



Agenda Item 2015-144  
**City of Diamondhead**

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5000 Diamondhead Circle, Diamondhead, MS 39525  
Phone: (228) 222.4626  
FAX: (228) 222-4390  
[www.diamondhead.ms.gov](http://www.diamondhead.ms.gov)

**STAFF REPORT TO CITY COUNCIL**

DATE: September 30, 2015

CASE FILE NUMBER: 201500290

APPLICANT: Highpoint Townhouse Property Owners Association and Gary Sheets

PROPERTY OWNER: Highpoint Townhouse Property Owners Association represented by Dennis Arceneaux

TAX PARCEL NUMBER: 067L-0-35-088.000

PHYSICAL STREET ADDRESS: 277 High Pointe Drive

LEGAL DESCRIPTION:

ZONING DISTRICT: R-3 High Density Single Family

TYPE OF APPLICATION: Variance

NATURE OF REQUEST: An application requesting to encroach within the required 20' separation distance between townhouse building clusters from the Zoning Ordinance (Article 4.7.5 E ii b). This variance would allow the construction of a golf cart shed within 10' 10" of the adjacent townhouse (278 Highpoint Drive).

DATE OF PUBLIC HEARING BEFORE PLANNING COMMISSION: September 22, 2015

RECOMMENDATION TO CITY COUNCIL: To approve the variance as petitioned with the condition that the Highpoint Townhouse Property Owners Association become a co-applicant; Commissioners voted 5 ayes and 0 nays with 1 absent (Miller) and 1 abstain (Garrison).

**Article            2.6.7**  
**Legislative**  
**Disposition**

- A. The action by the Planning Commission related to variance applications shall be a recommendation to the Mayor and City Council. The Mayor and City Council shall examine all such applications, reports, and recommendations transmitted to it and shall take further action as it deems necessary and desirable to approve, disapprove, modify, or remand to the Planning Commission for further considerations. No land or structure for which the

application for variance has been denied shall be considered again for the same variance request for at least one (1) year from the date such application was denied.

- B. The owner, agent, or lessee of property that requested a variance and subsequently was granted said variance by the Mayor and City Council must secure a building permit or certificate of zoning compliance within one (1) year of the variance being granted, or said variance will expire.

ATTACHMENTS: Application

Public Comments

Letter of Objection from Ms. Martha Bryan

Letter of Support from Terry Latham, President on behalf of Highpoint  
Townhouse Property Owners Association Board of Directors

City of Diamondhead  
5800 Diamondhead Circle  
Diamondhead, MS 39525



Office 228-222-4626  
Fax 228-222-4390  
www.Diamondhead.ms.gov



CASE NO. 2015 00290

RECEIVED  
DATE SEP 02 2015  
BY: \_\_\_\_\_

APPLICANT: GARY Sheets  
APPLICANT'S ADDRESS: 277 Highpoint DR., Diamondhead, MS, 39525  
APPLICANT'S TELEPHONE: (HOME) 260-438-9310 (WORK) \_\_\_\_\_  
PROPERTY OWNER: GARY Sheets  
MAILING ADDRESS: 1028 Greendale Ct., Decatur, Ga. 46733  
TELEPHONE NUMBER: (HOME) 260-438-9310 (WORK) \_\_\_\_\_  
TAX ROLL PARCEL NUMBER: 067L-0-35-088.000  
STREET ADDRESS OR LEGAL DESCRIPTION OF PROPERTY: 277 Highpoint DR., Diamondhead, MS. 39525  
STATE PURPOSE OF VARIANCE: (FRONT SIDE REAR/LOT SIZE/PARKING/BUILDING COVERAGE) (SIGNAGE - SIZE - HEIGHT) To Allow 8' addition to encroach within the 20' separation required distance between buildings.  
ZONING DISTRICT R3

I was told by Highpoint President I did not need a building permit to build my golf cart shed on common ground so we started construction. Now I find I did need a permit and the building is 95% finished. There is no issue with Highpoint officials or my neighbors. It would be a great loss if I can't finish construction.

STATEMENT OF UNDERSTANDING

As the applicant or owner/s for the requested Variance in the City of Diamondhead, I (we) understand the following:

The application fee of \$500.00 must be paid prior to the acceptance of the application. Further, that if the application is withdrawn for any reason that the application fee is forfeited to the City of Diamondhead.

As the applicant or owner/s, I (we), or the designated representative, must be present at the public hearing.

That all information provided with this application is true and correct to the best of my knowledge.

That this application represents only property owned by me (us) and that any other adjoining property owners must apply for a Variance on his own behalf.

That all required attachments have been provided to the City of Diamondhead.

That additional information may be required by the Planning Commission prior to final disposition.

The City Council will not accept new case evidence once the recommendation has been made by the Planning Commission. If new evidence needs to be presented, the applicant will need to request that the matter be referred back to the Planning Commission for review.

The Public Hearing will be held on \_\_\_\_\_ at \_\_\_\_\_ p.m. in the Council Chambers of the Diamondhead City Hall.

If a continuance of the hearing is necessary at my (our) request, the request must be made to the Zoning Official a minimum of seven (7) days prior to the hearing. If such request is not made in writing, I understand that a new application must be filed and an application fee paid to the City.

If the application is denied by the City Council, a new application for the subject property may not be submitted for one (1) year from the date of denial.

[Signature]  
Signature of Applicant

[Signature]  
Signature of Property Owner

\_\_\_\_\_ For Official Use Only \_\_\_\_\_

- \$500.00
- Copy of Deed, Lease or Contract
- Site Plan
- Parking Spaces
- List of Property Owners

- Application Signed
- Written Project Description
- Drainage Plan NA( )
- Notarized Statement NA ( )

**REQUIRED ITEMS:**

- A. A statement describing the variance request and the reasons why it complies with the criteria for variances provided in Section 2.6.5, specifically...

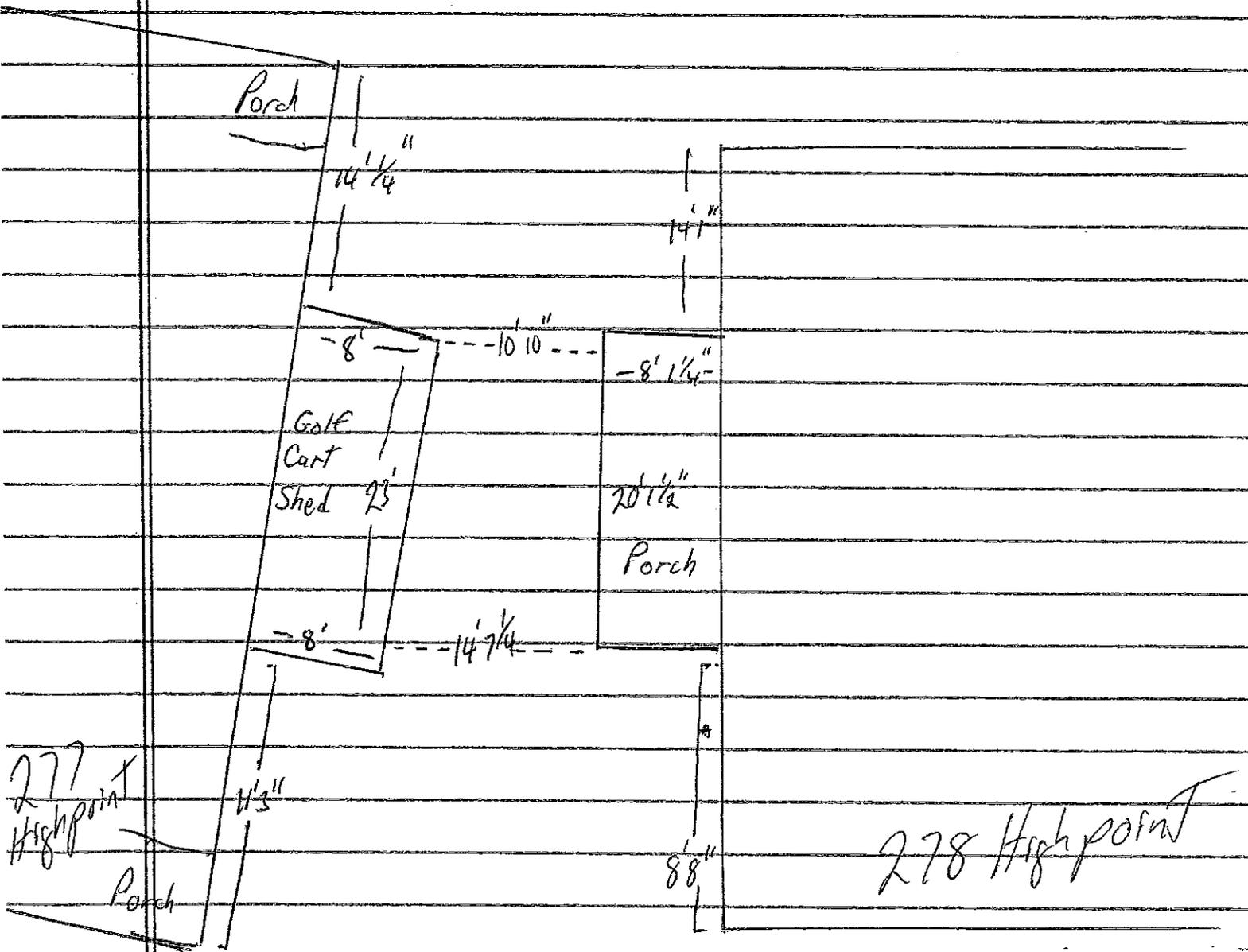
**THE CONDITIONS FOR GRANTING A VARIANCE:**

- yes  
No  
yes  
yes
1. DO THE SPECIAL CONDITIONS AND/OR CIRCUMSTANCES EXIST WHICH AFFECT ONLY THE LAND OR STRUCTURE IN QUESTION AND NO OTHER SURROUNDING OR SIMILAR PROPERTIES?
  2. WOULD LITERAL INTERPRETATION OF THE ZONING ORDINANCE DEPRIVE THE OWNER/APPLICANT OF RIGHTS COMMONLY ENJOYED BY OTHER PROPERTIES IN THE SAME ZONING DISTRICT?
  3. ARE THE SPECIAL CONDITIONS OR CIRCUMSTANCES NOT CAUSED BY THE OWNER/APPLICANT?
  4. WOULD THE REQUESTED VARIANCE NOT GIVE THE OWNER/APPLICANT ANY SPECIAL PRIVILEGES OR RIGHTS NOT SHARED BY OWNERS OF SIMILAR PROPERTIES?

- B. The property address and the name and mailing address of the owner of each lot within 300 feet of the subject property and a map with parcels keyed to the ownership and address data.
- C. Site plans, preliminary building elevation, preliminary improvement plans, or other maps or drawings, sufficiently dimensioned as required to illustrate the following, to the extent related to the variance application:
- i. Existing and proposed location and arrangement of uses on the site, and on abutting sites within 100 feet.
  - ii. Existing and proposed site improvements, buildings, and other structures on the site, and any off-site improvements related to or necessitated by the proposed use. Building elevations shall be sufficient to indicate the general height, bulk, scale, and architectural character.
  - iii. Existing and proposed topography, grading, landscaping, and screening, irrigation facilities, and erosion control measures.
  - iv. Existing and proposed parking, loading, and traffic and pedestrian circulation features, both on the site and any off-site facilities or improvement related to or necessitated by the proposed use.
  - v. The Zoning Administrator may request additional information necessary to enable a complete analysis and evaluation of the variance request, and determination as to whether the circumstances prescribed for the granting of a variance exist.
  - vi. A fee established by the City Council shall accompany the application. A single application may include request for variances from more than one regulation applicable to the same site, or for similar variances on two or more adjacent parcels with similar characteristics.
- D. Payment of fee for Variance Request: \$500.00 as per Ordinance 2012-020

# Site Plan For 277 Highpoint Dr

Back



Front

Ernie G. Gentry

City of Diamondhead  
5000 Diamondhead Circle  
Diamondhead, MS 39525



Office 228-222-4626  
Fax 228-222-4390  
www.Diamondhead.ms.gov

APPLICATION FOR VARIANCE REQUEST

CASE NO. 2015 00290

DATE 27 sept 15

APPLICANT: HPTA POA & Gary Sheets

APPLICANT'S ADDRESS: 200 HP Drive + 277 High Pt Drive

APPLICANT'S TELEPHONE: (HOME) \_\_\_\_\_ (WORK) 228-255-5241

PROPERTY OWNER: Gary Sheets, High Point POA

MAILING ADDRESS: SAME AS ABOVE

TELEPHONE NUMBER: (HOME) \_\_\_\_\_ (WORK) \_\_\_\_\_

TAX ROLL PARCEL NUMBER: 0676-0-35-088.000

STREET ADDRESS OR LEGAL DESCRIPTION OF PROPERTY: 277 Highpoint Drive

STATE PURPOSE OF VARIANCE: (FRONT/SIDE/REAR/LOT SIZE/PARKING/BUILDING

COVERAGE) (SIGNAGE - SIZE - HEIGHT) To allow 8' addition to encroach within 20' separation required distance between buildings

ZONING DISTRICT R3

STATEMENT OF UNDERSTANDING

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That all information provided with this application is true and correct to the best of my knowledge.

That this application represents only property owned by me (us) and that any other adjoining property owners must apply for a Variance on his own behalf.

That all required attachments have been provided to the City of Diamondhead.

That additional information may be required by the Planning Commission prior to final disposition.

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The Public Hearing will be held on \_\_\_\_\_ at \_\_\_\_\_ p.m. in the Council Chambers of the Diamondhead City Hall.

If a continuance of the hearing is necessary at my (our) request, the request must be made to the Zoning Official a minimum of seven (7) days prior to the hearing. If such request is not made in writing, I understand that a new application must be filed and an application fee paid to the City.

If the application is denied by the City Council, a new application for the subject property may not be submitted for one (1) year from the date of denial.

✶

*CO-APPLICANT*  
*Perry Jattin President HTAPOA*  
\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Signature of Property Owner

\_\_\_\_\_ For Official Use Only \_\_\_\_\_

- \$500.00
- Copy of Deed, Lease or Contract
- Site Plan
- Parking Spaces
- List of Property Owners
- Application Signed
- Written Project Description
- Drainage Plan NA( )
- Notarized Statement NA ( )



**Public Comments**  
**PLANNING AND ZONING COMMISSION**  
**Diamondhead, Mississippi**  
**Diamondhead City Hall Council Chambers**  
**September 22, 2015**  
**5:30 p.m. CST**

- **Case File Number 2015-00290**

Mr. Gary Sheets has filed an application requesting to encroach within the required 20' separation distance between townhouse building clusters from the Zoning Ordinance (Article 4.7.5 E ii b). This variance would allow the construction of a golf cart shed within 10' 10" of the adjacent townhouse (278 Highpoint Drive).

*Building Official Jones introduced for the record a letter received from Martha Bryan of Highpoint in opposition to allowing use of the common ground and who in addition shared concerns with the Highpoint POA practices.*

*Jones then introduced for the record a letter received on September 15 from Terry Latham President of Highpoint Townhome Property Owner's Association Board of Director providing support on behalf of the Board of Director for a favorable ruling on the variance request.*

*Thom Sislow, property owner, expressed his agreement of this particular variance and indicated future cases shall be considered case by case.*

*Connie Moore, owner of 278 spoke in opposition of the proposed variance. She explained her concerns were loss of control of current covenants in Highpoints stating it was the green space that attracted her there. She further stated, to allow such structures would be an eyesore, a potential privacy issue and hinder emergency vehicle access. The variance to allow the shed is a clear violation of covenants. She suggested the progress made thus far on the structure should be removed and the green space affected restored to its original state.*

*Ed Sutherland, a member of the Board of Directors and owner of 236 and 292 in Highpoint, spoke in favor of the variance. He asked the commission to consider the structure as it relates to the required 20' separation distance between townhouse building clusters. The other issues of concern raised were matters within authority of the Highpoint POA and architectural committee.*

*Donny Polito, part owner of the golf cart shed and Highpoint POA Board Member, assured the Commission that he as a board member abstained from any vote on the matter.*

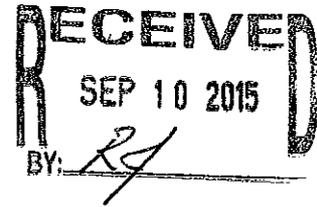
*Sandra Gray, Highpoint POA Treasurer, addressed the Commission with regards to matters identified by Chairman Malley to be internal issues of the Highpoint POA and not relevant to the variance before the Commission.*

*Commissioner Smith moved, seconded by Commissioner Bice, to approve, subject to Highpoint Townhouse Property Owner's submission as co-applicant, and was passed by the following vote:*

*Ayes: Bice, Bower, Malley, Smith, and Hensley. Nays: None. Absent: Miller. Abstain: Garrison*

September 9, 2015

Mr. Ronald R. Jones  
Building Official  
City of Diamondhead  
5000 Diamondhead Circle  
Diamondhead, MS. 39525



Re: Gary Sheets  
277 Highpoint Drive  
Construction of Golf

Dear Mr. Jones:

In keeping with our conversation of last week about the above referenced you suggested that I write a letter pertaining to File No. 201500290.

It is a great concern of mine and others, since the common grounds belong to the home owners in Highpoint, that only a few got this letter. In respect of the home owners every one that pays dues to maintain the grounds should have received this letter and let be aware of what is going on in our community. We pay for the maintenance of these common grounds and as residences we should have a vote concerning what happens to them.

If this golf card shed is approved then anyone living in our community can add on to their townhome any way they choose because there are no regulations to the covenants anymore. If you own a townhome on the end you can knock out the living room and add whatever footage that is in compliance with the golf cart shed, and/or you can extend your back deck 8' or the front deck 8'. Also this golf shed involves two different home owners and I asked the question what would happen if this home went up for. The answer was the double ownership was grandfathered in the deal which to me would be very difficult and touchy situation of the buyer did not agree this.

We do not own any property but the footprint that is under our townhome and I would like to know how you can insure a structure that is on property that does not belong to the homeowner. In your deed it does not include common grounds as part of your property and I do not feel that we should be charged to keep up grounds that other people are using for their own personal use. You cannot go around in Diamondhead and build something on other property that does not belong to you so this should be enforced in the same way as we.

I have served on the board in the past and at no time was any structure allowed to be built on the common grounds. This board that is in office now has allowed other structures to be erected on common grounds without any vote of approval from the owners. And it is ironic that these

structures involved board members who think they can approve and construct anything. You cannot give common grounds to any one individual for their own personal use.

I certainly hope that your office considers the entire community in this situation so that there will be some sort of control over the common grounds. If not this opens up a situation that could get out of control and create a huge problem in the future. To keep the common grounds as they are and maintain them surely will enhance the community and property value.

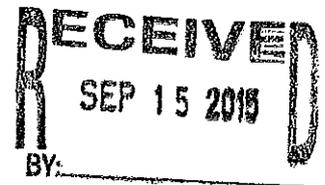
Sincerely,

A handwritten signature in cursive script that reads "Martha Bryan". The signature is written in black ink and is positioned above the printed name.

Martha Bryan  
286 Highpoint Drive  
Diamondhead, MS. 39525

CC: David Malley  
Planning and Zoning Committee

Highpoint Townhome Property Owners Association  
200 Highpoint Drive, Diamondhead Ms. 39521



Planning and Zoning  
City of Diamondhead Ms. 39525

I am unable to attend this meeting due to previous commitments but I would like to offer the following information for your consideration and urge you to approve the variance needed to complete the construction of the golf cart shed currently under construction at 277 Highpoint Drive owned by Mr. Gary Sheets

For many years, property values and sales in Highpoint have declined. Several years ago, with the election of a new board, we began to allow external changes to the exterior of our units that were previously forbidden by previous boards, such as changes to porch railings, screening in porches, extending the living area onto the porch, allowing a second story porch, etc. The result of this has been remarkable. Highpoint owners have made over one million dollars in improvements to their properties in just the last few years resulting in many units, being improved, sold or rented. Eight units have sold in just the last three months! The Board has invested over \$50,000 in improvements to the Association's amenities, including the two pools and landscaping initiatives. The results of these changes and efforts will mean high property values and increase the tax dollars available to the City of Diamondhead.

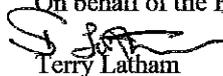
For 20 plus years, individual homeowners have built a variety of surface "extensions" adjoin their units on the common ground such as flagstone patios and similar outdoor living areas. Some of them exceed 100 square feet. Three years ago the Board approved the construction of a small gazebo on the common ground adjoining unit 250 for the use of the owner of 250. Approval was granted under the authority of the covenants governing Highpoint which states that the Architectural Committee may approve a structure to be built on the common ground. The Board of Directors voted to establish the sitting Board members as the Architectural Committee and they approved the construction based on the fact that it would greatly improve the ambiance of the entire community and did not harm any other member.

The Board has made a similar decision regarding the construction of a small extension onto unit 242 to provide shelter for a golf cart. We are a golfing community, and most Highpoint units are on the 17<sup>th</sup> or 18<sup>th</sup> holes of the Cardinal course. We have also approved two small "bump-outs" to the rear of the back porches of units. We feel that allowing such changes, will continue to add to the appearance of our community and encourage owners to improve their properties. All such request will be considered on their individual merits and based on the specific request and location. A few homeowners are upset over the decision we have made to allow greater flexibility in exterior modifications and allowing owners to lease a small portions of the common grounds adjoining their units but this is an internal High Point matter which should not concern the City of Diamondhead.

We have been made aware of the need for homeowners to obtain approval for such construction from the City Building Inspector's Office and their need to comply with all construction codes in effect. To that end we have redesigned our form used to request external modifications, established new rules and regulations concerning external modifications and will notify individual homeowners of the need to apply for a building permit, if needed, from the City of Diamondhead prior to construction. It is our full intent to work with the City of Diamondhead.

In closing, I trust that you will recommend approval of the variance requested by Mr. Sheets. He has invested several thousands of dollars into this project and the Board supports his request.

On behalf of the Board of Directors,

  
Terry Latham  
President

... or shall be permitted upon or in any other structure designed for use in boring for oil or gas to be erected, maintained or permitted upon any Lot.

Section 16. The drying of clothes in public view is prohibited.

Section 17. The digging of dirt or the removal of any dirt from any such Lot is expressly prohibited except as necessary in conjunction with the landscaping of or construction on such Lot.

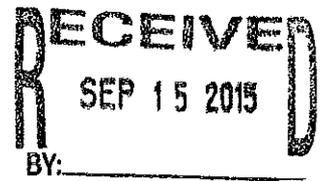
Section 18. The use or discharge of pistols, rifles, shotguns or other firearms is expressly prohibited on any part of the Property.

Section 19. All boats, boat trailers, camp trailers, and all other types of trailers, and any automobile or truck which is not capable of being driven in its present condition shall not be permanently parked or housed at any residence, it being the intent to prohibit visible location of such properties on any Lot or street other than for short temporary periods while such properties are being washed, cleaned or loaded in preparation for use.

\* Section 20. No building structure or any other improvement shall be constructed in any common area nor shall any use be made of any such common area by Association or any Owner unless such proposed construction and/or use has been approved in writing by the architectural committee set forth in Article VI hereof. \*

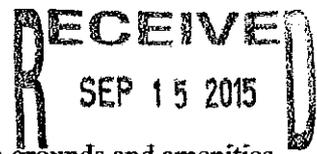
Section 21. Enforcement may be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages, or enforcement may be made by Association, Declarant or any Owner after fifteen (15) days from delivery of written notice to Owner specifying the nature and extent of such violation and making demand on Owner to cure or remedy such violation immediately, if Owner should fail or refuse to cure or remedy such violation in such fifteen (15) day period. In such event Association, or DECLARANT shall have the legal authority to come onto any Owner's Lot without his permission and to cure or remedy such violation by taking such action as may be necessary including, not by way of limitation, the removal of any structure,

Highpoint Townhomes Property Owners Association  
Revised rules and regulations effective 1 August 2015



Violations of approved rules and regulations may be punishable by fines or denial of use of High Point amenities as prescribed by the sitting Board of Directors  
Existing modifications in place prior to the date of this revision are grandfather in.

1. Speed limit in the complex is 15 mph.
2. TV/Satellite dishes. Must be mounted on owners unit, not on common ground. Wiring should be run in such a manner to conceal wires to the maximum extent possible.
3. Quiet times: 10pm on weekdays and 11pm on weekends, 12pm for approved parties on weekends.
4. Signs. No private signs may be placed on common ground. No political, advertising or business signs may be placed on individual units.
5. Roofs: Plastic/metal roofs are prohibited.
6. Screen porches. The entire porch must be screened in, not just a portion.
7. Hot tubs/Jacuzzi's. May be installed on porches or inside units but are not allowed to be placed on the common ground outside of individual units.
8. Window air conditioners may be used only for a limited period of time if an owner's central air is not working or being replaced/repaired. (Maximum time allowed 15 days).
9. Propane Gas tanks/BBQ's. Must be professionally installed. Tanks should be placed as close to unit as possible or under porches. Tanks must be screened by shrubbery or lattice work. Charcoal BBQ units are not allowed on porches due to inherent fire hazards.
10. Dumpsters. For use by residents/guest only. Household garbage only. Food refuse must be in enclosed bags. No building materials, appliances, furniture or other such items allowed. All boxes must be broken down to save space. No dumping of paint, chemicals, tires, car batteries or lawn furniture. Such items must be taken to the County dump at owners/renters costs.
11. Parking. Use parking bays. Do not park on grass and avoid parking or driving on grass where sprinkler systems are installed. Use the parking spots in front of your respective unit. You may utilize parking spots in front of units where units are not occupied (snow birds). Do not use your neighbor's parking spots without permission. Vehicles illegally parked may be towed at owners expense. Trailers/motorhomes/boats may not be parked in parking bays longer than 24 hours (except for moving vans/trailers when a move is in progress) Most units have 2 parking spots for their use.
12. Golf carts. Follow the rules of the road. Do not drive on the common ground in such a manner or frequency that it causes ruts or kills the grass. Do not allow children under 10 to drive without adult supervision.
13. Pools. Adhere to the pool rules posted at the pool and promulgated by separate notice.
14. Private vs. Common ground. The footprint of each unit is considered the boundary between private and common ground. The Association shall make no routine repairs or changes to private property/individual units. The Association shall routinely maintain all common grounds. Unit owners/renters who plant flowers or additional foliage in the common ground beds agree to maintain such plantings themselves. Owners/renters must have approval to plant any tree or bush in the common area that will grow over 10 ft. tall. No plantings may be made between or around units on the common ground that will interfere with access by utility or emergency



vehicles/personnel. Owners/renters in good standing may use the common grounds and amenities (pools, green spaces, parking bays and dumpsters). Owners in arrears may have their use of such spaces and amenities restricted by the Board. Owners/renters must notify the Board of any party or gathering that exceeds 20 people that will use the common grounds and gain approval from the Board for such use.

15. Maintenance/modifications to units. It is the sole responsibility of each owner to maintain their individual unit at a level of repair acceptable to the Board of Directors of the Association. Owners must submit a modification request to the Board a minimum of 10 days prior to the proposed start of any significant exterior alterations or changes to their unit for approval by the Board of Directors and must not initiate any such alteration until approval has been granted by the Board. Owners are responsible for obtaining all permits and approvals required by the City of Diamondhead/County prior to the start of construction and must post such documents on their unit IAW with City regulations. **If the planned changes/alterations are ones that have been previously approved by the Board for other owners than a modification request is not required unless it involves construction on the common grounds. However a building permit may be required and owners are advised to check with the City on all external modification plans and homeowners are responsible for complying with all building codes in effect.**
16. Insurance. Every owner is required to maintain adequate insurance on their unit at all times and provide the Board with the proof of such insurance on an annual basis or upon request of the Board.
17. Assessments. Each homeowner agrees to pay the monthly assessment as set by the Board. Assessments may vary from year to year. Assessments are used for the maintenance of the amenities and common grounds. Assessments are due by the 10<sup>th</sup> of the month if paid monthly. Dues paid later than the 10<sup>th</sup> may subject the owner to a late fee. Dues may be paid monthly, quarterly, or annually. Please contact the secretary for additional information. Homeowners who are behind more than 2 months in their assessment may be denied use of the Association common areas and amenities. Homeowners who are more than 6 months late with payment of dues shall be subject to legal action which may include late fees, legal fees, court costs and the cost of placing a lien on their property or in extreme cases, foreclosure proceedings.
18. Liability. Homeowners are responsible to the Association for the actions and conduct of the renters that they allow to live in their units to the following extent; If a renter damages any property, amenity or holding of the Association the owner will be liable to the Association to pay for any repairs or replacement of any association property damaged that has not been paid to the Association by the renter. It is strongly advised that owners collect a damage deposit from their renters that cover damage to Association property in addition to damage to their own units and unit contents
19. The exterior of all units must be painted "Highpoint" grey". Owners may use flat or semi gloss paint. Doors and the interior of screened in porches may be painted in accordance with the separate painting guide promulgated separately.

# City of Diamondhead



5000 Diamondhead Circle, Diamondhead, MS 39525

Phone: (228) 222.4626

FAX: (228) 222-4390

[www.diamondhead.ms.gov](http://www.diamondhead.ms.gov)

## STAFF REPORT TO CITY COUNCIL

DATE: September 30, 2015

CASE FILE NUMBER: 201500278

APPLICANT: Diamondhead Country Club and Property Owners Association

PROPERTY OWNER: Diamondhead Country Club and Property Owners Association  
represented by Darrel Kinchen

TAX PARCEL NUMBER: 067G-2-25-010.000

PHYSICAL STREET ADDRESS: 98182 Golf Club Drive

LEGAL DESCRIPTION:

ZONING DISTRICT: Public Facilities and Recreation

TYPE OF APPLICATION: Conditional Use Approval

NATURE OF REQUEST: An application requesting a Conditional Use Permit from the Zoning Ordinance (Article 2.5) to allow the use and operation of a dog park.

DATE OF PUBLIC HEARING BEFORE PLANNING COMMISSION: September 22, 2015

RECOMMENDATION TO CITY COUNCIL: To deny the conditional use permit to allow the use and operation of a dog park. Commissioners voted 4 ayes and 2 nays with 1 absent (Miller).

### **Article 2.5.8**

#### **Legislative Disposition**

The Mayor and City Council shall examine all such applications, reports, and recommendations transmitted to it and shall take further action as it deems necessary and desirable to approve, disapprove, modify, or remand to the Planning Commission for further considerations. No land or structure for which the application for Conditional Use Permit has been denied by the Mayor and City Council shall be considered again by the Planning Commission or the Mayor and City Council for the same classification for at least one (1) year from the date such application was denied.

ATTACHMENTS: Application

Public Comments

Letter of Objection from Purcell Company

Letter of Objection from Joe Baker

City of Diamondhead  
5000 Diamondhead Circle  
Diamondhead, MS 39525



Office 228-222-4626  
Fax 228-222-4390  
www.Diamondhead.ms.gov

APPLICATION FOR CONDITIONAL USE

RECEIVED  
AUG 27 2015  
BY: RJ 11:20 A.M.

CASE NO. 2015 00278

DATE August 25, 2015

APPLICANT: Diamondhead Country Club & Property Owners Assn.

APPLICANT'S ADDRESS: 5300 Diamondhead Circle

APPLICANT'S TELEPHONE: (HOME) N/A (WORK) 228-255-1900 Ext. 125

PROPERTY OWNER: DCC & POA - (for DCC & POA Darrell Kinchen)

MAILING ADDRESS: Same

TELEPHONE NUMBER: (HOME) N/A (WORK) Same

TAX ROLL PARCEL NUMBER: # 0676-2-25-010.000

STREET ADDRESS OR LEGAL DESCRIPTION OF PROPERTY: 98182 Golf Club Drive

STATE PURPOSE OF REQUEST: Organize the space And use for Dog walk Park.

ZONING DISTRICT P.F.R. (Public for Recreation) Now

STATEMENT OF UNDERSTANDING

As the applicant or owner/s for the requested Conditional Use in the City of Diamondhead, I (we) understand the following:

The application fee of \$500.00 must be paid prior to the acceptance of the application. Further, that if the application is withdrawn for any reason that the application fee is forfeited to the City of Diamondhead.

As the applicant or owner/s, I (we), or the designated representative, must be present at the public hearing.

That all information provided with this application is true and correct to the best of my knowledge.

That this application represents only property owned by me (us) and that any other adjoining property owners must apply for a change on his own behalf.

That all required attachments have been provided to the City of Diamondhead.

That additional information may be required by the Planning Commission prior to final disposition.

The City Council will not accept new case evidence once the recommendation has been made by the Planning Commission. If new evidence needs to be presented, the applicant will need to request that the matter be referred back to the Planning Commission for review.

The Public Hearing will be held on 9-22-15 at 5:30 p.m. in the Council Chambers of the Diamondhead City Hall.

If a continuance of the hearing is necessary at my (our) request, the request must be made to the Zoning Official a minimum of seven (7) days prior to the hearing. If such request is not made in writing, I understand that a new application must be filed and an application fee paid to the City.

Diamondhead Country Club +  
Property Owners Assn. Inc.  
Signature of Applicant

for Deco POA - Travell Kingston  
Signature of Property Owner

\_\_\_\_\_ For Official Use Only \_\_\_\_\_

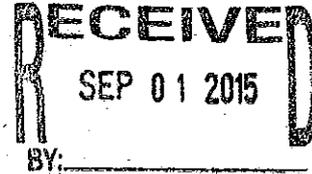
- \$500.00
- Copy of Deed, Lease or Contract
- Site Plan
- Parking Spaces
- List of Property Owners NA ( )

- Application Signed
- Written Project Description
- Drainage Plan NA ( )
- Notarized Statement NA ( )

# DIAMONDHEAD

COUNTRY CLUB & PROPERTY OWNERS ASSOCIATION

September 1, 2015



Narrative regarding the Proposed Dog Park

To: Diamondhead City/Planning and Zoning Commission  
Via: Ronald Jones, Diamondhead Building Official  
From: Diamondhead Country Club and Property Owners Association Inc.

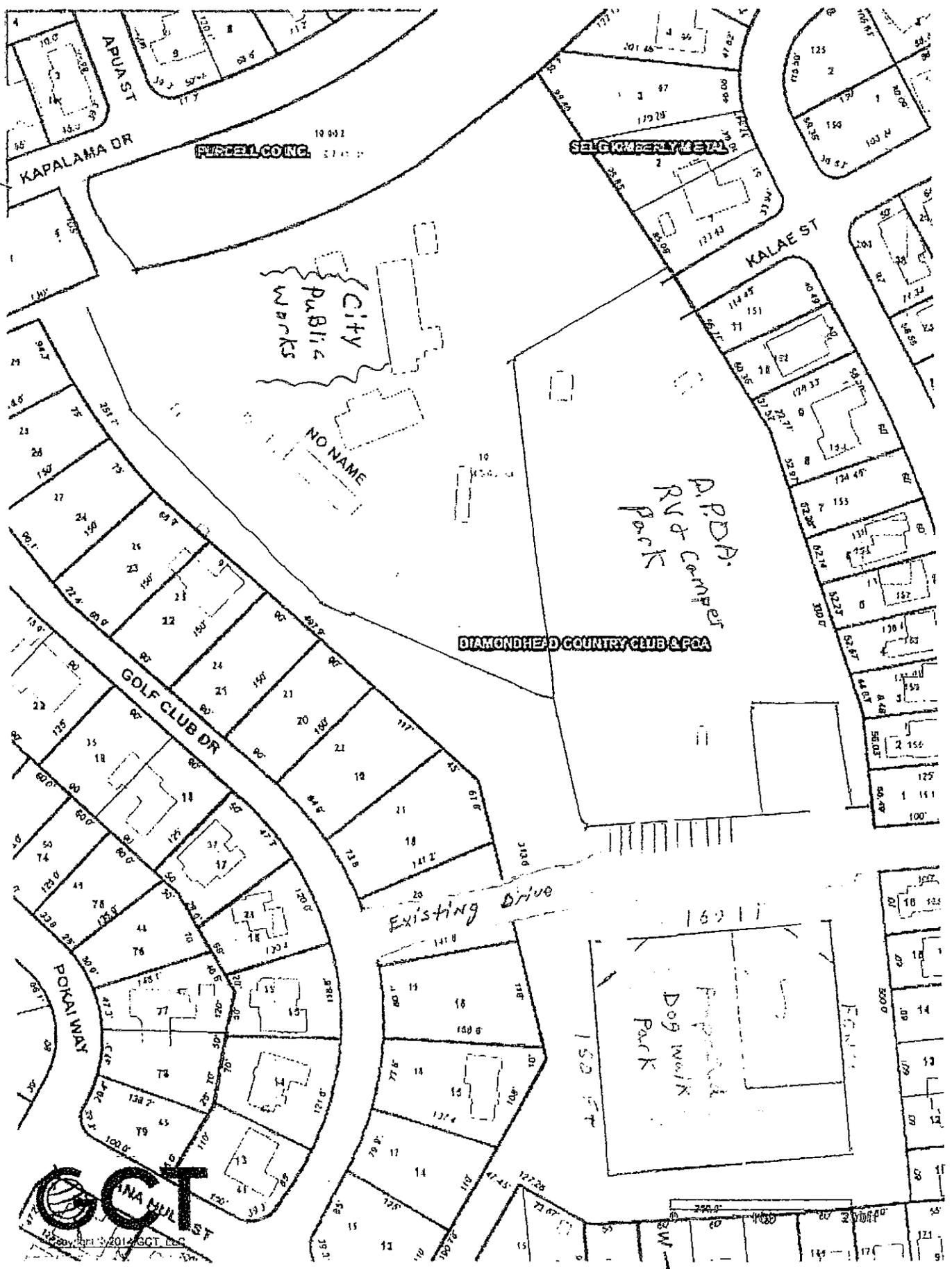
Diamondhead POA is requesting a Conditional use permit to put in a Dog Walk Park at the former Equestrian Facility location (presently used as open green space and leashed dog walk area). This Property is Zoned PFR. The entrance to the site is from Golf Club Drive between Ana Hulu Street and Kapalama Drive.

The proposed dimensions of the fenced area are 160 FT. X 160 FT. This will consist of a large dog area and a small dog area. Both the large and small fenced areas will have their own common entrance, with double gated areas to leash and unleash, to prevent dogs from getting free in the open park area. We believe the Dog Walk Park as proposed in the RFP Zone will be in harmony with and complementary to the surrounding community.

- There will be a 130 Ft. buffer distance from the proposed Dog Walk Park (Fence), and all abutting residents. (See proposed plot plan)
- The park will be open from sun up until dusk 7 days a week
- The Dog Park will be operated by the group of volunteers that have solicited both the City and the POA to permit the park
- The Diamondhead POA will ensure the volunteer group complies with the rules of operation established by the POA
- The grounds will be kept in a clean, wholesome and well maintained condition
- The Dog Walk Park rules will be prominently posted
- Waste receptacles will be provided
- Diamondhead POA reserves the right to terminate the use and remove the fencing that creates the Dog Park should the volunteer group fail to properly maintain the grounds or enforce the established rules
- The areas adjacent to the proposed Dog Park are firm ground adequate for temporary parking of automobiles and golf carts. This area is presently used as access and egress to boat trailer storage

If you have any questions, please do not hesitate to contact Darrell Kinchen 228-255-1900  
EXT.125 R/ *Darrell Kinchen*

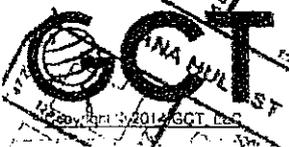
Address - 98182 GOLF CLUB DRIVE



Plot Plan

Decorative Green Fence

Proposed Location







**Public Comments**  
**PLANNING AND ZONING COMMISSION**  
**Diamondhead, Mississippi**  
**Diamondhead City Hall Council Chambers**  
**September 22, 2015**  
**5:30 p.m. CST**

**Case File Number 2015-00278**

The Diamondhead POA represented by Darrel Kinchen has filed an application requesting a Conditional Use Permit from the Zoning Ordinance (Article 2.5) to allow the use and operation of a dog park. Case File Number 201500278.

*Joe Baker, neighbor to the proposed park site spoke in opposition to the park location. He explained that he does not oppose the dog park, but would rather see it located in area that would not affect the residents. He suggested new dogs entering the neighborhood to use the park would cause issues with the neighborhood animals. He and his wife enjoy the outdoors by sitting on their porch, something he fears may no longer possible.*

*Sandra Gray expressed concerns regarding the potential hazard with a curve at the entrance to the park causing traffic problems*

*Lora Kolberta representing Four Paws Community Group explained the proposed site as already being used for off-leash exercise. She further indicated that Mr. Kinchen had informed her the POA Board of Directors had approved the land use for the park.*

*Building Official Jones introduced for the record, a letter of objection from Purcell Co., Inc. citing the park as an unacceptable amenity to Purcell as it was originally agreed upon with DHPOA the subject site would become a soccer or baseball area. The letter also suggested "faux wrought iron" could be permitted rather than chain link enclosures.*

*Commissioner Garrison introduced questions regarding policing, upkeep, and management of the facility.*

*Mark Boyd DHPOA General Manager then explained there were no alternative sites available. He suggested the proposed site is the only land owned by the POA that could house the park. In response to Commissioner Garrison regarding the operation of the park, he explained volunteer operation. If in fact the park was not successfully operated, the fencing would be removed and the park closed.*

*Ed Sutherland expressed his concerns with regard to non-defined responsibility such as no policing and operations by volunteer group being managed based on agreement with the POA.*

*Commissioner Hensley moved, seconded by Commissioner Bower to deny a Conditional Use Permit from the Zoning Ordinance (Article 2.5) to allow the use and operation of a dog park at 98182 Golf Club Drive. Case File Number 201500278.*

*Darrel Kinchen, DHPOA having requested permission to do so, read aloud a narrative from DHPOA outlining the conditional use request, proposed dimensions, volunteer agreement terms and general operation of the park.*

*A vote was then called on the motion to deny and was passed by the following voted:*

*Ayes: Bice, Bower, Garrison, and Hensley. Nays: Malley and Smith. Absent: Miller.*

## Ronald Jones

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**From:** Carl Joffe <carl.joffe2@gmail.com>  
**Sent:** Friday, September 18, 2015 3:02 PM  
**To:** Ronald Jones  
**Cc:** tcgarrison@cableone.net; malleyent@aol.com; ejbice@gmail.com; gbower@cableone.net; millerma1007@aol.com; babrogsmith@aol.com; hensleyjc121@gmail.com  
**Subject:** Planning & Zoning Commission - Case File Number 201500278 Dog Park  
**Attachments:** DH - Dog Park Ltr P&Z City.pdf; DH - Supplemental Agree. 6,abc.pdf; Biloxi Dog Park.JPG; Wrought Iron Fence (Aluminum).jpg

Mr. Jones,

Attached please find Purcell Co., Inc.'s formal objection to the requested Conditional Use Permit for a Dog Park in Case File Number 201500278. Please include the attached letter and attachments in the case file for consideration at the Tuesday, September 22, 2015 Planning Commission meeting. Thank you for your assistance.

Sincerely,

Carl Joffe  
Purcell Co., Inc.  
4401 E. Aloha Drive  
Diamondhead, MS 39525  
228-255-9130

# PURCELL CO., INC.

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September 18, 2015

Ronald R. Jones, Building Official  
City of Diamondhead  
5000 Diamondhead Circle  
Diamondhead, MS 39525

RE: Conditional Use Permit - Dog Park  
Case File Number: 201500278  
Our Files: DH 2002, DH 3478 & DH 3244

Dear Mr. Jones:

Please accept this letter as the formal objection of Purcell Co., Inc. to the proposed establishment of a Dog Park on Tax Parcel 067G-2-25-010.000. The subject property was formally owned by Purcell Co., Inc. ("Purcell"), and is subject to use restrictions outlined in that certain Supplemental Agreement, Section "6.(a),(b) &(c)", by and between the Diamondhead Country Club & Property Owners Association, Inc. ("DHPOA") and Purcell. The said Supplemental Agreement is recorded in Book 97 at Page 491 of the official land records in the Office of the Chancery Clerk of Hancock County. A copy of said Section 6. is attached for your reference.

This subject property was originally designated as Riding Stables, but that facility was closed at the DHPOA's request with Purcell's consent with the understanding that the DHPOA would in the future construct a soccer or baseball field(s) on the property, or other replacement amenity acceptable to Purcell.

It is our further understanding that the proposed Dog Park will initially not have the required parking and restroom facilities normally required by the City's zoning ordinance. We also understand that the Dog Park will be enclosed with a chain link fence which would not be permitted under the present language of the zoning ordinance. And even if the present zoning ordinance were to be amended to allow chain link fencing, Purcell strenuously objects to the use of a chain link for the proposed Dog Park since same would constitute an unacceptable eyesore in our opinion. The attached photo of Biloxi's Dog Park enclosed with a chain link fence is attached for your reference. In the event that the City elects to grant the conditional use of this property as a Dog Park, the use of aluminum "faux wrought iron" fencing would be much more aesthetically acceptable. A photo of such "faux wrought iron" is attached for your information and reference.

For the foregoing reasons, we respectfully request that the Planning and Zoning Commission recommend denial of the Conditional Use Permit for this Dog Park. Thank you for your consideration.

Sincerely yours,



Carl H. Joffe  
Counsel

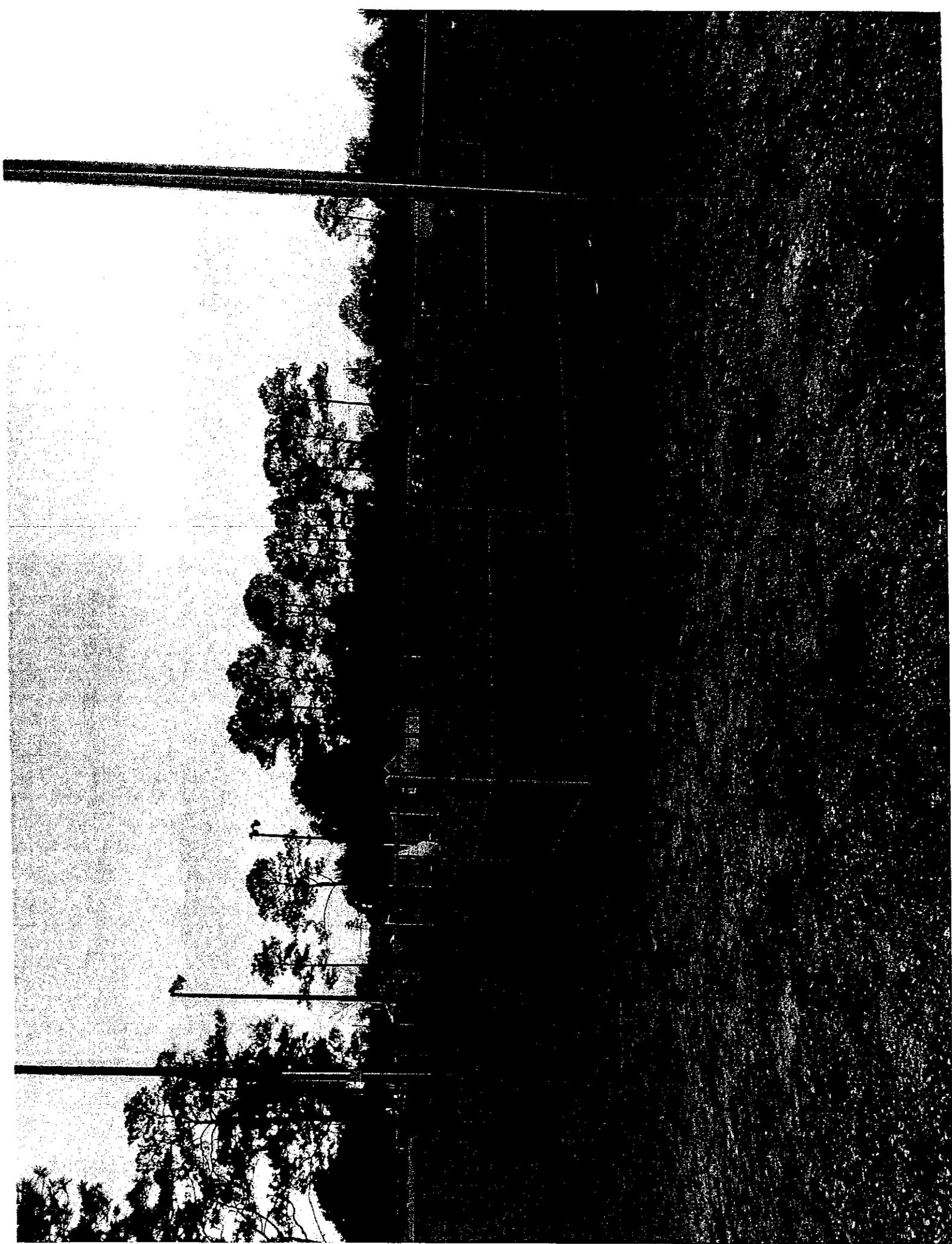
CC: Planning & Zoning Commissioners  
Darrel Kinchen, DHPOA  
Artis E. James, Jr.  
Holcomb Hector

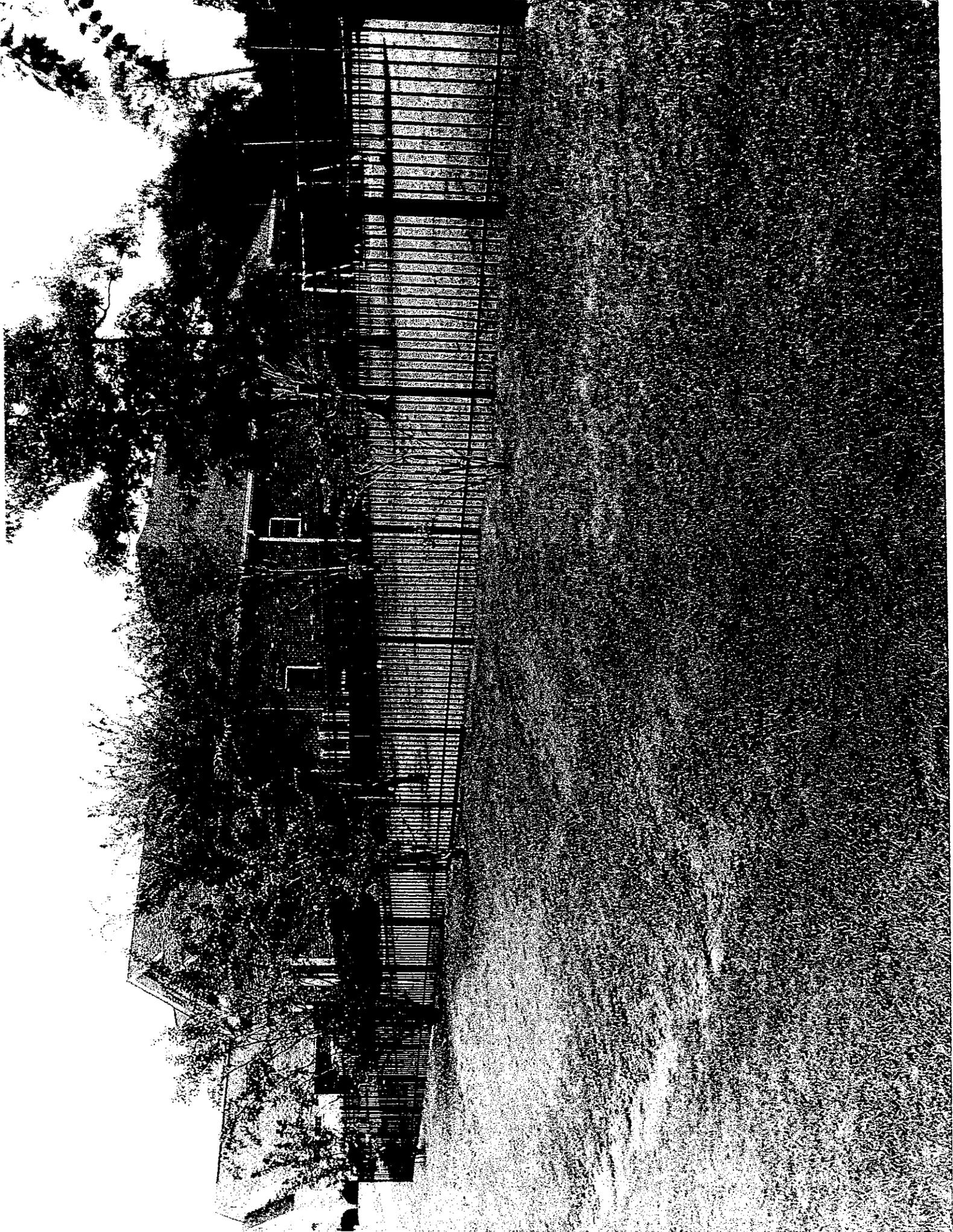
6.. OBLIGATIONS OF ASSOCIATION TO MAINTAIN AND PROVIDE SERVICES. On January 1, 1985, Purcell will turn over to Association possession of the Subject Property and the Common Facilities located thereon. From and after said date, Association will operate and maintain the Common Facilities, provide security guard service, and subsidize the Diamondhead Fire District to the extent necessary to continue its present operations, all for the benefit of owners of lots and real property in Diamondhead.

a. OPERATION AND MAINTENANCE OF COMMON FACILITIES. The Association shall be responsible for the exclusive management and control of the Common Facilities. Association agrees, pursuant to Exhibits A and B attached hereto, to manage, operate and maintain said Common Facilities to the same standard as such facilities and areas have been previously maintained, operated and managed by Purcell. Included in the maintenance and operation of Common Facilities is the provision for security services and maintenance of green spaces adjacent to the streets, lakes and recreational areas of Diamondhead.

b. LIABILITY. In further consideration of the conveyance contemplated herein, Purcell shall not be liable for any loss or damage arising out of any failure of Association to maintain the Common Facilities as above provided from and after January 1, 1985; or arising out of the acts or failure to act on the part of Association in furtherance of its duty to maintain and operate the common Facilities and provide services from and after January 1, 1985; and Association agrees to indemnify, defend and hold harmless Purcell from any and all claims, demands, loss or damage arising on account thereof. Purcell acknowledges that Association had no obligation or responsibility to maintain or operate the Common Facilities prior to such conveyance.

c. BREACH. Failure of the Association to operate and maintain the Common Facilities to the standards hereinabove set forth shall constitute a material breach of this Agreement.

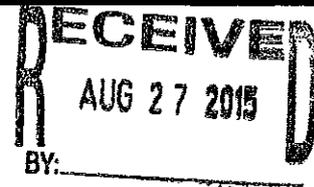




**Ronald Jones**

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**From:** JOE BAKER <joejbaker@bellsouth.net>  
**Sent:** Thursday, August 27, 2015 12:02 PM  
**To:** Ronald Jones  
**Subject:** abosure to dog park



dr sirs I have recently found out the poa wants to put a dog park in my back yard at 98182 golf club drive. I am very opposed to this and wonder why anyone would put a dog park in a reidentual neighborhood. my neighbor has two large dogs that bark at everything that moves,we have worked out our differcents at this time but if a dog park is put in next to us these dogs will bark all the time along with every other dog in the neighborhood. They say we have a noise ordenence but who would enforce it everytime a dog barks. as stated I am opposed to this. thank you joe baker 9819 anahulu st.