting a new and separate offense a new summons will be issued each time the violations are not corrected. You may contact the City of Gautier, Code Enforcement Office, Monday – Thursday, 8:00 AM - 5:00 PM at (228) 497-8802/1878. Code enforcement will be happy to assist you with any questions that you may have.

Sincerely,

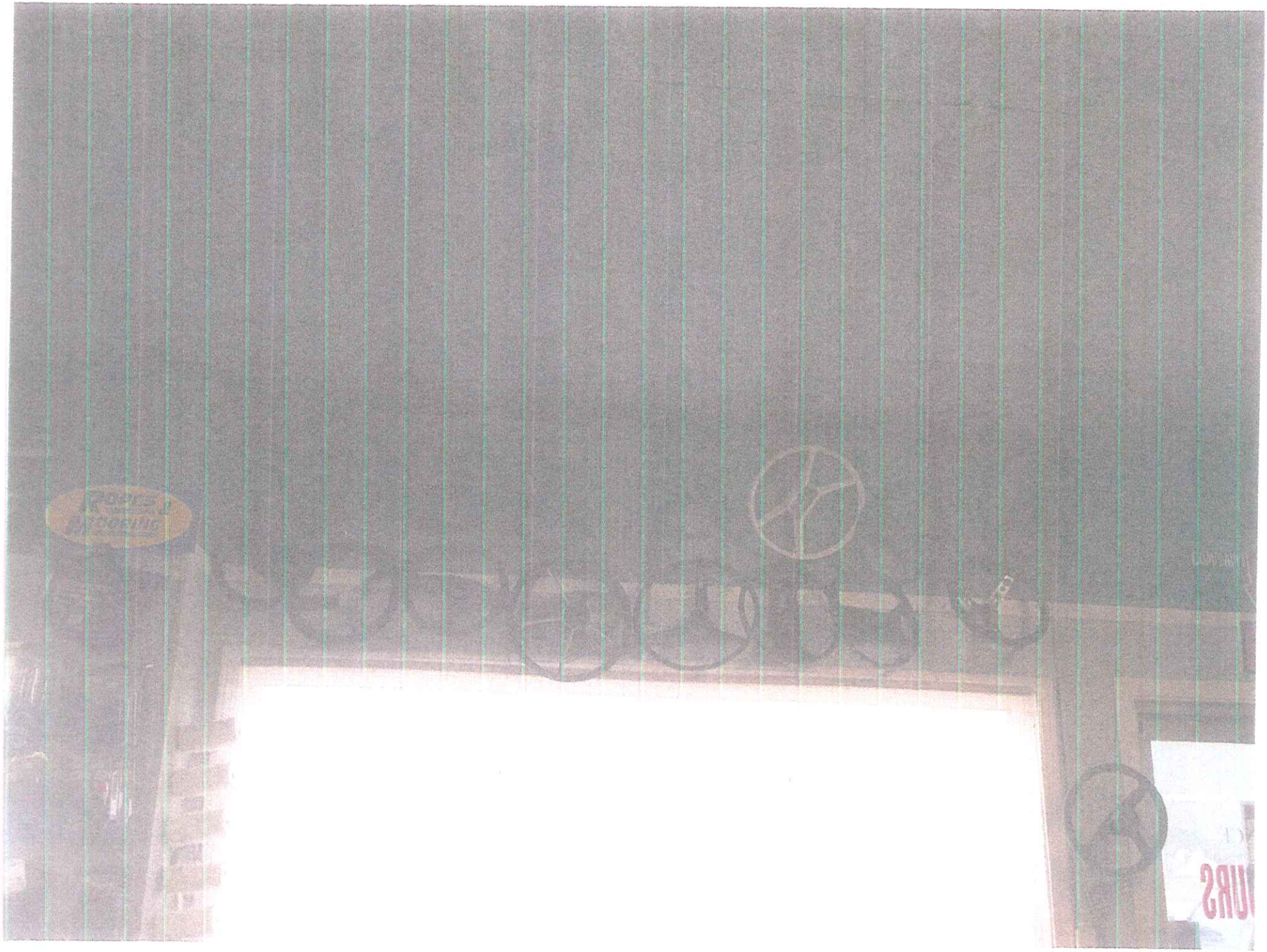
Joseph Belles
Code Enforcement Officer

DONNA
COURT CLERK
497-8036

FUEL SYSTEMS
HARDWARE
Slam Latch
OMC
EVINRUDE Johnson
PERKO
Drain Plug

SEATING

ANCHORS



The Boat Man
buying/selling new/used boats/trailers

FL 3453KM