

**APPLICATION FOR NOMINATION TO THE ST. JOHNS COUNTY  
COURT/APPLICATION FOR NOMINATION TO THE CIRCUIT COURT  
IN AND FOR THE SEVENTH JUDICIAL CIRCUIT**

**JUNE 2025**

**ZACHARY W. MILLER, ESQ.**





4. Are you a registered voter in Florida (Y/N)?

**Yes**

5. Please list all courts (including state bar admissions) and administrative bodies having special admissions requirements to which you have ever been admitted to practice, giving the dates of admission, and if applicable, state whether you have ever been suspended or resigned. Please explain the reason for any lapse in membership.

**State of Florida – October 2008  
Middle District of Florida- October 2013**

6. Have you ever been known by any aliases? If so, please indicate and when you were known by such alias.

**None**

**EDUCATION:**

7. List in reverse chronological order each secondary school, college, university, law school or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, the date the degree was received, class standing, and graduating GPA (if your class standing or graduating GPA is unknown, please request the same from such school).

<u>School</u>	<u>GPA</u>	<u>Dates of Attendance</u>	<u>Degree</u>
<b>Suffolk Law School</b>	<b>Top 25% Dean's List (2 years)</b>	<b>2005-2008</b>	<b>J.D.</b>
<b>Boston University</b>	<b>3.3 GPA</b>	<b>2000-2004</b>	<b>B.S.</b>
<b>Episcopal High School</b>	<b>3.3 GPA</b>	<b>1996-2000</b>	<b>H.S.</b>

8. List and describe any organizations, clubs, fraternities or sororities, and extracurricular activities you engaged in during your higher education. For each, list any positions or titles you held and the dates of participation.

**Intern – Bulletin Newspapers (college) – Summer to Fall 2003**

**Intern – Roll Call Newspaper (college) – Winter to Spring 2004**

**Intern – Massachusetts State House (Law School) – Fall 2006**

**Intern – Greenberg Traurig (Law School) – Summer 2006**

**EMPLOYMENT:**

9. List in reverse chronological order all full-time jobs or employment (including internships and clerkships) you have held since the age of 21. Include the name and address of the employer, job title(s) and dates of employment. For non-legal employment, please briefly describe the position and provide a business address and telephone number.

<b><u>EMPLOYER/TITLE</u></b>	<b><u>DATES</u></b>
<b>Law Office of Zach Miller, Esq. Attorney 3203 Old Barn Court Ponte Vedra Beach, Florida 32082</b>	<b>Summer 2021 – Present</b>
<b>Summit Contracting General Counsel 7595 Baymeadows Way Suite 100, Jacksonville, FL 32256</b>	<b>Spring 2020 - Summer 2021</b>
<b>Baptist Hospitals General Counsel 800 Prudential Drive Jacksonville, FL 32207</b>	<b>Fall 2019 - Spring 2020</b>
<b>Law Office of Paul M. Harden, Jacksonville, Florida Attorney 1431 Riverplace Blvd #901, Jacksonville, FL 32207</b>	<b>Fall 2013 - Fall 2019</b>
<b>Office of the State Attorney, 4th Judicial Circuit, Jacksonville, FL Assistant State Attorney 311 West Monroe Street Jacksonville, Florida 32202</b>	<b>Summer 2010 – Fall 2013</b>
<b>Pappas Metcalf Jenks &amp; Miller, P.A., Jacksonville, FL Associate Attorney 1 Independent Dr # 2300, Jacksonville, FL 32202 (current address, bought by Gunster)</b>	<b>Summer 2008 - Summer 2010</b>
<b>Pappas Metcalf Jenks &amp; Miller, P.A., Summer Associate Jacksonville, FL</b>	<b>Summer 2007</b>

**1 Independent Dr # 2300,  
Jacksonville, FL 32202  
(current address, bought by Gunster)**

**Greenberg Traurig, LLC, Boston, MA  
Summer Associate  
1 International Pl #2000,  
Boston, MA 02110**

**Summer 2006**

**Boston City Council, Boston, MA  
Communications Director  
1 City Hall Square, Boston, MA 02201  
(617) 635-3040**

**Spring 2005 - Winter 2005**

**Bulletin Newspapers, Boston, MA  
General Assignment Reporter  
1842 Centre St,  
West Roxbury, MA 02132  
(closed)**

**Spring 2004 - Spring 2005**

**Roll Call Newspaper, Washington D.C.  
Intern/Reporter  
1201 Pennsylvania Ave, NW Suite 600  
Washington, DC 20004  
202-650-6500**

**Winter 2004 - Spring 2004**

**Eagle Tribune Newspapers, Washington D.C.  
Washington Correspondent/Reporter  
100 Turnpike St.  
North Andover, MA 01845  
978-946-2000**

**Winter 2004 - Spring 2004**

**Bulletin Newspapers, Boston, MA  
Intern/Reporter  
1842 Centre St,  
West Roxbury, MA 02132  
(closed)**

**Summer 2003 - Fall 2003**

- 10. Describe the general nature of your current practice including any certifications which you possess; additionally, if your practice is substantially different from your prior practice or if you are not now practicing law, give details of prior practice. Describe your typical clients or former clients and the problems for which they sought your services.**

**My current practice focuses on real property, land use, quasi-judicial hearings, covenants and restrictions, condominium/homeowner associations, transactional matters (leases, purchase and sale agreements, etc.) and construction law (contracts,**

liens, etc.). Part of that practice involves civil litigation concerning those areas of law, specifically declaratory judgments, breach of contract actions, certiorari petitions, regulatory takings (federal and state) and code enforcement actions. On occasion, I handle criminal law matters and general civil litigation not involving real estate.

My typical clients are both large-scale and small-scale property owners who require litigation services, transactional services, real property entitlements, construction documents and government affairs. I have also represented residents and property owners opposed to certain developments. In general, my clients require services for acquisition of real property, the development of said property and entitlements for said property.

From 2010 to 2013 I worked as a prosecutor where my practice was exclusively criminal. My last position as a prosecutor was in the Special Prosecutor division where I primarily handled financial crimes.

11. What percentage of your appearance in court in the last five years or in the last five years of practice (include the dates) was:

	Court		Area of Practice
Federal Appellate	_____ %	Civil	<u>98</u> %
Federal Trial	_____ %	Criminal	<u>2</u> %
Federal Other	_____ %	Family	_____ %
State Appellate	<u>2</u> %	Probate	_____ %
State Trial	<u>98</u> %	Other	_____ %
State Administrative	_____ %		
State Other	_____ %		
<b>TOTAL</b>	<b><u>100</u> %</b>	<b>TOTAL</b>	<b><u>100</u> %</b>

If your appearance in court the last five years is substantially different from your prior practice, please provide a brief explanation:

**In the years prior to 2018 I had several cases before the state appellate courts and one that was before the Florida Supreme Court.**

**As an assistant state attorney my practice was all criminal and involved extensive motion practice, hearings and jury trials. When I was not in court, I met with victims of crimes and their families to keep them informed of the process and answer their**

questions.

12. In your lifetime, how many (number) of the cases that you tried to verdict, judgment, or final decision were:

Jury? 11

Non-jury?

More than 30

(Felony first chairs. Unknown as to second chairs and misdemeanors, likely more than 30).

Arbitration? \_\_\_\_\_

Administrative Bodies?

Including quasi-judicial, 100s

Appellate? 5

13. Please list every case that you have argued (or substantially participated) in front of the United States Supreme Court, a United States Circuit Court, the Florida Supreme Court, or a Florida District Court of Appeal, providing the case name, jurisdiction, case number, date of argument, and the name(s), e-mail address(es), and telephone number(s) for opposing appellate counsel. If there is a published opinion, please also include that citation.

**In matters before the state appellate courts, I drafted the briefs but did not provide the oral arguments.**

14. Within the last ten years, have you ever been formally reprimanded, sanctioned, demoted, disciplined, placed on probation, suspended, or terminated by an employer or tribunal before which you have appeared? If so, please state the circumstances under which such action was taken, the date(s) such action was taken, the name(s) of any persons who took such action, and the background and resolution of such action.

**No**

15. In the last ten years, have you failed to meet any deadline imposed by court order or received notice that you have not complied with substantive requirements of any business or contractual arrangement? If so, please explain full.

**No**

16. For your last six cases, which were tried to verdict or handled on appeal, either before a jury, judge, appellate panel, arbitration panel or any other administrative hearing officer, list the names, e-mail addresses, and telephone numbers of the trial/appellate counsel on all sides and court case numbers (include appellate cases). *This question is optional for sitting judges who have served five years or more.*

***Soha, et. al. v. Clay County, Florida***

Special Magistrate Hearing Pursuant to s.70.51, F.S.  
Courtney Grimm, Esq.  
Courtney.Grimm@claycountygov.com  
[REDACTED]

*Gottlieb v. JWB Property Management*  
2024-SC-5460 (Duval County)  
Pro Se  
(Non-Jury Trial)

*Williams v. JWB Property Management*  
23-SC-8813 (Duval County).  
Pro Se  
(Non-Jury Trial)

*Florida Power & Light Company v. Florida Timberlands*  
22-CA-219 (Putnam County)  
John W. Little, Esq. III  
[jlittle@gunster.com](mailto:jlittle@gunster.com).  
[REDACTED]  
(Non-Jury Trial).

*COJ. v. David Willis*  
2022-CA-003550 (Duval County)  
Michael Fackler, Esq.  
[Mfackler@coj.net](mailto:Mfackler@coj.net)  
(904) 630-1700  
(Motion to dismiss granted. Post-judgment bench trial on determination and amount of attorney's fees)

*Jennigirl, LLC. v. Putnam County*  
22-CA-84. (Putnam County)  
Richard Komando, Esq.  
[Rich@claylawyers.com](mailto:Rich@claylawyers.com).  
[REDACTED]  
(Certiorari Petition Granted).

17. For your last six cases, which were either settled in mediation or settled without mediation or trial, list the names and telephone numbers of trial counsel on all sides and court case numbers (include appellate cases). *This question is optional for sitting judges who have served five years or more.*

*Fennel IP, LLC., v. Duval County Property Appraiser, et. al.*  
2024-CA-1959 (Duval County)  
Tiffany Douglas Pinkstaff  
[tpinkstaff@coj.net](mailto:tpinkstaff@coj.net)  
[REDACTED]

*Stubbs v. BCEL 10D, LLC and JWB Real Estate Capital*  
2024-CA-003180 (Duval County)  
Jason Gieger, Esq.  
[Jason@litigation-practice.com](mailto:Jason@litigation-practice.com)  
[REDACTED]

*Higbee v. Crosby*  
CA-2024-665 (St. Johns County)  
Brad Russell, Esq.  
[brad@russellandrussell.law](mailto:brad@russellandrussell.law)  
9 [REDACTED]

*JWB Real Estate Capital v. Bank of America, N.A.*  
2023-CC-12484  
Paul Cuffe, Esq.  
[pcuffe@mcguirewoods.com](mailto:pcuffe@mcguirewoods.com)  
[REDACTED]

*Bowman v. PRH Jacksonville Beach, LLC.*  
23-CA-8374 (Duval County)  
Alexa Browning, Esq.  
[browninga@gtlaw.com](mailto:browninga@gtlaw.com)  
[REDACTED]

*Deerwood Park North Owners' Association v Jax After Dark*  
23-CA-8735 (Duval County)  
David S. Fursteller  
[David@jaxattys.com](mailto:David@jaxattys.com)  
[REDACTED]

18. During the last five years, on average, how many times per month have you appeared in Court or at administrative hearings? If during any period you have appeared in court with greater frequency than during the last five years, indicate the period during which you appeared with greater frequency and succinctly explain.

**On average, about 1 day per month.**

**From 2010 to 2013, I was in court five days a week.**

19. If Questions 16, 17, and 18 do not apply to your practice, please list your last six major transactions or other legal matters that were resolved, listing the names, e-mail addresses, and telephone numbers of the other party counsel.

**Because questions 16, 17 and 18 apply, I am not listing these matters. That said, my current practice involves extensive negotiating, drafting and finalizing numerous transactional documents which I am happy to disclose upon request.**

20. During the last five years, if your practice was greater than 50% personal injury, workers' compensation or professional malpractice, what percentage of your work was in representation of plaintiffs or defendants?

N/A

21. List and describe the five most significant cases which you personally litigated giving the case style, number, court and judge, the date of the case, the names, e-mail addresses, and telephone numbers of the other attorneys involved, and citation to reported decisions, if any. Identify your client and describe the nature of your participation in the case and the reason you believe it to be significant.

***City of Jacksonville v. David Willis***  
***2022-CA-003550***

**The City of Jacksonville alleged my client violated the city's municipal code by renting out a home as a short-term vacation rental. The city brought an action in circuit court seeking an injunction and over one hundred thousand dollars in fines. My co-counsel and I successfully argued that the circuit court did not have subject matter jurisdiction due to the ordinance code not having any specific regulations for short-term vacation rentals and the issue being pre-empted by state statute. This effectively meant that, pursuant to the court's order, the city would not be able to cite anyone for the length of their rental. We were also able to secure discharge of an unlawful *lis pendens* filed against our client, for which we were awarded attorneys' fees.**

**This case was significant because it served as an important check by the judiciary on the overreach by a municipal government.**

**Opposing counsel was the office of general counsel for the City of Jacksonville (multiple attorneys). The client was David Willis. The Judge was the Honorable Michael Sharrit.**

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*JWB Real Estate Capital, LLC., et. al. v. City of Jacksonville Beach*  
*17-cv-00960-TJC-PDB*

This case involved a Section 1983 claim brought against the City of Jacksonville Beach for the unequal application of its ordinance provisions. My client applied for development permits for townhomes. Townhomes are residential units where each unit directly connects to the wall of the neighboring unit. Defendant asserted that the driveways and walkways were “parking areas” and “accessory structures” and therefore needed to be more than five feet from any property line, per the ordinance code. This would make construction of townhomes an impossibility. The evidence showed the city made this interpretation because of public pressure to stop townhomes from being built. I found numerous examples where the city had approved townhomes where the driveways and walkways were less than five feet from property lines. The case involved two requests for administrative interpretations, two administrative appeals of said interpretations, oral arguments before the court, extensive pre-trial litigation and discovery. The case was ultimately settled after the planners for the city admitted during deposition that they had previously approved similar townhomes and that there was no logical reason to require townhomes to abide by such a setback requirement.

This case was significant because it demonstrated the necessity for equal treatment under the law applies to any law, no matter how technical. Further, the case showed that if local governments want to cater to political pressure on matters, the correct avenue is through the legislative process, not attempting to “re-interpret” the ordinance code in an arbitrary and capricious manner.

The opinion denying the motion to dismiss was written by the Honorable Timothy Corrigan. Opposing counsel was Dale Scott, Esq.

.....  
*Surf Works, LLC v. City of Jacksonville Beach. 1D-16-3312 (Surf Works, LLC v. City of Jacksonville Beach, 230 So. 3d 925 (Fla. 1<sup>st</sup> DCA 2017).*

This case involved a denial of a rezoning by the City of Jacksonville Beach. Co-counsel and I represented the applicant and filed a petition for writ of certiorari to the circuit court. The circuit court agreed with most of our arguments but disagreed with our reading of the applicable ordinance section. We then filed a petition for writ of certiorari to the district court. After extensive briefing and oral argument, the district court wrote an opinion agreeing with our interpretation of the ordinance code.

I believe this case was important because the district court's opinion held that a local government must strictly construe and apply the provisions of its ordinance code and not apply them in an *ad hoc* manner based upon political pressures.

The opinion was written by the Honorable Judge Bradford Thomas. The opposing attorney was Susan Erdelyi. The opinion was released on November 8, 2017. The client was Surf Works, LLC.

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*State v. Flowers*  
2011- CF- 6432

This case involved an ex-boyfriend (the defendant) who broke into his ex-girlfriend's home (where he used to live), bolted all the doors but one shut and wrote on the walls in his own blood. There was extensive pre-trial litigation (almost three years' worth) centering on whether he had the right to enter the home. The charge was armed burglary with a deadly weapon. The trial lasted five days and resulted in the jury returning a verdict of guilty on all counts.

I believe this case was significant because it concerned the right of the victim to feel safe in her own home. Specifically, it concerned her right to know that the law would protect her and her property from an ex-boyfriend who felt he was entitled to her attention and her property.

The Judge was the Honorable Virginia Norton. Opposing counsel during the trial was Kelly Kobielush. The trial was in March 2013. The client was the State of Florida.

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*State v. Aderhold*  
2012-CF-6062

This case involved the defendant making methamphetamine in a motel room. Because of the dangerous nature of the drug and the apparatus used to make it, all the evidence was destroyed before trial. This meant the only evidence was testimony and pictures taken during the arrest. Getting the remaining evidence to the jury required extensive argument on particular rules of evidence (the market reports exception) for which there was no precedent in the State of Florida. The defendant was found guilty on all charges.

I believe this case was significant because it showed that a conviction could be obtained in a manufacturing of methamphetamine case even though law enforcement was not able to retain the majority of the evidence found at the crime scene. This was pivotal in providing that prosecution for manufacturing such a dangerous substance

was possible even though the nature of the substance prohibited it being retained for evidence.

The Judge was the Honorable James Daniel. Opposing counsel was Shannon Schott (public defender). The trial was in December 2012. The client was the State of Florida.

.....  
*State v. Keys*  
*2011-CF-050934*

This case involved a young man with a severe learning disability who, while working at Publix, was attacked by the defendant. The defendant was upset that the victim had complimented him on his t-shirt and decided to punch him repeatedly, knocking out several teeth. I charged the defendant with abuse of a disabled adult – a first degree felony. I also charged the defendant’s brother, who drove the defendant from the scene, with accessory after the fact. The case was difficult in that the victim was (understandably) scared of testifying and was (also understandably) limited in the testimony he could provide. The case ultimately turned on the co-defendant (the brother) pleading guilty and offering testimony implicating his brother, who was sentenced to ten (10) years.

I believe this case was significant because it showed that the law and law enforcement would bring serious penalties against those who showed callous disregard toward the security and well-being of those with disabilities.

Opposing counsel was Butch Berry (now deceased). The client was the State of Florida. The Judge was the Honorable Mark Hulsey.

22. Attach at least two, but no more than three, examples of legal writing which you personally wrote. If you have not personally written any legal documents recently, you may attach a writing sample for which you had substantial responsibility. Please describe your degree of involvement in preparing the writing you attached.

In all the attached documents I was the attorney who researched the material and drafted the documents filed. In instances where other attorneys are listed, my co-counsel reviewed and offered edits and suggestions.

**PRIOR JUDICIAL EXPERIENCE OR PUBLIC OFFICE**

23. Have you ever held judicial office or been a candidate for judicial office? If so, state the court(s) involved, the dates of service or dates of candidacy, and any election results.

No.

24. If you have previously submitted a questionnaire or application to this or any other judicial nominating commission, please give the name(s) of the commission, the approximate date(s) of each submission, and indicate if your name was certified to the Governor's Office for consideration.

**I applied for a Circuit Court vacancy in the 7th Judicial Circuit in October 2024. My name was certified to the Governor's Office for consideration; however, I was not selected.**

**I applied for a Circuit Court vacancy in the 7th Judicial Circuit in November 2018. My name was not certified to the Governor's Office for consideration.**

25. List any prior quasi-judicial service, including the agency or entity, dates of service, position(s) held, and a brief description of the issues you heard.

**St. Johns County Planning and Zoning Agency. 2021-2022**

**The St. Johns County Planning and Zoning Agency heard quasi-judicial zoning matters, including rezonings, exceptions, variances and planned unit development modifications and comprehensive plan amendments. The comprehensive plan amendments and rezonings were for recommendations to the Board of County Commissioners. The other items were final orders.**

26. If you have prior judicial or quasi-judicial experience, please list the following information:

**St. Johns County Planning and Zoning Agency**

- (i) the names, phone numbers and addresses of six attorneys who appeared before you on matters of substance;

**Ellen Avery-Smith, Esq.**  
**100 Whetstone Pl Ste 200**  
**St Augustine, FL 32086**  
[eaverysmith@rtlaw.com](mailto:eaverysmith@rtlaw.com)

**Gary B Davenport, Esq.**  
**99 Marine St**  
**Saint Augustine, FL 32084**  
[garybdavenport@gmail.com](mailto:garybdavenport@gmail.com)

Courtney P. Gaver, Esq.  
Rogers Towers, P.A.  
1301 Riverplace Blvd Ste 1500  
Jacksonville, FL 32207  
[cgaver@rtlaw.com](mailto:cgaver@rtlaw.com)

Richard Komando, Esq.  
1845 Eastwest Pkwy Ste 6  
Fleming Island, FL 32003  
[rich@claylawyers.com](mailto:rich@claylawyers.com)

Karl Sanders, Esq.  
1102 A1A N Ste 201  
Ponte Vedra Beach, FL 32082  
[kjsanders@kjslawpa.com](mailto:kjsanders@kjslawpa.com)

Michael O. Sznajstajler  
149 S. Ridgewood Avenue, Suite 700  
Daytona Beach, Florida 32114  
[Michael.Sznajstajler@cobbcole.com](mailto:Michael.Sznajstajler@cobbcole.com)

- (ii) the approximate number and nature of the cases you handled during your tenure;

**Over one hundred quasi-judicial zoning matters.**

- (iii) the citations of any published opinions; and  
N/A

- (iv) descriptions of the five most significant cases you have tried or heard, identifying the citation or style, attorneys involved, dates of the case, and the reason you believe these cases to be significant.

**All the matters that came before the Planning and Zoning Agency I consider to be significant because each ultimately concerned a citizen's property rights, as well as the rights of residents to not be impacted by development.**

**One unusual case concerned a proposed rezoning on Porter Road near U.S. 1 north of St. Augustine. The proposed rezoning was heard on January 20, 2022.**

**The zoning proposed was unremarkable when compared to other proposals, however, the land development code required review by the St. Johns County Airport Authority. At the hearing I asked the attorney representing the applicant if the St. Johns County Airport Authority had reviewed the application. The attorney stated that “staff” had reviewed it and approved it. I asked who the staff member was who provided the review. The attorney said he provided the review and approval as he was also the attorney for the St. Johns County Airport Authority. I asked how he could represent the applicant and the reviewing authority. He did not provide the answer.**

**The zoning was ultimately denied.**

**I bring up this case not as an example of a “gotcha” but to show the importance of any decision-maker being well-versed in the rules, regulations and procedures in any area of law they are charged with overseeing. A judge I regularly appeared before as a new prosecutor told me, “the answer is almost always in the rules or the statute, you just have to take the time to look for it.”**

**On this matter, the zoning was subject to a slightly different set of rules and approvals compared to others. Researching those rules allowed an important conflict to come to light and help uphold the impartiality of another local board.**

- 27.** Provide citations and a brief summary of all of your orders or opinions where your decision was reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, attach copies of the opinions.

**N/A.**

- 28.** Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, attach copies of the opinions.

**N/A.**

29. Has a complaint about you ever been made to the Judicial Qualifications Commission? If so, give the date, describe the complaint, whether or not there was a finding of probable cause, whether or not you have appeared before the Commission, and its resolution.

No

30. Have you ever held an attorney in contempt? If so, for each instance state the name of the attorney, case style for the matter in question, approximate date and describe the circumstances.

N/A.

31. Have you ever held or been a candidate for any other public office? If so, state the office, location, dates of service or candidacy, and any election results.

N/A.

#### **NON-LEGAL BUSINESS INVOLVEMENT**

32. If you are now an officer, director, or otherwise engaged in the management of any business enterprise, state the name of such enterprise, the nature of the business, the nature of your duties, and whether you intend to resign such position immediately upon your appointment or election to judicial office.

**I am the 100% owner of a single-asset limited liability company (*SLM Investments, LLC*) which owns one single-family residential parcel in Putnam County. The property is currently vacant.**

33. Since being admitted to the Bar, have you ever engaged in any occupation, business or profession other than the practice of law? If so, explain and provide dates. If you received any compensation of any kind outside the practice of law during this time, please list the amount of compensation received.

N/A

#### **POSSIBLE BIAS OR PREJUDICE**

34. The Commission is interested in knowing if there are certain types of cases, groups of entities, or extended relationships or associations which would limit the cases for which you could sit as the presiding judge. Please list all types or classifications of cases or litigants for which you, as a general proposition, believe it would be difficult for you to sit as the presiding judge. Indicate the reason for each situation as to why you believe you

might be in conflict. If you have prior judicial experience, describe the types of cases from which you have recused yourself.

**There are no types of cases I have any bias or prejudice towards. Nor do I have any prejudice or bias to any groups.**

## **PROFESSIONAL ACCOMPLISHMENTS AND OTHER ACTIVITIES**

- 35.** List the titles, publishers, and dates of any books, articles, reports, letters to the editor, editorial pieces, or other published materials you have written or edited, including materials published only on the Internet. Attach a copy of each listed or provide a URL at which a copy can be accessed.

N/A

- 36.** List any reports, memoranda or policy statements you prepared or contributed to the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. Provide the name of the entity, the date published, and a summary of the document. To the extent you have the document, please attach a copy or provide a URL at which a copy can be accessed.

N/A

- 37.** List any speeches or talks you have delivered, including commencement speeches, remarks, interviews, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place they were delivered, the sponsor of the presentation, and a summary of the presentation. If there are any readily available press reports, a transcript or recording, please attach a copy or provide a URL at which a copy can be accessed.

N/A

- 38.** Have you ever taught a course at an institution of higher education or a bar association? If so, provide the course title, a description of the course subject matter, the institution at which you taught, and the dates of teaching. If you have a syllabus for each course, please provide.

N/A

- 39.** List any fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement. Include the date received and the presenting entity or organization.

N/A

40. Do you have a Martindale-Hubbell rating? If so, what is it and when was it earned?

N/A

41. List all bar associations, legal, and judicial-related committees of which you are or have been a member. For each, please provide dates of membership or participation. Also, for each indicate any office you have held and the dates of office.

**Federalist Society. Originally joined in 2008. Rejoined in 2024 after a lapse in membership.**

**Federalist Society (Law School) 2005-2008**

**Former Member Jacksonville Bar Association (Young Attorney)**

**Former Member St. Augustine Inn of Court**

42. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in the previous question to which you belong, or to which you have belonged since graduating law school. For each, please provide dates of membership or participation and indicate any office you have held and the dates of office.

**Humane Society of St. Augustine – Board Member (2019-2021)**

**Planning and Zoning Agency – Member (2021-2022)**

43. Do you now or have you ever belonged to a club or organization that in practice or policy restricts (or restricted during the time of your membership) its membership on the basis of race, religion (other than a church, synagogue, mosque or other religious institution), national origin, or sex (other than an educational institution, fraternity or sorority)? If so, state the name and nature of the club(s) or organization(s), relevant policies and practices and whether you intend to continue as a member if you are selected to serve on the bench.

No.

44. Please describe any significant pro bono legal work you have done in the past 10 years, giving dates of service.

**Represented Springfield Preservation and Revitalization (SPAR) in administrative appeals and advised their board and members on zoning matters. (2021- Present).**

**Spoke at community meetings for various communities on the northside of Jacksonville concerning insurance scams. (2018-Present)**

**Advised residents on the northside of Jacksonville concerning opposition for location of liquor stores near schools. (2021 – Present).**

**Advised and drafted legal documents for Lift Jax. (2023 – Present).**

**Represent Clara White Mission. (2025-Present).**

**Drafted legislation to streamline the process to develop and construct affordable homes.**

45. Please describe any hobbies or other vocational interests.

**I compete in various USGA and FSGA golf tournaments.**

46. Please state whether you have served or currently serve in the military, including your dates of service, branch, highest rank, and type of discharge.

**None.**

47. Please provide links to all social media and blog accounts you currently maintain, including, but not limited to, Facebook, Twitter, LinkedIn, and Instagram.

**<https://www.facebook.com/zach.miller.1257/>**

## **FAMILY BACKGROUND**

48. Please state your current marital status. If you are currently married, please list your spouse's name, current occupation, including employer, and the date of the marriage. If you have ever been divorced, please state for each former spouse their name, current address, current telephone number, the date and place of the divorce and court and case number information.

**Married.**

**May 31, 2014**

**Jennifer L. Miller  
Legal Assistant  
Lippes Mathias LLP**

49. If you have children, please list their names and ages. If your children are over 18 years of age, please list their current occupation, residential address, and a current telephone number.

  
Age 8

#### **CRIMINAL AND MISCELLANEOUS ACTIONS**

50. Have you ever been convicted of a felony or misdemeanor, including adjudications of guilt withheld? If so, please list and provide the charges, case style, date of conviction, and terms of any sentence imposed, including whether you have completed those terms.

**No.**

51. Have you ever pled nolo contendere or guilty to a crime which is a felony or misdemeanor, including adjudications of guilt withheld? If so, please list and provide the charges, case style, date of conviction, and terms of any sentence imposed, including whether you have completed those terms.

**No.**

52. Have you ever been arrested, regardless of whether charges were filed? If so, please list and provide sufficient details surrounding the arrest, the approximate date and jurisdiction.

**No.**

53. Have you ever been a party to a lawsuit, either as the plaintiff, defendant, petitioner, or respondent? If so, please supply the case style, jurisdiction/county in which the lawsuit was filed, case number, your status in the case, and describe the nature and disposition of the matter.

**No.**

54. To your knowledge, has there ever been a complaint made or filed alleging malpractice as a result of action or inaction on your part?

**No.**

55. To the extent you are aware, have you or your professional liability carrier ever settled a claim against you for professional malpractice? If so, give particulars, including the name of the client(s), approximate dates, nature of the claims, the disposition and any amounts involved.

**No.**

- 56.** Has there ever been a finding of probable cause or other citation issued against you or are you presently under investigation for a breach of ethics or unprofessional conduct by any court, administrative agency, bar association, or other professional group. If so, provide the particulars of each finding or investigation.

**No.**

- 57.** To your knowledge, within the last ten years, have any of your current or former co-workers, subordinates, supervisors, customers, clients, or the like, ever filed a formal complaint or accusation of misconduct including, but not limited to, any allegations involving sexual harassment, creating a hostile work environment or conditions, or discriminatory behavior against you with any regulatory or investigatory agency or with your employer? If so, please state the date of complaint or accusation, specifics surrounding the complaint or accusation, and the resolution or disposition.

**No.**

- 58.** Are you currently the subject of an investigation which could result in civil, administrative, or criminal action against you? If yes, please state the nature of the investigation, the agency conducting the investigation, and the expected completion date of the investigation.

**No.**

- 59.** Have you ever filed a personal petition in bankruptcy or has a petition in bankruptcy been filed against you, this includes any corporation or business entity that you were involved with? If so, please provide the case style, case number, approximate date of disposition, and any relevant details surrounding the bankruptcy.

**No.**

- 60.** In the past ten years, have you been subject to or threatened with eviction proceedings? If yes, please explain.

**No.**

- 61.** Please explain whether you have complied with all legally required tax return filings. To the extent you have ever had to pay a tax penalty or a tax lien was filed against you, please explain giving the date, the amounts, disposition, and current status.

**I have complied with all legally required tax return filings. For my 2024 taxes I was assessed a \$3.00 penalty for underestimating my 2024 estimated quarterly tax filings. The penalty was paid.**

## **HEALTH**

**62.** Are you currently addicted to or dependent upon the use of narcotics, drugs, or alcohol?

**No.**

**63.** During the last ten years have you been hospitalized or have you consulted a professional or have you received treatment or a diagnosis from a professional for any of the following: Kleptomania, Pathological or Compulsive Gambling, Pedophilia, Exhibitionism or Voyeurism? If your answer is yes, please direct each such professional, hospital and other facility to furnish the Chairperson of the Commission any information the Commission may request with respect to any such hospitalization, consultation, treatment or diagnosis. [“Professional” includes a Physician, Psychiatrist, Psychologist, Psychotherapist or Mental Health Counselor.] Please describe such treatment or diagnosis.

**No.**

**64.** In the past ten years have any of the following occurred to you which would interfere with your ability to work in a competent and professional manner: experiencing periods of no sleep for two or three nights, experiencing periods of hyperactivity, spending money profusely with extremely poor judgment, suffering from extreme loss of appetite, issuing checks without sufficient funds, defaulting on a loan, experiencing frequent mood swings, uncontrollable tiredness, falling asleep without warning in the middle of an activity. If yes, please explain.

**No.**

**65.** Do you currently have a physical or mental impairment which in any way limits your ability or fitness to properly exercise your duties as a member of the Judiciary in a competent and professional manner? If yes please explain the limitation or impairment and any treatment, program or counseling sought or prescribed.

**No.**

**66.** During the last ten years, have you ever been declared legally incompetent or have you or your property been placed under any guardianship, conservatorship or committee? If yes, provide full details as to court, date, and circumstances.

**No.**

67. During the last ten years, have you unlawfully used controlled substances, narcotic drugs, or dangerous drugs as defined by Federal or State laws? If your answer is “Yes,” explain in detail. (Unlawful use includes the use of one or more drugs and/or the unlawful possession or distribution of drugs. It does not include the use of drugs taken under supervision of a licensed health care professional or other uses authorized by Federal or State law provisions.).

**No.**

68. In the past ten years, have you ever been reprimanded, demoted, disciplined, placed on probation, suspended, cautioned, or terminated by an employer as result of your alleged consumption of alcohol, prescription drugs, or illegal drugs? If so, please state the circumstances under which such action was taken, the name(s) of any persons who took such action, and the background and resolution of such action.

**No.**

69. Have you ever refused to submit to a test to determine whether you had consumed and/or were under the influence of alcohol or drugs? If so, please state the date you were requested to submit to such a test, the type of test required, the name of the entity requesting that you submit to the test, the outcome of your refusal, and the reason why you refused to submit to such a test.

**No.**

70. In the past ten years, have you suffered memory loss or impaired judgment for any reason? If so, please explain in full.

**No.**

## **SUPPLEMENTAL INFORMATION**

71. Describe any additional education or experiences you have which could assist you in holding judicial office.

**My undergraduate degree was in print journalism, and I worked as a journalist prior to going to law school.**

**Being a reporter meant working on tight deadlines while checking (and rechecking) that all the facts in a story were correct. Being a reporter meant that I had to convey complex matters into just a few paragraphs with simple prose.**

**This experience has served me well as an attorney. Every client I have been fortunate enough to represent has remarked on the timeliness of my responses and the quick**

turnaround time on documents. While I pride myself on being thorough, I have worked very hard to provide quick turnarounds on any matter pending.

**This is an important quality in a judge. People's futures, whether it be their business, their family or their freedom, hang in the balance of the judge's decision-making. While it is undoubtedly important to provide all matters with the time and attention needed, it is equally important as a judge to keep matters from lingering. Stale judicial matters harm those who have sought access to the courts and harm the public's confidence that the judiciary can timely and fairly adjudicate the issues.**

72. Explain the particular contribution you believe your selection would bring to this position and provide any additional information you feel would be helpful to the Commission and Governor in evaluating your application.

**Having extensive experience in civil, criminal, administrative, quasi-judicial and legislative matters and hearings will allow me to preside over a wide range of cases efficiently and effectively.**

**Having worked as a prosecutor I understand the long hours and daily grind for lawyers at the state's attorney's office and public defender's office. As a judge, I believe this experience will allow me to work effectively on criminal matters because I understand in detail what the pressures and difficulties prosecutors and criminal defense attorneys face.**

**Having worked as in-house counsel, I have first-hand experience of how the legal system, litigation, courtrooms and the overall legal process can be intimidating for non-lawyers simply trying to run a business, as well as their employees who are required to testify in court or at hearings.**

**Having worked in a law firm, I understand the pressures that associates and shareholders face representing their clients while also running a business.**

**As a solo-practitioner, I understand the challenge of being an attorney who is their own office manager, researcher, scheduler, bookkeeper, partner and associate.**

**Having these wide-ranging experiences will allow me to preside over cases knowing that I have been in the shoes of almost any type of attorney that appears before me. I believe this will be a strong asset.**

**Because I have been fortunate to handle a wide variety of cases and matters I believe I can be a strong asset in any area assigned as well as providing coverage for other judges when needed.**

## REFERENCES

73. List the names, addresses, e-mail addresses and telephone numbers of ten persons who are in a position to comment on your qualifications for a judicial position and of whom inquiry may be made by the Commission and the Governor.

Jeremiah Blocker, Esq.  
[jeremiah@dhclawyers.com](mailto:jeremiah@dhclawyers.com)

[REDACTED]

Rory Diamond, Esq.  
[rory@dhclawyers.com](mailto:rory@dhclawyers.com)

[REDACTED]

Michael O. Sznajstajler  
[Michael.Sznajstajler@cobbcole.com](mailto:Michael.Sznajstajler@cobbcole.com)

[REDACTED]

Charlie Douglas, Esq.  
[charlie@dhclawyers.com](mailto:charlie@dhclawyers.com)

[REDACTED]

The Honorable Terrance Freeman  
[TFreeman@coj.net](mailto:TFreeman@coj.net)

[REDACTED]

Paul M. Harden, Esq.  
[Paul@hardenlawoffice.com](mailto:Paul@hardenlawoffice.com)

[REDACTED]

Richard Komando, Esq.  
[rich@claylawyers.com](mailto:rich@claylawyers.com)

[REDACTED]

Matt Polimeni, Esq.  
[matthew.polimeni@aprenergy.com](mailto:matthew.polimeni@aprenergy.com)

[REDACTED]

Karl Sanders, Esq.  
[kjsanders@kjslawpa.com](mailto:kjsanders@kjslawpa.com)

[REDACTED]

Cyndy K. Trimmer, Esq.  
[ctrimmer@drivermcafee.com](mailto:ctrimmer@drivermcafee.com)

[REDACTED]

**CERTIFICATE**

I have read the foregoing questions carefully and have answered them truthfully, fully and completely. I hereby waive notice by and authorize The Florida Bar or any of its committees, educational and other institutions, the Judicial Qualifications Commission, the Florida Board of Bar Examiners or any judicial or professional disciplinary or supervisory body or commission, any references furnished by me, employers, business and professional associates, all governmental agencies and instrumentalities and all consumer and credit reporting agencies to release to the respective Judicial Nominating Commission and Office of the Governor any information, files, records or credit reports requested by the commission in connection with any consideration of me as possible nominee for appointment to judicial office. Information relating to any Florida Bar disciplinary proceedings is to be made available in accordance with Rule 3-7.1(1), Rules Regulating The Florida Bar. I recognize and agree that, pursuant to the Florida Constitution and the Uniform Rules of this commission, the contents of this questionnaire and other information received from or concerning me, and all interviews and proceedings of the commission, except for deliberations by the commission, shall be open to the public.

Further, I stipulate I have read and understand the requirements of the Florida Code of Judicial Conduct.

Dated this 16 day of June, 2025.

Zachary Miller  
Printed Name

Zach Miller  
Signature

*(Pursuant to Section 119.071(4)(d)(1), F.S.), . . . The home addresses and telephone numbers of justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges; the home addresses, telephone numbers, and places of employment of the spouses and children of justices and judges; and the names and locations of schools and day care facilities attended by the children of justices and judges are exempt from the provisions of subsection (1), dealing with public records.*

**FINANCIAL HISTORY**

1. State the amount of gross income you have earned, or losses you have incurred (before deducting expenses and taxes) from the practice of law for the preceding three-year period. This income figure should be stated on a year-to-year basis and include year-to-date information, and salary, if the nature of your employment is in a legal field.

**Current Year-To-Date: \$312,389.75 (as of 6/16/25)**

**Last Three Years: \$533,006.74(2024) \$ 355,041.32 (2023) \$344,652.00 (2022)**

**(Sole Practitioner) (Sole Practitioner) (Sole Practitioner)**

2. State the amount of net income you have earned, or losses you have incurred (after deducting expenses but not taxes) from the practice of law for the preceding three-year period. This income figure should be stated on a year-to-year basis and include year-to-date information, and salary, if the nature of your employment is in a legal field.

**Current Year-To-Date: \$282,029.69**

**(Estimate)**

**Last Three Years: \$508,236(2024) \$ 315,879.56 (2023) \$314,592.50 (2022)**

**(Sole Practitioner) (Sole Practitioner) (Sole Practitioner)**

3. State the gross amount of income or losses incurred (before deducting expenses or taxes) you have earned in the preceding three years on a year-by-year basis from all sources other than the practice of law, and generally describe the source of such income or losses.

**Current Year-To-Date: \$1,727.08 (Interest)**

**Last Three Years: \$57,580 (2024) \$4,645.00 (2023) \$2,837.43 (2022)**

**(NWM/Interest) (Merrill/Interest) (Merrill/Interest)**

4. State the amount you have earned in the preceding three years on a year by year basis from all sources other than the practice of law, and generally describe the source of such income or losses.

**Current Year-To-Date: Same as 3.**

**Last Three Years: Same as 3 Same as 3 Same as 3**

5. State the amount of net income you have earned or losses incurred (after deducting

expenses) from all sources other than the practice of law for the preceding three-year period on a year by year basis, and generally describe the sources of such income or losses.

**Current Year-To-Date: Same as 3.**

**Last Three Years: Same as 3 Same as 3 Same as 3**

**FORM 6**  
**FULL AND PUBLIC**  
**DISCLOSURE OF**  
**FINANCIAL INTEREST**

**PART A – NET WORTH**

Please enter the value of your net worth as of December 31 or a more current date. [Note: Net worth is not calculated by subtracting your *reported* liabilities from your *reported* assets, so please see the instructions on page 3.]

My net worth as of 6/16/2025, 2025 was \$2,205,838.02

**PART B – ASSETS**

**HOUSEHOLD GOODS AND PERSONAL EFFECTS:**

Household goods and personal effects may be reported in a lump sum if their aggregate value exceeds \$1,000. This category includes any of the following, if not held for investment purposes; jewelry; collections of stamps, guns, and numismatic items; art objects; household equipment and furnishings; clothing; other household items; and vehicles for personal use.

The aggregate value of my household goods and personal effects (described above) is estimated to be above \$20,000.00

**ASSETS INDIVIDUALLY VALUED AT OVER \$1,000:**

DESCRIPTION OF ASSET (specific description is required – see instructions p. 3)

VALUE OF ASSET

DESCRIPTION OF ASSET (specific description is required – see instructions p. 3)	VALUE OF ASSET
Home 3203 Old Barn Court Ponte Vedra Beach, Florida	\$1,368,158.00 (SJC Property Appraiser)
Northwestern Portfolio	\$367,508.17 (6/16/25)
First Citizens Savings and Checking Accounts	\$249,895.05 (6/16/25)
Bank of America Savings and Checking Accounts	\$2,748.72
2024 Toyota Land Cruiser (Personal Vehicle)	\$58,371 (estimate/KBB)
2020 BMW X3 (Personal Vehicle)	\$20,968 (estimate/KBB)
First Citizens Certificate of Deposit	\$54,567.44 (6/16/25)
Goldman Sachs Certificate of Deposit	\$102,337.60 (6/16/25)
SLM Investments, LLC (Sole Member/Manager)	\$17,000.00 (value of asset at 109 Bellray Drive, Satsuma, Florida)
First Citizens Checking Account (SLM Investments, LLC)	\$2,397.48 (6/16/25)
Stifel Investment Portfolio	\$12,500.00 (estimate)

**PART C - LIABILITIES**

**LIABILITIES IN EXCESS OF \$1,000 (See instructions on page 4):**

NAME AND ADDRESS OF CREDITOR

AMOUNT OF LIABILITY

NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY
American Express Credit Card 200 Vesey Street New York, NY 10285-3106	\$8,051.00 (6/16/25)
USAA 9800 Fredericksburg Road, San Antonio, Texas, 78288	\$55,991.42(6/16/25)
BMW Credit 5550 Britton Pkwy, Hilliard, Ohio 43026	\$6,571.02 (6/16/25)

**PART D - INCOME**

You may **EITHER** (1) file a complete copy of your latest federal income tax return, including all W2's, schedules, and attachments, **OR** (2) file a sworn statement identifying each separate source and amount of income which exceeds \$1,000 including secondary sources of income, by completing the remainder of Part D, below.

I elect to file a copy of my latest federal income tax return and all W2's, schedules, and attachments.  
 (if you check this box and attach a copy of your latest tax return, you need not complete the remainder of Part D.)

**PRIMARY SOURCE OF INCOME** (See instructions on page 5):

NAME OF SOURCE OF INCOME EXCEEDING \$1,000	ADDRESS OF SOURCE OF INCOME	AMOUNT

**SECONDARY SOURCES OF INCOME** [Major customers, clients, etc., of businesses owned by reporting person—see instructions on page 6]

NAME OF BUSINESS ENTITY	NAME OF MAJOR SOURCES OF BUSINESS' INCOME	ADDRESS OF SOURCE	PRINCIPAL BUSINESS ACTIVITY OF SOURCE

**PART E - INTERESTS IN SPECIFIC BUSINESS** [Instructions on page 7]

	BUSINESS ENTITY #1	BUSINESS ENTITY #2	BUSINESS ENTITY #3
NAME OF BUSINESS ENTITY	SLM INVESTMENTS, LLC		
ADDRESS OF BUSINESS ENTITY	3203 Old Barn Court Ponte Vedra Florida 32082		
PRINCIPAL BUSINESS ACTIVITY	Real Estate Holdings		
POSITION HELD WITH ENTITY	Manager/Owner		
I OWN MORE THAN A 5% INTEREST IN THE BUSINESS	Yes		
NATURE OF MY OWNERSHIP INTEREST	Sole Owner		

IF ANY OF PARTS A THROUGH E ARE CONTINUED ON A SEPARATE SHEET, PLEASE CHECK HERE

**OATH**

I, the person whose name appears at the beginning of this form, do depose on oath or affirmation and say that the information disclosed on this form and any attachments hereto is true, accurate, and complete.

*[Handwritten Signature]*  
SIGNATURE

STATE OF FLORIDA

COUNTY OF St Johns

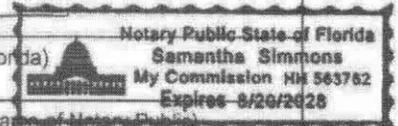
Sworn to (or affirmed) and subscribed before me this 16th day of June, 2025 by \_\_\_\_\_

*[Handwritten Signature]*

(Signature of Notary Public—State of Florida)

*[Handwritten Name]*

(Print, Type, or Stamp Commissioned Name of Notary Public)



Personally Known  OR Produced Identification \_\_\_\_\_

Type of Identification Produced \_\_\_\_\_

## JUDICIAL APPLICATION DATA RECORD

The judicial application shall include a separate page asking applicants to identify their race, ethnicity and gender. Completion of this page shall be optional, and the page shall include an explanation that the information is requested for data collection purposes in order to assess and promote diversity in the judiciary. The chair of the Commission shall forward all such completed pages, along with the names of the nominees to the JNC Coordinator in the Governor's Office (pursuant to JNC Uniform Rule of Procedure).

(Please Type or Print)

Date: 6/16/25

JNC Submitting To: 7<sup>th</sup> Judicial Circuit

Name (please print) Zachary Miller

Current Occupation: Attorney

Telephone Number: 9046518958

Attorney No.: 0059331

Gender (check one):  Male  Female

Ethnic Origin (check one):  White, non-Hispanic

Hispanic

Black

American Indian/Alaskan Native

Asian/Pacific Islander

County of Residence: St. Johns County

*FLORIDA DEPARTMENT OF LAW ENFORCEMENT*

DISCLOSURE PURSUANT TO THE  
FAIR CREDIT REPORTING ACT (FCRA)

The Florida Department of Law Enforcement (FDLE) may obtain one or more consumer reports, including but not limited to credit reports, about you, for employment purposes as defined by the Fair Credit Reporting Act, including for determinations related to initial employment, reassignment, promotion, or other employment-related actions.

CONSUMER'S AUTHORIZATION FOR  
FDLE TO OBTAIN CONSUMER REPORT(S)

I have read and understand the above Disclosure. I authorize the Florida Department of Law Enforcement (FDLE) to obtain one or more consumer reports on me, for employment purposes, as described in the above Disclosure.

Zachary Watson Miller

Printed Name of Applicant

Zach Miller

Signature of Applicant

Date: 6/16/2025

For the year Jan. 1–Dec. 31, 2024, or other tax year beginning , 2024, ending , 20 See separate instructions.

Your first name and middle initial Zachary W Last name Miller Your social security number

If joint return, spouse's first name and middle initial Jennifer L Last name Miller Spouse's social security number

Home address (number and street). If you have a P.O. box, see instructions. 3203 Old Barn Ct Apt. no. Presidential Election Campaign

City, town, or post office. If you have a foreign address, also complete spaces below. Ponte Vedra Beach FL ZIP code 320823713 Check here if you, or your spouse if filing jointly, want \$3 to go to this fund. Checking a box below will not change your tax or refund.

Foreign country name Foreign province/state/county Foreign postal code You Spouse

Filing Status Single Married filing jointly (even if only one had income) Married filing separately (MFS) Head of household (HOH) Qualifying surviving spouse (QSS) If you checked the MFS box, enter the name of your spouse. If you checked the HOH or QSS box, enter the child's name if the qualifying person is a child but not your dependent: If treating a nonresident alien or dual-status alien spouse as a U.S. resident for the entire tax year, check the box and enter their name (see instructions and attach statement if required):

Digital Assets At any time during 2024, did you: (a) receive (as a reward, award, or payment for property or services); or (b) sell, exchange, or otherwise dispose of a digital asset (or a financial interest in a digital asset)? (See instructions.) Yes No

Standard Deduction Someone can claim: You as a dependent Your spouse as a dependent Spouse itemizes on a separate return or you were a dual-status alien

Age/Blindness You: Were born before January 2, 1960 Are blind Spouse: Was born before January 2, 1960 Is blind

Table with 5 columns: (1) First name, Last name, (2) Social security number, (3) Relationship to you, (4) Check the box if qualifies for (see instructions): Child tax credit, Credit for other dependents. Includes entry for Daughter.

Income section table with columns 1a-1z and 1a-1z. Includes rows for Total amount from Form(s) W-2, Household employee wages, Tip income, Medicaid waiver payments, Taxable dependent care benefits, Employer-provided adoption benefits, Wages from Form 8919, Other earned income, Nontaxable combat pay election, and Add lines 1a through 1h.

Table with columns 2a-2b, 3a-3b, 4a-4b, 5a-5b, 6a-6b. Includes rows for Tax-exempt interest, Qualified dividends, IRA distributions, Pensions and annuities, Social security benefits, Taxable interest, Ordinary dividends, Taxable amount.

Table with columns 7-15. Includes rows for Capital gain or (loss), Additional income from Schedule 1, Add lines 1z, 2b, 3b, 4b, 5b, 6b, 7, and 8. This is your total income, Adjustments to income from Schedule 1, Subtract line 10 from line 9. This is your adjusted gross income, Standard deduction or itemized deductions (from Schedule A), Qualified business income deduction from Form 8995 or Form 8995-A, Add lines 12 and 13, Subtract line 14 from line 11. If zero or less, enter -0-. This is your taxable income.



**SCHEDULE 1  
(Form 1040)**

Department of the Treasury  
Internal Revenue Service

**Additional Income and Adjustments to Income**

Attach to Form 1040, 1040-SR, or 1040-NR.

Go to [www.irs.gov/Form1040](http://www.irs.gov/Form1040) for instructions and the latest information.

OMB No. 1545-0074

**2024**  
Attachment  
Sequence No. **01**

Name(s) shown on Form 1040, 1040-SR, or 1040-NR

Zachary W & Jennifer L Miller

Your social security number

[REDACTED]

For 2024, enter the amount reported to you on Form(s) 1099-K that was included in error or for personal items sold at a loss . . . . .

**Note:** The remaining amounts reported to you on Form(s) 1099-K should be reported elsewhere on your return depending on the nature of the transaction. See [www.irs.gov/1099k](http://www.irs.gov/1099k).

<b>Part I Additional Income</b>			
<b>1</b>	Taxable refunds, credits, or offsets of state and local income taxes . . . . .		<b>1</b>
<b>2a</b>	Alimony received . . . . .		<b>2a</b>
<b>b</b>	Date of original divorce or separation agreement (see instructions): _____		
<b>3</b>	Business income or (loss). Attach Schedule C . . . . .		<b>3</b> 508,236.
<b>4</b>	Other gains or (losses). Attach Form 4797 . . . . .		<b>4</b>
<b>5</b>	Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E . . . . .		<b>5</b>
<b>6</b>	Farm income or (loss). Attach Schedule F . . . . .		<b>6</b>
<b>7</b>	Unemployment compensation . . . . .		<b>7</b>
<b>8</b>	Other income:		
<b>a</b>	Net operating loss . . . . .	<b>8a</b> ( )	
<b>b</b>	Gambling . . . . .	<b>8b</b>	
<b>c</b>	Cancellation of debt . . . . .	<b>8c</b>	
<b>d</b>	Foreign earned income exclusion from Form 2555 . . . . .	<b>8d</b> ( )	
<b>e</b>	Income from Form 8853 . . . . .	<b>8e</b>	
<b>f</b>	Income from Form 8889 . . . . .	<b>8f</b>	
<b>g</b>	Alaska Permanent Fund dividends . . . . .	<b>8g</b>	
<b>h</b>	Jury duty pay . . . . .	<b>8h</b>	
<b>i</b>	Prizes and awards . . . . .	<b>8i</b>	
<b>j</b>	Activity not engaged in for profit income . . . . .	<b>8j</b>	
<b>k</b>	Stock options . . . . .	<b>8k</b>	
<b>l</b>	Income from the rental of personal property if you engaged in the rental for profit but were not in the business of renting such property . . . . .	<b>8l</b>	
<b>m</b>	Olympic and Paralympic medals and USOC prize money (see instructions) . . . . .	<b>8m</b>	
<b>n</b>	Section 951(a) inclusion (see instructions) . . . . .	<b>8n</b>	
<b>o</b>	Section 951A(a) inclusion (see instructions) . . . . .	<b>8o</b>	
<b>p</b>	Section 461(l) excess business loss adjustment . . . . .	<b>8p</b>	
<b>q</b>	Taxable distributions from an ABL account (see instructions) . . . . .	<b>8q</b>	
<b>r</b>	Scholarship and fellowship grants not reported on Form W-2 . . . . .	<b>8r</b>	
<b>s</b>	Nontaxable amount of Medicaid waiver payments included on Form 1040, line 1a or 1d . . . . .	<b>8s</b> ( )	
<b>t</b>	Pension or annuity from a nonqualified deferred compensation plan or a nongovernmental section 457 plan . . . . .	<b>8t</b>	
<b>u</b>	Wages earned while incarcerated . . . . .	<b>8u</b>	
<b>v</b>	Digital assets received as ordinary income not reported elsewhere. See instructions . . . . .	<b>8v</b>	
<b>z</b>	Other income. List type and amount: _____	<b>8z</b>	
<b>9</b>	Total other income. Add lines 8a through 8z . . . . .		<b>9</b>
<b>10</b>	Combine lines 1 through 7 and 9. This is your <b>additional income</b> . Enter here and on Form 1040, 1040-SR, or 1040-NR, line 8 . . . . .		<b>10</b> 508,236.

For Paperwork Reduction Act Notice, see your tax return instructions.

**Part II Adjustments to Income**

<b>11</b>	Educator expenses . . . . .		<b>11</b>	
<b>12</b>	Certain business expenses of reservists, performing artists, and fee-basis government officials. Attach Form 2106 . . . . .		<b>12</b>	
<b>13</b>	Health savings account deduction. Attach Form 8889 . . . . .		<b>13</b>	
<b>14</b>	Moving expenses for members of the Armed Forces. Attach Form 3903 . . . . .		<b>14</b>	
<b>15</b>	Deductible part of self-employment tax. Attach Schedule SE . . . . .		<b>15</b>	17,259.
<b>16</b>	Self-employed SEP, SIMPLE, and qualified plans . . . . .		<b>16</b>	
<b>17</b>	Self-employed health insurance deduction . . . . .		<b>17</b>	19,134.
<b>18</b>	Penalty on early withdrawal of savings . . . . .		<b>18</b>	
<b>19a</b>	Alimony paid . . . . .		<b>19a</b>	
<b>b</b>	Recipient's SSN . . . . .			
<b>c</b>	Date of original divorce or separation agreement (see instructions): _____			
<b>20</b>	IRA deduction . . . . .		<b>20</b>	
<b>21</b>	Student loan interest deduction . . . . .		<b>21</b>	
<b>22</b>	Reserved for future use . . . . .		<b>22</b>	
<b>23</b>	Archer MSA deduction . . . . .		<b>23</b>	
<b>24</b>	Other adjustments:			
<b>a</b>	Jury duty pay (see instructions) . . . . .	<b>24a</b>		
<b>b</b>	Deductible expenses related to income reported on line 8l from the rental of personal property engaged in for profit . . . . .	<b>24b</b>		
<b>c</b>	Nontaxable amount of the value of Olympic and Paralympic medals and USOC prize money reported on line 8m . . . . .	<b>24c</b>		
<b>d</b>	Reforestation amortization and expenses . . . . .	<b>24d</b>		
<b>e</b>	Repayment of supplemental unemployment benefits under the Trade Act of 1974 . . . . .	<b>24e</b>		
<b>f</b>	Contributions to section 501(c)(18)(D) pension plans . . . . .	<b>24f</b>		
<b>g</b>	Contributions by certain chaplains to section 403(b) plans . . . . .	<b>24g</b>		
<b>h</b>	Attorney fees and court costs for actions involving certain unlawful discrimination claims (see instructions) . . . . .	<b>24h</b>		
<b>i</b>	Attorney fees and court costs you paid in connection with an award from the IRS for information you provided that helped the IRS detect tax law violations . . . . .	<b>24i</b>		
<b>j</b>	Housing deduction from Form 2555 . . . . .	<b>24j</b>		
<b>k</b>	Excess deductions of section 67(e) expenses from Schedule K-1 (Form 1041) . . . . .	<b>24k</b>		
<b>z</b>	Other adjustments. List type and amount: _____	<b>24z</b>		
<b>25</b>	Total other adjustments. Add lines 24a through 24z . . . . .		<b>25</b>	
<b>26</b>	Add lines 11 through 23 and 25. These are your <b>adjustments to income</b> . Enter here and on Form 1040, 1040-SR, or 1040-NR, line 10 . . . . .		<b>26</b>	36,393.

**SCHEDULE 2  
(Form 1040)**

Department of the Treasury  
Internal Revenue Service

**Additional Taxes**

Attach to Form 1040, 1040-SR, or 1040-NR.  
Go to [www.irs.gov/Form1040](http://www.irs.gov/Form1040) for instructions and the latest information.

OMB No. 1545-0074

**2024**  
Attachment  
Sequence No. **02**

Name(s) shown on Form 1040, 1040-SR, or 1040-NR

Zachary W & Jennifer L Miller

Your social security number

[REDACTED]

**Part I Tax**

<b>1</b>	Additions to tax:			
<b>a</b>	Excess advance premium tax credit repayment. Attach Form 8962 . . . . .	<b>1a</b>		
<b>b</b>	Repayment of new clean vehicle credit(s) transferred to a registered dealer from Schedule A (Form 8936), Part II. Attach Form 8936 and Schedule A (Form 8936) . . . . .	<b>1b</b>		
<b>c</b>	Repayment of previously owned clean vehicle credit(s) transferred to a registered dealer from Schedule A (Form 8936), Part IV. Attach Form 8936 and Schedule A (Form 8936) . . . . .	<b>1c</b>		
<b>d</b>	Recapture of net EPE from Form 4255, line 2a, column (l) . . . . .	<b>1d</b>		
<b>e</b>	Excessive payments (EP) from Form 4255. Check applicable box and enter amount. <b>(i)</b> <input type="checkbox"/> Line 1a, column (n) <b>(ii)</b> <input type="checkbox"/> Line 1c, column (n) <b>(iii)</b> <input type="checkbox"/> Line 1d, column (n) <b>(iv)</b> <input type="checkbox"/> Line 2a, column (n) . . . . .	<b>1e</b>		
<b>f</b>	20% EP from Form 4255. Check applicable box and enter amount. See instructions. <b>(i)</b> <input type="checkbox"/> Line 1a, column (o) <b>(ii)</b> <input type="checkbox"/> Line 1c, column (o) <b>(iii)</b> <input type="checkbox"/> Line 1d, column (o) <b>(iv)</b> <input type="checkbox"/> Line 2a, column (o) . . . . .	<b>1f</b>		
<b>y</b>	Other additions to tax (see instructions): _____	<b>1y</b>		
<b>z</b>	Add lines 1a through 1y . . . . .			<b>1z</b>
<b>2</b>	Alternative minimum tax. Attach Form 6251 . . . . .			<b>2</b>
<b>3</b>	Add lines 1z and 2. Enter here and on Form 1040, 1040-SR, or 1040-NR, line 17 . . . . .			<b>3</b>

**Part II Other Taxes**

<b>4</b>	Self-employment tax. Attach Schedule SE . . . . .			<b>4</b>	34,517.
<b>5</b>	Social security and Medicare tax on unreported tip income. Attach Form 4137 . . . . .	<b>5</b>			
<b>6</b>	Uncollected social security and Medicare tax on wages. Attach Form 8919 . . . . .	<b>6</b>			
<b>7</b>	Total additional social security and Medicare tax. Add lines 5 and 6 . . . . .			<b>7</b>	
<b>8</b>	Additional tax on IRAs or other tax-favored accounts. Attach Form 5329 if required. If not required, check here . . . . . <input type="checkbox"/>			<b>8</b>	
<b>9</b>	Household employment taxes. Attach Schedule H . . . . .			<b>9</b>	
<b>10</b>	Repayment of first-time homebuyer credit. Attach Form 5405 if required . . . . .			<b>10</b>	
<b>11</b>	Additional Medicare Tax. Attach Form 8959 . . . . .			<b>11</b>	2,260.
<b>12</b>	Net investment income tax. Attach Form 8960 . . . . .			<b>12</b>	2,518.
<b>13</b>	Uncollected social security and Medicare or RRTA tax on tips or group-term life insurance from Form W-2, box 12 . . . . .			<b>13</b>	
<b>14</b>	Interest on tax due on installment income from the sale of certain residential lots and timeshares . . . . .			<b>14</b>	
<b>15</b>	Interest on the deferred tax on gain from certain installment sales with a sales price over \$150,000 . . . . .			<b>15</b>	
<b>16</b>	Recapture of low-income housing credit. Attach Form 8611 . . . . .			<b>16</b>	

(continued on page 2)

**Part II Other Taxes** (continued)

<b>17</b>	Other additional taxes:		
<b>a</b>	Recapture of other credits. List type, form number, and amount: _____	<b>17a</b>	
<b>b</b>	Recapture of federal mortgage subsidy, if you sold your home see instructions	<b>17b</b>	
<b>c</b>	Additional tax on HSA distributions. Attach Form 8889 . . . . .	<b>17c</b>	
<b>d</b>	Additional tax on an HSA because you didn't remain an eligible individual. Attach Form 8889 . . . . .	<b>17d</b>	
<b>e</b>	Additional tax on Archer MSA distributions. Attach Form 8853 . . . . .	<b>17e</b>	
<b>f</b>	Additional tax on Medicare Advantage MSA distributions. Attach Form 8853	<b>17f</b>	
<b>g</b>	Recapture of a charitable contribution deduction related to a fractional interest in tangible personal property . . . . .	<b>17g</b>	
<b>h</b>	Income you received from a nonqualified deferred compensation plan that fails to meet the requirements of section 409A . . . . .	<b>17h</b>	
<b>i</b>	Compensation you received from a nonqualified deferred compensation plan described in section 457A . . . . .	<b>17i</b>	
<b>j</b>	Section 72(m)(5) excess benefits tax . . . . .	<b>17j</b>	
<b>k</b>	Golden parachute payments . . . . .	<b>17k</b>	
<b>l</b>	Tax on accumulation distribution of trusts . . . . .	<b>17l</b>	
<b>m</b>	Excise tax on insider stock compensation from an expatriated corporation . . . . .	<b>17m</b>	
<b>n</b>	Look-back interest under section 167(g) or 460(b) from Form 8697 or 8866 . . . . .	<b>17n</b>	
<b>o</b>	Tax on non-effectively connected income for any part of the year you were a nonresident alien from Form 1040-NR . . . . .	<b>17o</b>	
<b>p</b>	Any interest from Form 8621, line 16f, relating to distributions from, and dispositions of, stock of a section 1291 fund . . . . .	<b>17p</b>	
<b>q</b>	Any interest from Form 8621, line 24 . . . . .	<b>17q</b>	
<b>z</b>	Any other taxes. List type and amount: _____	<b>17z</b>	
<b>18</b>	Total additional taxes. Add lines 17a through 17z . . . . .		<b>18</b>
<b>19</b>	Recapture of net EPE from Form 4255, line 1d, column (l) . . . . .		<b>19</b>
<b>20</b>	Section 965 net tax liability installment from Form 965-A . . . . .	<b>20</b>	
<b>21</b>	Add lines 4, 7 through 16, 18, and 19. These are your <b>total other taxes</b> . Enter here and on Form 1040 or 1040-SR, line 23, or Form 1040-NR, line 23b . . . . .		<b>21</b> 39,295.

**SCHEDULE 3  
(Form 1040)**

Department of the Treasury  
Internal Revenue Service

**Additional Credits and Payments**

Attach to Form 1040, 1040-SR, or 1040-NR.  
Go to [www.irs.gov/Form1040](http://www.irs.gov/Form1040) for instructions and the latest information.

OMB No. 1545-0074

**2024**  
Attachment  
Sequence No. **03**

Name(s) shown on Form 1040, 1040-SR, or 1040-NR

Zachary W & Jennifer L Miller

Your social security number

[REDACTED]

**Part I Nonrefundable Credits**

<b>1</b>	Foreign tax credit. Attach Form 1116 if required . . . . .	<b>1</b>	166.
<b>2</b>	Credit for child and dependent care expenses from Form 2441, line 11. Attach Form 2441 . . . . .	<b>2</b>	
<b>3</b>	Education credits from Form 8863, line 19 . . . . .	<b>3</b>	
<b>4</b>	Retirement savings contributions credit. Attach Form 8880 . . . . .	<b>4</b>	
<b>5a</b>	Residential clean energy credit from Form 5695, line 15 . . . . .	<b>5a</b>	
<b>b</b>	Energy efficient home improvement credit from Form 5695, line 32 . . . . .	<b>5b</b>	
<b>6</b>	Other nonrefundable credits:		
<b>a</b>	General business credit. Attach Form 3800 . . . . .	<b>6a</b>	
<b>b</b>	Credit for prior year minimum tax. Attach Form 8801 . . . . .	<b>6b</b>	
<b>c</b>	Adoption credit. Attach Form 8839 . . . . .	<b>6c</b>	
<b>d</b>	Credit for the elderly or disabled. Attach Schedule R . . . . .	<b>6d</b>	
<b>e</b>	Reserved for future use . . . . .	<b>6e</b>	
<b>f</b>	Clean vehicle credit. Attach Form 8936 . . . . .	<b>6f</b>	
<b>g</b>	Mortgage interest credit. Attach Form 8396 . . . . .	<b>6g</b>	
<b>h</b>	District of Columbia first-time homebuyer credit. Attach Form 8859 . . . . .	<b>6h</b>	
<b>i</b>	Qualified electric vehicle credit. Attach Form 8834 . . . . .	<b>6i</b>	
<b>j</b>	Alternative fuel vehicle refueling property credit. Attach Form 8911 . . . . .	<b>6j</b>	
<b>k</b>	Credit to holders of tax credit bonds. Attach Form 8912 . . . . .	<b>6k</b>	
<b>l</b>	Amount on Form 8978, line 14. See instructions . . . . .	<b>6l</b>	
<b>m</b>	Credit for previously owned clean vehicles. Attach Form 8936 . . . . .	<b>6m</b>	
<b>z</b>	Other nonrefundable credits. List type and amount: _____	<b>6z</b>	
<b>7</b>	Total other nonrefundable credits. Add lines 6a through 6z . . . . .	<b>7</b>	
<b>8</b>	Add lines 1 through 4, 5a, 5b, and 7. Enter here and on Form 1040, 1040-SR, or 1040-NR, line 20 . . . . .	<b>8</b>	166.

**Part II Other Payments and Refundable Credits**

<b>9</b>	Net premium tax credit. Attach Form 8962 . . . . .	<b>9</b>	
<b>10</b>	Amount paid with request for extension to file (see instructions) . . . . .	<b>10</b>	
<b>11</b>	Excess social security and tier 1 RRTA tax withheld . . . . .	<b>11</b>	
<b>12</b>	Credit for federal tax on fuels. Attach Form 4136 . . . . .	<b>12</b>	
<b>13</b>	Other payments or refundable credits:		
<b>a</b>	Form 2439 . . . . .	<b>13a</b>	
<b>b</b>	Section 1341 credit for repayment of amounts included in income from earlier years . . . . .	<b>13b</b>	
<b>c</b>	Net elective payment election amount from Form 3800, Part III, line 6, column (j) . . . . .	<b>13c</b>	
<b>d</b>	Deferred amount of net 965 tax liability (see instructions) . . . . .	<b>13d</b>	
<b>z</b>	Other refundable credits (see instructions): _____	<b>13z</b>	
<b>14</b>	Total other payments or refundable credits. Add lines 13a through 13z . . . . .	<b>14</b>	
<b>15</b>	Add lines 9 through 12 and 14. Enter here and on Form 1040, 1040-SR, or 1040-NR, line 31 . . . . .	<b>15</b>	

For Paperwork Reduction Act Notice, see your tax return instructions.

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Schedule 3 (Form 1040) 2024

**SCHEDULE B  
(Form 1040)**

Department of the Treasury  
Internal Revenue Service

**Interest and Ordinary Dividends**

Attach to Form 1040 or 1040-SR.

Go to [www.irs.gov/ScheduleB](http://www.irs.gov/ScheduleB) for instructions and the latest information.

OMB No. 1545-0074

**2024**

Attachment  
Sequence No. **08**

Name(s) shown on return

Zachary W & Jennifer L Miller

Your social security number

[REDACTED]

**Part I  
Interest**

(See instructions and the Instructions for Form 1040, line 2b.)

**Note:** If you received a Form 1099-INT, Form 1099-OID, or substitute statement from a brokerage firm, list the firm's name as the payer and enter the total interest shown on that form.

		Amount
<b>1</b>	List name of payer. If any interest is from a seller-financed mortgage and the buyer used the property as a personal residence, see the instructions and list this interest first. Also, show that buyer's social security number and address: <u>Goldman Sachs Bank USA</u> . . . . .	610.52
	<u>First Citizens Bank &amp; Trust</u> . . . . .	2,378.04
	<u>Northwestern Mutual</u> . . . . .	625.84
	<u>Northwestern Mutual</u> . . . . .	72.44
<b>2</b>	Add the amounts on line 1 . . . . .	3,686.84
<b>3</b>	Excludable interest on series EE and I U.S. savings bonds issued after 1989. Attach Form 8815 . . . . .	
<b>4</b>	Subtract line 3 from line 2. Enter the result here and on Form 1040 or 1040-SR, line 2b	3,686.84

**Note:** If line 4 is over \$1,500, you must complete Part III.

**Part II  
Ordinary Dividends**

(See instructions and the Instructions for Form 1040, line 3b.)

**Note:** If you received a Form 1099-DIV or substitute statement from a brokerage firm, list the firm's name as the payer and enter the ordinary dividends shown on that form.

		Amount
<b>5</b>	List name of payer: <u>Northwestern Mutual</u> . . . . .	842.50
	<u>Merrill</u> . . . . .	731.77
	<u>Northwestern Mutual</u> . . . . .	3,410.20
<b>6</b>	Add the amounts on line 5. Enter the total here and on Form 1040 or 1040-SR, line 3b	4,984.47

**Note:** If line 6 is over \$1,500, you must complete Part III.

**Part III  
Foreign Accounts and Trusts**

You must complete this part if you (a) had over \$1,500 of taxable interest or ordinary dividends; (b) had a foreign account; or (c) received a distribution from, or were a grantor of, or a transferor to, a foreign trust.

**Caution:** If required, failure to file FinCEN Form 114 may result in substantial penalties. Additionally, you may be required to file Form 8938, Statement of Specified Foreign Financial Assets. See instructions.

		Yes	No
<b>7a</b>	At any time during 2024, did you have a financial interest in or signature authority over a financial account (such as a bank account, securities account, or brokerage account) located in a foreign country? See instructions . . . . .	[ ]	X
	If "Yes," are you required to file FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR), to report that financial interest or signature authority? See FinCEN Form 114 and its instructions for filing requirements and exceptions to those requirements . . . . .	[ ]	[ ]
<b>b</b>	If you are required to file FinCEN Form 114, list the name(s) of the foreign country(-ies) where the financial account(s) is (are) located: _____	[ ]	[ ]
<b>8</b>	During 2024, did you receive a distribution from, or were you the grantor of, or transferor to, a foreign trust? If "Yes," you may have to file Form 3520. See instructions . . . . .	[ ]	X

SCHEDULE C (Form 1040)

Profit or Loss From Business (Sole Proprietorship)

OMB No. 1545-0074

2024

Attachment Sequence No. 09

Department of the Treasury Internal Revenue Service

Attach to Form 1040, 1040-SR, 1040-SS, 1040-NR, or 1041; partnerships must generally file Form 1065. Go to www.irs.gov/ScheduleC for instructions and the latest information.

Name of proprietor: Zachary W Miller. Social security number (SSN): [REDACTED]. Principal business or profession: Attorney. Business name: Law Office of Zachary Miller. Business address: 3203 Old Barn Ct, Ponte Vedra Beach, FL 32082-3713. Accounting method: (1) Cash. Did you materially participate? Yes. If you started or acquired this business during 2024, check here. Did you make any payments in 2024 that would require you to file Form(s) 1099? Yes. If "Yes," did you or will you file required Form(s) 1099? Yes.

Part I Income

Table with 7 rows for income calculation. Line 1: 533,007. Line 2: Returns and allowances. Line 3: 533,007. Line 4: Cost of goods sold. Line 5: Gross profit: 533,007. Line 6: Other income. Line 7: Gross income: 533,007.

Part II Expenses. Enter expenses for business use of your home only on line 30.

Table with 32 rows for expense calculation. Line 8: Advertising. Line 9: 2,334. Line 10: Commissions and fees. Line 11: Contract labor. Line 12: Depletion. Line 13: Depreciation and section 179 expense deduction: 0. Line 14: Employee benefit programs. Line 15: 4,443. Line 16: Interest. Line 16a: Mortgage. Line 16b: Other. Line 17: Legal and professional services: 50. Line 18: Office expense. Line 19: Pension and profit-sharing plans. Line 20: Rent or lease. Line 20a: Vehicles, machinery, and equipment. Line 20b: Other business property. Line 21: Repairs and maintenance. Line 22: Supplies. Line 23: 265. Line 24: Travel and meals. Line 24a: Travel. Line 24b: Deductible meals: 1,024. Line 25: Utilities: 813. Line 26: Wages. Line 27a: 8,723. Line 27b: Energy efficient commercial bldgs deduction. Line 28: Total expenses: 17,652. Line 29: Tentative profit or (loss): 515,355. Line 30: Expenses for business use of your home: 7,119. Line 31: Net profit or (loss): 508,236. Line 32: If you have a loss, check the box that describes your investment in this activity.

**Part III Cost of Goods Sold** (see instructions)

**33** Method(s) used to value closing inventory:    **a**  Cost    **b**  Lower of cost or market    **c**  Other (attach explanation)

**34** Was there any change in determining quantities, costs, or valuations between opening and closing inventory?  
 If "Yes," attach explanation . . . . .  **Yes**     **No**

<b>35</b> Inventory at beginning of year. If different from last year's closing inventory, attach explanation . . . . .	<b>35</b>	
<b>36</b> Purchases less cost of items withdrawn for personal use . . . . .	<b>36</b>	
<b>37</b> Cost of labor. Do not include any amounts paid to yourself . . . . .	<b>37</b>	
<b>38</b> Materials and supplies . . . . .	<b>38</b>	
<b>39</b> Other costs . . . . .	<b>39</b>	
<b>40</b> Add lines 35 through 39 . . . . .	<b>40</b>	
<b>41</b> Inventory at end of year . . . . .	<b>41</b>	
<b>42</b> <b>Cost of goods sold.</b> Subtract line 41 from line 40. Enter the result here and on line 4 . . . . .	<b>42</b>	

**Part IV Information on Your Vehicle.** Complete this part **only** if you are claiming car or truck expenses on line 9 and are not required to file Form 4562 for this business. See the instructions for line 13 to find out if you must file Form 4562.

**43** When did you place your vehicle in service for business purposes? (month/day/year) \_\_\_\_\_

**44** Of the total number of miles you drove your vehicle during 2024, enter the number of miles you used your vehicle for:

**a** Business \_\_\_\_\_    **b** Commuting (see instructions) \_\_\_\_\_    **c** Other \_\_\_\_\_

**45** Was your vehicle available for personal use during off-duty hours? . . . . .  **Yes**     **No**

**46** Do you (or your spouse) have another vehicle available for personal use?. . . . .  **Yes**     **No**

**47a** Do you have evidence to support your deduction? . . . . .  **Yes**     **No**

**b** If "Yes," is the evidence written? . . . . .  **Yes**     **No**

**Part V Other Expenses.** List below business expenses not included on lines 8–26, line 27b, or line 30.

Lexis Nexus		1,629.
Google		30.
Drop Box		119.
Court Filing Fees/Summons/Process Servers		989.
Application Fees		716.
Recording Subscription		150.
Public Records Request Fee		1,249.
LLC and EIN Filings		670.
See Line 48 Other Expenses		3,171.
<b>48 Total other expenses.</b> Enter here and on line 27a . . . . .	<b>48</b>	<b>8,723.</b>

**SCHEDULE D  
(Form 1040)**

**Capital Gains and Losses**

OMB No. 1545-0074

**2024**

Department of the Treasury  
Internal Revenue Service

Attach to Form 1040, 1040-SR, or 1040-NR.  
Use Form 8949 to list your transactions for lines 1b, 2, 3, 8b, 9, and 10.  
Go to [www.irs.gov/ScheduleD](http://www.irs.gov/ScheduleD) for instructions and the latest information.

Attachment  
Sequence No. **12**

Name(s) shown on return

Zachary W & Jennifer L Miller

Your social security number

[REDACTED]

Did you dispose of any investment(s) in a qualified opportunity fund during the tax year?  Yes  No

If "Yes," attach Form 8949 and see its instructions for additional requirements for reporting your gain or loss.

**Part I Short-Term Capital Gains and Losses—Generally Assets Held One Year or Less** (see instructions)

See instructions for how to figure the amounts to enter on the lines below.

This form may be easier to complete if you round off cents to whole dollars.

	(d) Proceeds (sales price)	(e) Cost (or other basis)	(g) Adjustments to gain or loss from Form(s) 8949, Part I, line 2, column (g)	(h) Gain or (loss) Subtract column (e) from column (d) and combine the result with column (g)
<b>1a</b> Totals for all short-term transactions reported on Form 1099-B for which basis was reported to the IRS and for which you have no adjustments (see instructions). However, if you choose to report all these transactions on Form 8949, leave this line blank and go to line 1b . . . . .	2,436.	2,436.		0.
<b>1b</b> Totals for all transactions reported on Form(s) 8949 with <b>Box A</b> checked . . . . .				
<b>2</b> Totals for all transactions reported on Form(s) 8949 with <b>Box B</b> checked . . . . .				
<b>3</b> Totals for all transactions reported on Form(s) 8949 with <b>Box C</b> checked . . . . .				
<b>4</b> Short-term gain from Form 6252 and short-term gain or (loss) from Forms 4684, 6781, and 8824 . . . . .				<b>4</b>
<b>5</b> Net short-term gain or (loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1 . . . . .				<b>5</b>
<b>6</b> Short-term capital loss carryover. Enter the amount, if any, from line 8 of your <b>Capital Loss Carryover Worksheet</b> in the instructions . . . . .				<b>6</b> ( )
<b>7 Net short-term capital gain or (loss).</b> Combine lines 1a through 6 in column (h). If you have any long-term capital gains or losses, go to Part II below. Otherwise, go to Part III on the back . . . . .				<b>7</b> 0.

**Part II Long-Term Capital Gains and Losses—Generally Assets Held More Than One Year** (see instructions)

See instructions for how to figure the amounts to enter on the lines below.

This form may be easier to complete if you round off cents to whole dollars.

	(d) Proceeds (sales price)	(e) Cost (or other basis)	(g) Adjustments to gain or loss from Form(s) 8949, Part II, line 2, column (g)	(h) Gain or (loss) Subtract column (e) from column (d) and combine the result with column (g)
<b>8a</b> Totals for all long-term transactions reported on Form 1099-B for which basis was reported to the IRS and for which you have no adjustments (see instructions). However, if you choose to report all these transactions on Form 8949, leave this line blank and go to line 8b . . . . .				
<b>8b</b> Totals for all transactions reported on Form(s) 8949 with <b>Box D</b> checked . . . . .	2,436.	2,436.	0.	0.
<b>9</b> Totals for all transactions reported on Form(s) 8949 with <b>Box E</b> checked . . . . .	188,960.	131,660.	31.	57,331.
<b>10</b> Totals for all transactions reported on Form(s) 8949 with <b>Box F</b> checked . . . . .				
<b>11</b> Gain from Form 4797, Part I; long-term gain from Forms 2439 and 6252; and long-term gain or (loss) from Forms 4684, 6781, and 8824 . . . . .				<b>11</b>
<b>12</b> Net long-term gain or (loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1 . . . . .				<b>12</b>
<b>13</b> Capital gain distributions. See the instructions . . . . .				<b>13</b> 249.
<b>14</b> Long-term capital loss carryover. Enter the amount, if any, from line 13 of your <b>Capital Loss Carryover Worksheet</b> in the instructions . . . . .				<b>14</b> ( )
<b>15 Net long-term capital gain or (loss).</b> Combine lines 8a through 14 in column (h). Then, go to Part III on the back . . . . .				<b>15</b> 57,580.

**Part III Summary**

<b>16</b>	Combine lines 7 and 15 and enter the result . . . . .	<b>16</b>	57,580.
	<ul style="list-style-type: none"> <li>• If line 16 is a <b>gain</b>, enter the amount from line 16 on Form 1040, 1040-SR, or 1040-NR, line 7. Then, go to line 17 below.</li> <li>• If line 16 is a <b>loss</b>, skip lines 17 through 20 below. Then, go to line 21. Also be sure to complete line 22.</li> <li>• If line 16 is <b>zero</b>, skip lines 17 through 21 below and enter -0- on Form 1040, 1040-SR, or 1040-NR, line 7. Then, go to line 22.</li> </ul>		
<b>17</b>	Are lines 15 and 16 <b>both</b> gains? <input checked="" type="checkbox"/> <b>Yes.</b> Go to line 18. <input type="checkbox"/> <b>No.</b> Skip lines 18 through 21, and go to line 22.		
<b>18</b>	If you are required to complete the <b>28% Rate Gain Worksheet</b> (see instructions), enter the amount, if any, from line 7 of that worksheet . . . . .	<b>18</b>	
<b>19</b>	If you are required to complete the <b>Unrecaptured Section 1250 Gain Worksheet</b> (see instructions), enter the amount, if any, from line 18 of that worksheet . . . . .	<b>19</b>	
<b>20</b>	Are lines 18 and 19 both zero or blank and you are not filing Form 4952? <input checked="" type="checkbox"/> <b>Yes.</b> Complete the <b>Qualified Dividends and Capital Gain Tax Worksheet</b> in the instructions for Form 1040, line 16. <b>Don't</b> complete lines 21 and 22 below.  <input type="checkbox"/> <b>No.</b> Complete the <b>Schedule D Tax Worksheet</b> in the instructions. <b>Don't</b> complete lines 21 and 22 below.		
<b>21</b>	If line 16 is a loss, enter here and on Form 1040, 1040-SR, or 1040-NR, line 7, the <b>smaller</b> of: <ul style="list-style-type: none"> <li>• The loss on line 16; or</li> <li>• (\$3,000), or if married filing separately, (\$1,500) } . . . . .</li> </ul> <p><b>Note:</b> When figuring which amount is smaller, treat both amounts as positive numbers.</p>	<b>21</b>	( )
<b>22</b>	Do you have qualified dividends on Form 1040, 1040-SR, or 1040-NR, line 3a?  <input type="checkbox"/> <b>Yes.</b> Complete the <b>Qualified Dividends and Capital Gain Tax Worksheet</b> in the instructions for Form 1040, line 16.  <input type="checkbox"/> <b>No.</b> Complete the rest of Form 1040, 1040-SR, or 1040-NR.		





**SCHEDULE SE  
(Form 1040)**

**Self-Employment Tax**

OMB No. 1545-0074

Department of the Treasury  
Internal Revenue Service

Attach to Form 1040, 1040-SR, 1040-SS, or 1040-NR.  
Go to [www.irs.gov/ScheduleSE](http://www.irs.gov/ScheduleSE) for instructions and the latest information.

**2024**  
Attachment  
Sequence No. **17**

Name of person with self-employment income (as shown on Form 1040, 1040-SR, 1040-SS, or 1040-NR)

Social security number of person  
with self-employment income

Zachary W Miller

**Part I Self-Employment Tax**

**Note:** If your only income subject to self-employment tax is **church employee income**, see instructions for how to report your income and the definition of church employee income.

**A** If you are a minister, member of a religious order, or Christian Science practitioner **and** you filed Form 4361, but you had \$400 or more of **other** net earnings from self-employment, check here and continue with Part I

Skip lines 1a and 1b if you use the farm optional method in Part II. See instructions.

**1a** Net farm profit or (loss) from Schedule F, line 34, and farm partnerships, Schedule K-1 (Form 1065), box 14, code A **1a**

**b** If you received social security retirement or disability benefits, enter the amount of Conservation Reserve Program payments included on Schedule F, line 4b, or listed on Schedule K-1 (Form 1065), box 20, code AQ **1b** ( )

Skip line 2 if you use the nonfarm optional method in Part II. See instructions.

**2** Net profit or (loss) from Schedule C, line 31; and Schedule K-1 (Form 1065), box 14, code A (other than farming). See instructions for other income to report or if you are a minister or member of a religious order **2** 508,236.

**3** Combine lines 1a, 1b, and 2 **3** 508,236.

**4a** If line 3 is more than zero, multiply line 3 by 92.35% (0.9235). Otherwise, enter amount from line 3 **4a** 469,356.

**Note:** If line 4a is less than \$400 due to Conservation Reserve Program payments on line 1b, see instructions.

**b** If you elect one or both of the optional methods, enter the total of lines 15 and 17 here **4b**

**c** Combine lines 4a and 4b. If less than \$400, **stop**; you don't owe self-employment tax. **Exception:** If less than \$400 and you had **church employee income**, enter -0- and continue **4c** 469,356.

**5a** Enter your **church employee income** from Form W-2. See instructions for definition of church employee income **5a**

**b** Multiply line 5a by 92.35% (0.9235). If less than \$100, enter -0- **5b** 0.

**6** Add lines 4c and 5b **6** 469,356.

**7** Maximum amount of combined wages and self-employment earnings subject to social security tax or the 6.2% portion of the 7.65% railroad retirement (tier 1) tax for 2024 **7** 168,600

**8a** Total social security wages and tips (total of boxes 3 and 7 on Form(s) W-2) and railroad retirement (tier 1) compensation. If \$168,600 or more, skip lines 8b through 10, and go to line 11 **8a**

**b** Unreported tips subject to social security tax from Form 4137, line 10 **8b**

**c** Wages subject to social security tax from Form 8919, line 10 **8c**

**d** Add lines 8a, 8b, and 8c **8d**

**9** Subtract line 8d from line 7. If zero or less, enter -0- here and on line 10 and go to line 11 **9** 168,600.

**10** Multiply the **smaller** of line 6 or line 9 by 12.4% (0.124) **10** 20,906.

**11** Multiply line 6 by 2.9% (0.029) **11** 13,611.

**12 Self-employment tax.** Add lines 10 and 11. Enter here and on **Schedule 2 (Form 1040), line 4, or Form 1040-SS, Part I, line 3** **12** 34,517.

**13 Deduction for one-half of self-employment tax.** Multiply line 12 by 50% (0.50). Enter here and on **Schedule 1 (Form 1040), line 15** **13** 17,259.

For Paperwork Reduction Act Notice, see your tax return instructions.

Schedule SE (Form 1040) 2024

**Part II Optional Methods To Figure Net Earnings** (see instructions)

**Farm Optional Method.** You may use this method **only** if **(a)** your gross farm income<sup>1</sup> wasn't more than \$10,380, **or (b)** your net farm profits<sup>2</sup> were less than \$7,493.

<b>14</b> Maximum income for optional methods . . . . .	<b>14</b>	6,920
<b>15</b> Enter the <b>smaller</b> of: two-thirds ( $\frac{2}{3}$ ) of gross farm income <sup>1</sup> (not less than zero) <b>or</b> \$6,920. Also, include this amount on line 4b above . . . . .	<b>15</b>	

**Nonfarm Optional Method.** You may use this method **only** if **(a)** your net nonfarm profits<sup>3</sup> were less than \$7,493 and also less than 72.189% of your gross nonfarm income,<sup>4</sup> **and (b)** you had net earnings from self-employment of at least \$400 in 2 of the prior 3 years. **Caution:** You may use this method no more than five times.

<b>16</b> Subtract line 15 from line 14 . . . . .	<b>16</b>	
<b>17</b> Enter the <b>smaller</b> of: two-thirds ( $\frac{2}{3}$ ) of gross nonfarm income <sup>4</sup> (not less than zero) <b>or</b> the amount on line 16. Also, include this amount on line 4b above . . . . .	<b>17</b>	

<sup>1</sup> From Sch. F, line 9; and Sch. K-1 (Form 1065), box 14, code B.

<sup>2</sup> From Sch. F, line 34; and Sch. K-1 (Form 1065), box 14, code A—minus the amount you would have entered on line 1b had you not used the optional method.

<sup>3</sup> From Sch. C, line 31; and Sch. K-1 (Form 1065), box 14, code A.

<sup>4</sup> From Sch. C, line 7; and Sch. K-1 (Form 1065), box 14, code C.

# Qualified Business Income Deduction

Department of the Treasury  
Internal Revenue Service

Attach to your tax return.

Go to [www.irs.gov/Form8995A](http://www.irs.gov/Form8995A) for instructions and the latest information.

Name(s) shown on return

Zachary W & Jennifer L Miller

Your taxpayer identification number

[REDACTED]

**Note:** You can claim the qualified business income deduction **only** if you have qualified business income from a qualified trade or business, real estate investment trust dividends, publicly traded partnership income, or a domestic production activities deduction passed through from an agricultural or horticultural cooperative. See instructions.

Use this form if your taxable income, before your qualified business income deduction, is above \$191,950 (\$383,900 if married filing jointly), or you're a patron of an agricultural or horticultural cooperative.

## Part I Trade, Business, or Aggregation Information

Complete Schedules A, B, and/or C (Form 8995-A), as applicable, before starting Part I. Attach additional worksheets when needed. See instructions.

1	(a) Trade, business, or aggregation name	(b) Check if specified service	(c) Check if aggregation	(d) Taxpayer identification number	(e) Check if patron
A		<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
B		<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
C		<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>

## Part II Determine Your Adjusted Qualified Business Income

	A	B	C
2 Qualified business income from the trade, business, or aggregation. See instructions . . . . .			
3 Multiply line 2 by 20% (0.20). If your taxable income is \$191,950 or less (\$383,900 if married filing jointly), skip lines 4 through 12 and enter the amount from line 3 on line 13 . . . . .			
4 Allocable share of W-2 wages from the trade, business, or aggregation . . . . .			
5 Multiply line 4 by 50% (0.50) . . . . .			
6 Multiply line 4 by 25% (0.25) . . . . .			
7 Allocable share of the unadjusted basis immediately after acquisition (UBIA) of all qualified property . . . . .			
8 Multiply line 7 by 2.5% (0.025) . . . . .			
9 Add lines 6 and 8 . . . . .			
10 Enter the greater of line 5 or line 9 . . . . .			
11 W-2 wage and UBIA of qualified property limitation. Enter the smaller of line 3 or line 10 . . . . .			
12 Phased-in reduction. Enter the amount from line 26, if any . . . . .			
13 Qualified business income deduction before patron reduction. Enter the greater of line 11 or line 12 . . . . .			
14 Patron reduction. Enter the amount from Schedule D (Form 8995-A), line 6, if any. See instructions . . . . .			
15 Qualified business income component. Subtract line 14 from line 13 . . . . .			
16 Total qualified business income component. Add all amounts reported on line 15 . . . . .			

**Part III Phased-in Reduction**

Complete Part III only if your taxable income is more than \$191,950 but not \$241,950 (\$383,900 and \$483,900 if married filing jointly) and line 10 is less than line 3. Otherwise, skip Part III.

		A	B	C
17	Enter the amounts from line 3 . . . . .	17		
18	Enter the amounts from line 10 . . . . .	18		
19	Subtract line 18 from line 17 . . . . .	19		
20	Taxable income before qualified business income deduction . . . . .	20		
21	Threshold. Enter \$191,950 (\$383,900 if married filing jointly) . . . . .	21		
22	Subtract line 21 from line 20 . . . . .	22		
23	Phase-in range. Enter \$50,000 (\$100,000 if married filing jointly) . . . . .	23		
24	Phase-in percentage. Divide line 22 by line 23 . . . . .	24	%	
25	Total phase-in reduction. Multiply line 19 by line 24 . . . . .	25		
26	Qualified business income after phase-in reduction. Subtract line 25 from line 17. Enter this amount here and on line 12, for the corresponding trade or business . . . . .	26		

**Part IV Determine Your Qualified Business Income Deduction**

27	Total qualified business income component from all qualified trades, businesses, or aggregations. Enter the amount from line 16 . . . . .	27			
28	Qualified REIT dividends and publicly traded partnership (PTP) income or (loss). See instructions . . . . .	28	151.		
29	Qualified REIT dividends and PTP (loss) carryforward from prior years . . . . .	29	( )		
30	Total qualified REIT dividends and PTP income. Combine lines 28 and 29. If less than zero, enter -0- . . . . .	30	151.		
31	REIT and PTP component. Multiply line 30 by 20% (0.20) . . . . .	31	30.		
32	Qualified business income deduction before the income limitation. Add lines 27 and 31 . . . . .	32		30.	
33	Taxable income before qualified business income deduction . . . . .	33	540,605.		
34	Enter your net capital gain, if any, increased by any qualified dividends (see instructions) . . . . .	34	61,378.		
35	Subtract line 34 from line 33. If zero or less, enter -0- . . . . .	35		479,227.	
36	Income limitation. Multiply line 35 by 20% (0.20) . . . . .	36		95,845.	
37	Qualified business income deduction before the domestic production activities deduction (DPAD) under section 199A(g). Enter the smaller of line 32 or line 36 . . . . .	37		30.	
38	DPAD under section 199A(g) allocated from an agricultural or horticultural cooperative. Don't enter more than line 33 minus line 37 . . . . .	38			
39	Total qualified business income deduction. Add lines 37 and 38 . . . . .	39		30.	
40	Total qualified REIT dividends and PTP (loss) carryforward. Combine lines 28 and 29. If zero or greater, enter -0- . . . . .	40	( )	0.	

### Additional Medicare Tax

If any line does not apply to you, leave it blank. See separate instructions.  
 Attach to Form 1040, 1040-SR, 1040-NR, or 1040-SS.  
 Go to [www.irs.gov/Form8959](http://www.irs.gov/Form8959) for instructions and the latest information.

Name(s) shown on return

Zachary W & Jennifer L Miller

Your social security number

XXXXXXXXXX

**Part I Additional Medicare Tax on Medicare Wages**

<b>1</b>	Medicare wages and tips from Form W-2, box 5. If you have more than one Form W-2, enter the total of the amounts from box 5 . . . . .	<b>1</b>	31,711.		
<b>2</b>	Unreported tips from Form 4137, line 6 . . . . .	<b>2</b>			
<b>3</b>	Wages from Form 8919, line 6 . . . . .	<b>3</b>			
<b>4</b>	Add lines 1 through 3 . . . . .	<b>4</b>	31,711.		
<b>5</b>	Enter the following amount for your filing status:				
	Married filing jointly . . . . . \$250,000				
	Married filing separately . . . . . \$125,000				
	Single, Head of household, or Qualifying surviving spouse . . . \$200,000	<b>5</b>	250,000.		
<b>6</b>	Subtract line 5 from line 4. If zero or less, enter -0- . . . . .	<b>6</b>			0.
<b>7</b>	Additional Medicare Tax on Medicare wages. Multiply line 6 by 0.9% (0.009). Enter here and go to Part II . . . . .	<b>7</b>			0.

**Part II Additional Medicare Tax on Self-Employment Income**

<b>8</b>	Self-employment income from Schedule SE (Form 1040), Part I, line 6. If you had a loss, enter -0- . . . . .	<b>8</b>	469,356.		
<b>9</b>	Enter the following amount for your filing status:				
	Married filing jointly . . . . . \$250,000				
	Married filing separately . . . . . \$125,000				
	Single, Head of household, or Qualifying surviving spouse . . . \$200,000	<b>9</b>	250,000.		
<b>10</b>	Enter the amount from line 4 . . . . .	<b>10</b>	31,711.		
<b>11</b>	Subtract line 10 from line 9. If zero or less, enter -0- . . . . .	<b>11</b>	218,289.		
<b>12</b>	Subtract line 11 from line 8. If zero or less, enter -0- . . . . .	<b>12</b>			251,067.
<b>13</b>	Additional Medicare Tax on self-employment income. Multiply line 12 by 0.9% (0.009). Enter here and go to Part III . . . . .	<b>13</b>			2,260.

**Part III Additional Medicare Tax on Railroad Retirement Tax Act (RRTA) Compensation**

<b>14</b>	Railroad retirement (RRTA) compensation and tips from Form(s) W-2, box 14 (see instructions) . . . . .	<b>14</b>			
<b>15</b>	Enter the following amount for your filing status:				
	Married filing jointly . . . . . \$250,000				
	Married filing separately . . . . . \$125,000				
	Single, Head of household, or Qualifying surviving spouse . . . \$200,000	<b>15</b>			
<b>16</b>	Subtract line 15 from line 14. If zero or less, enter -0- . . . . .	<b>16</b>			
<b>17</b>	Additional Medicare Tax on railroad retirement (RRTA) compensation. Multiply line 16 by 0.9% (0.009). Enter here and go to Part IV . . . . .	<b>17</b>			

**Part IV Total Additional Medicare Tax**

<b>18</b>	Add lines 7, 13, and 17. Also include this amount on Schedule 2 (Form 1040), line 11 (Form 1040-SS filers, see instructions), and go to Part V . . . . .	<b>18</b>			2,260.
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**Part V Withholding Reconciliation**

<b>19</b>	Medicare tax withheld from Form W-2, box 6. If you have more than one Form W-2, enter the total of the amounts from box 6 . . . . .	<b>19</b>	460.		
<b>20</b>	Enter the amount from line 1 . . . . .	<b>20</b>	31,711.		
<b>21</b>	Multiply line 20 by 1.45% (0.0145). This is your regular Medicare tax withholding on Medicare wages . . . . .	<b>21</b>	460.		
<b>22</b>	Subtract line 21 from line 19. If zero or less, enter -0-. This is your Additional Medicare Tax withholding on Medicare wages . . . . .	<b>22</b>			0.
<b>23</b>	Additional Medicare Tax withholding on railroad retirement (RRTA) compensation from Form W-2, box 14 (see instructions) . . . . .	<b>23</b>			
<b>24</b>	<b>Total Additional Medicare Tax withholding.</b> Add lines 22 and 23. Also include this amount with federal income tax withholding on Form 1040, 1040-SR, or 1040-NR, line 25c (Form 1040-SS filers, see instructions) . . . . .	<b>24</b>			0.

# Net Investment Income Tax— Individuals, Estates, and Trusts

Attach to your tax return.

Go to [www.irs.gov/Form8960](http://www.irs.gov/Form8960) for instructions and the latest information.

Name(s) shown on your tax return

Zachary W & Jennifer L Miller

Your social security number or EIN

### Part I Investment Income

- Section 6013(g) election (see instructions)
- Section 6013(h) election (see instructions)
- Regulations section 1.1411-10(g) election (see instructions)

<b>1</b>	Taxable interest (see instructions)		<b>1</b>	3,687.
<b>2</b>	Ordinary dividends (see instructions)		<b>2</b>	4,984.
<b>3</b>	Annuities (see instructions)		<b>3</b>	
<b>4a</b>	Rental real estate, royalties, partnerships, S corporations, trusts, trades or businesses, etc. (see instructions)	<b>4a</b> 508,236.	<b>4c</b>	0.
<b>b</b>	Adjustment for net income or loss derived in the ordinary course of a non-section 1411 trade or business (see instructions)	<b>4b</b> -508,236.		
<b>c</b>	Combine lines 4a and 4b			
<b>5a</b>	Net gain or loss from disposition of property (see instructions)	<b>5a</b> 57,580.	<b>5d</b>	57,580.
<b>b</b>	Net gain or loss from disposition of property that is not subject to net investment income tax (see instructions)	<b>5b</b>		
<b>c</b>	Adjustment from disposition of partnership interest or S corporation stock (see instructions)	<b>5c</b>		
<b>d</b>	Combine lines 5a through 5c			
<b>6</b>	Adjustments to investment income for certain CFCs and PFICs (see instructions)		<b>6</b>	
<b>7</b>	Other modifications to investment income (see instructions)		<b>7</b>	
<b>8</b>	Total investment income. Combine lines 1, 2, 3, 4c, 5d, 6, and 7		<b>8</b>	66,251.

### Part II Investment Expenses Allocable to Investment Income and Modifications

<b>9a</b>	Investment interest expenses (see instructions)	<b>9a</b>	<b>9d</b>	
<b>b</b>	State, local, and foreign income tax (see instructions)	<b>9b</b>		
<b>c</b>	Miscellaneous investment expenses (see instructions)	<b>9c</b>		
<b>d</b>	Add lines 9a, 9b, and 9c			
<b>10</b>	Additional modifications (see instructions)		<b>10</b>	
<b>11</b>	Total deductions and modifications. Add lines 9d and 10		<b>11</b>	

### Part III Tax Computation

<b>12</b>	Net investment income. Subtract Part II, line 11, from Part I, line 8. Individuals, complete lines 13–17. Estates and trusts, complete lines 18a–21. If zero or less, enter -0-		<b>12</b>	66,251.
<b>13</b>	Modified adjusted gross income (see instructions)	<b>13</b> 569,805.	<b>16</b>	66,251.
<b>14</b>	Threshold based on filing status (see instructions)	<b>14</b> 250,000.		
<b>15</b>	Subtract line 14 from line 13. If zero or less, enter -0-	<b>15</b> 319,805.		
<b>16</b>	Enter the smaller of line 12 or line 15			
<b>17</b>	Net investment income tax for individuals. Multiply line 16 by 3.8% (0.038). <b>Enter here and include on your tax return</b> (see instructions)		<b>17</b>	2,518.
<b>18a</b>	Net investment income (line 12 above)	<b>18a</b>	<b>20</b>	
<b>b</b>	Deductions for distributions of net investment income and charitable deductions (see instructions)	<b>18b</b>		
<b>c</b>	Undistributed net investment income. Subtract line 18b from line 18a (see instructions). If zero or less, enter -0-	<b>18c</b>		
<b>19a</b>	Adjusted gross income (see instructions)	<b>19a</b>		
<b>b</b>	Highest tax bracket for estates and trusts for the year (see instructions)	<b>19b</b>		
<b>c</b>	Subtract line 19b from line 19a. If zero or less, enter -0-	<b>19c</b>		
<b>20</b>	Enter the smaller of line 18c or line 19c			
<b>21</b>	Net investment income tax for estates and trusts. Multiply line 20 by 3.8% (0.038). <b>Enter here and include on your tax return</b> (see instructions)		<b>21</b>	

**Expenses for Business Use of Your Home**

Department of the Treasury  
Internal Revenue Service

File only with Schedule C (Form 1040). Use a separate Form 8829 for each home you used for business during the year.

**2024**  
Attachment  
Sequence No. **176**

Go to [www.irs.gov/Form8829](http://www.irs.gov/Form8829) for instructions and the latest information.

Name(s) of proprietor(s)

Zachary W Miller

Your social security number

[REDACTED]

**Part I Part of Your Home Used for Business**

Attorney

1	Area used regularly and exclusively for business, regularly for daycare, or for storage of inventory or product samples (see instructions)	1	365
2	Total area of home	2	3,800
3	Divide line 1 by line 2. Enter the result as a percentage	3	9.61 %
<b>For daycare facilities not used exclusively for business, go to line 4. All others, go to line 7.</b>			
4	Multiply days used for daycare during year by hours used per day	4	hr.
5	If you started or stopped using your home for daycare during the year, see instructions; otherwise, enter 8,784	5	8,760 hr.
6	Divide line 4 by line 5. Enter the result as a decimal amount	6	
7	Business percentage. For daycare facilities not used exclusively for business, multiply line 6 by line 3 (enter the result as a percentage). All others, enter the amount from line 3	7	9.61 %

**Part II Figure Your Allowable Deduction**

8	Enter the amount from Schedule C, line 29, <b>plus</b> any gain derived from the business use of your home, <b>minus</b> any loss from the trade or business not derived from the business use of your home. See instructions.	8	499,365.
<b>See instructions for columns (a) and (b) before completing lines 9-22.</b>			
9	Casualty losses (see instructions)	9	
10	Deductible mortgage interest (see instructions)	10	3,372.
11	Real estate taxes (see instructions)	11	6,764.
12	Add lines 9, 10, and 11	12	10,136.
13	Multiply line 12, column (b), by line 7	13	974.
14	Add line 12, column (a), and line 13	14	974.
15	Subtract line 14 from line 8. If zero or less, enter -0-	15	498,391.
16	Excess mortgage interest (see instructions)	16	
17	Excess real estate taxes (see instructions)	17	
18	Insurance	18	11,184.
19	Rent	19	
20	Repairs and maintenance	20	5,415.
21	Utilities	21	7,498.
22	Other expenses (see instructions)	22	24,827.
23	Add lines 16 through 22	23	48,924.
24	Multiply line 23, column (b), by line 7	24	4,702.
25	Carryover of prior year operating expenses (see instructions)	25	
26	Add line 23, column (a), line 24, and line 25	26	4,702.
27	Allowable operating expenses. Enter the <b>smaller</b> of line 15 or line 26	27	4,702.
28	Limit on excess casualty losses and depreciation. Subtract line 27 from line 15	28	493,689.
29	Excess casualty losses (see instructions)	29	
30	Depreciation of your home from line 42 below	30	1,443.
31	Carryover of prior year excess casualty losses and depreciation (see instructions)	31	
32	Add lines 29 through 31	32	1,443.
33	Allowable excess casualty losses and depreciation. Enter the <b>smaller</b> of line 28 or line 32	33	1,443.
34	Add lines 14, 27, and 33	34	7,119.
35	Casualty loss portion, if any, from lines 14 and 33. Carry amount to <b>Form 4684</b> . See instructions	35	
36	<b>Allowable expenses for business use of your home.</b> Subtract line 35 from line 34. Enter here and on Schedule C, line 30. If your home was used for more than one business, see instructions	36	7,119.

**Part III Depreciation of Your Home**

37	Enter the <b>smaller</b> of your home's adjusted basis or its fair market value. See instructions	37	766,000.
38	Value of land included on line 37	38	155,000.
39	Basis of building. Subtract line 38 from line 37	39	611,000.
40	Business basis of building. Multiply line 39 by line 7	40	58,717.
41	Depreciation percentage (see instructions)	41	2.4573 %
42	Depreciation allowable (see instructions). Multiply line 40 by line 41. Enter here and on line 30 above	42	1,443.

**Part IV Carryover of Unallowed Expenses to 2025**

43	Operating expenses. Subtract line 27 from line 26. If less than zero, enter -0-	43	0.
44	Excess casualty losses and depreciation. Subtract line 33 from line 32. If less than zero, enter -0-	44	0.

Depreciation and Amortization (Including Information on Listed Property)

Department of the Treasury Internal Revenue Service

Go to www.irs.gov/Form4562 for instructions and the latest information.

Attach to your tax return.

Table with 3 columns: Name(s) shown on return, Business or activity to which this form relates, Identifying number. Values: Zachary W & Jennifer L Miller, Sch C Attorney, [Redacted]

Part I Election To Expense Certain Property Under Section 179

Note: If you have any listed property, complete Part V before you complete Part I.

Table with 5 main rows for calculations and 13 rows for property details. Includes columns for description, cost, and elected cost.

Note: Don't use Part II or Part III below for listed property. Instead, use Part V.

Part II Special Depreciation Allowance and Other Depreciation (Don't include listed property. See instructions.)

Table with 3 rows for special depreciation allowance, property election, and other depreciation.

Part III MACRS Depreciation (Don't include listed property. See instructions.)

Section A

Table with 2 rows for MACRS deductions and grouping election.

Section B—Assets Placed in Service During 2024 Tax Year Using the General Depreciation System

Table with 7 columns: Classification, Month and year placed in service, Basis for depreciation, Recovery period, Convention, Method, Depreciation deduction. Includes rows for 3-year through 25-year property and residential/nonresidential real property.

Section C—Assets Placed in Service During 2024 Tax Year Using the Alternative Depreciation System

Table with 7 columns: Class life, Recovery period, Convention, Method, Depreciation deduction. Includes rows for 12-year, 30-year, and 40-year class life.

Part IV Summary (See instructions.)

Table with 3 rows for summary calculations: Listed property, Total, and Section 263A costs.

Part V Listed Property (Include automobiles, certain other vehicles, certain aircraft, and property used for entertainment, recreation, or amusement.)

Note: For any vehicle for which you are using the standard mileage rate or deducting lease expense, complete only 24a, 24b, columns (a) through (c) of Section A, all of Section B, and Section C if applicable.

Section A—Depreciation and Other Information (Caution: See the instructions for limits for passenger automobiles.)

24a Do you have evidence to support the business/investment use claimed? [X] Yes [ ] No 24b If "Yes," is the evidence written? [X] Yes [ ] No

Table with 10 columns: (a) Type of property, (b) Date placed in service, (c) Business/investment use percentage, (d) Cost or other basis, (e) Basis for depreciation, (f) Recovery period, (g) Method/Convention, (h) Depreciation deduction, (i) Elected section 179 cost. Includes rows 25-29.

Section B—Information on Use of Vehicles

Complete this section for vehicles used by a sole proprietor, partner, or other "more than 5% owner," or related person. If you provided vehicles to your employees, first answer the questions in Section C to see if you meet an exception to completing this section for those vehicles.

Table with 6 main columns: (a) Vehicle 1, (b) Vehicle 2, (c) Vehicle 3, (d) Vehicle 4, (e) Vehicle 5, (f) Vehicle 6. Includes rows 30-36.

Section C—Questions for Employers Who Provide Vehicles for Use by Their Employees

Answer these questions to determine if you meet an exception to completing Section B for vehicles used by employees who aren't more than 5% owners or related persons. See instructions.

Table with 2 columns: Yes, No. Includes rows 37-41.

Note: If your answer to 37, 38, 39, 40, or 41 is "Yes," don't complete Section B for the covered vehicles.

Part VI Amortization

Table with 6 columns: (a) Description of costs, (b) Date amortization begins, (c) Amortizable amount, (d) Code section, (e) Amortization period or percentage, (f) Amortization for this year. Includes rows 42-44.



**Additional Information From 2024 Federal Tax Return****Schedule C (Attorney): Profit or Loss from Business****Line 48 Other Expenses****Continuation Statement**

Description	Amount
PACER Charge	115.
Zoning Hearing Ads, Materials for hearings, application fees	2,482.
Hotel for work trip	224.
Federalist Society Event Booking	350.
<b>Total</b>	<b>3,171.</b>

# WRITING SAMPLES

**IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT,  
IN AND FOR ST. JOHNS COUNTY, FLORIDA**

JAMES DAVID HIGBEE,

Plaintiff,

v.

NICOLE CRANBERG CROSBY.,

Defendant

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Case No.: CA-2024-665

Division: 59

**PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS**

Plaintiff, James David Higbee, by and through his undersigned attorney, hereby files this Response to Defendant's Motion to Dismiss and Incorporated Memorandum of Law. In support, Plaintiff states the following:

**I. BACKGROUND**

On May 23, 2024, Plaintiff filed a complaint against Defendant (the "Complaint"). The Complaint seeks damages and injunctive relief for a defamatory post made by Defendant on Facebook. Specifically, the Complaint sets forth the following factual allegations:

On October 19, 2023, Defendant posted on the "Fight for St. Johns County" Facebook Group (the "FFSJC Group") a portion of the record from a 2013 criminal case in Palm Beach County, Florida in which Plaintiff was listed as the defendant (the "2013 Case"). (the "October Post"). (*Compl.* ¶ 14.). In the 2013 Case, Plaintiff was issued a notice to appear. (*Exhibit A, Complaint.*)

The October Post identified the case as *misdemeanor* heard before the county court. (*Compl.* ¶ 14-30.).

The October Post demonstrates that Defendant knew that Plaintiff's 2013 Case was a *misdemeanor*. (*Compl.* ¶ 27-30.).

On April 12, 2024, Plaintiff posted another comment about the 2013 Case. However, this time Plaintiff identified the charges as “*felony thefts*” and the record identifying the case as a *misdemeanor* was carefully doctored and edited so that any reference to the item being a *misdemeanor* was removed. (the “April Post”). (*Compl.* ¶ 27-45.).

The April Post also stated that Plaintiff is part of a “cartel” and that he has multiple “felony thefts.” (*Compl. Exhibit B*).

Plaintiff made no comments in the April Post (*Compl. Exhibit B*) thereby making Defendant's defamatory comments a bizarre non-sequitur unmoored from any of the topics discussed and making it clear that Defendant's sole purpose was to defame and damage Plaintiff.<sup>1</sup>

Plaintiff was demoted due to the April Post. (*Compl.* ¶ 47.). Defendant's defamatory lie caused Plaintiff economic harm, emotional distress and damages to his reputation. (*Compl.* ¶ 47-51.).

In summary, Defendant authored a post which included records which clearly and expressly demonstrated that Plaintiff was not a felon. Six (6) months later, Defendant doctored the same records so all references to “*misdemeanor*” and “*county court*” were removed and Defendant, in the same post, wrongfully and intentionally identified Plaintiff as someone who had committed multiple *felonies* and was a member of a *cartel*. Defendant knew Plaintiff was not a felon. Defendant knew Plaintiff did not have multiple felonies. Defendant knew Plaintiff is not part of a “cartel.” Defendant possessed records showing that Plaintiff is not a felon. Defendant doctored

<sup>1</sup> The primary post had to do with the ranking of the St. Johns County School District compared to other counties. Plaintiff did not make a comment on this post. As is obvious, this post has nothing to do with Plaintiff.

said records to bolster this misrepresentation. Defendant did this to harm Plaintiff and Defendant was successful in inflicting harm. (*Compl.* ¶ 47-51.).

To this, Defendant incredibly claims Plaintiff has failed to state a cause of action for defamation on the theory that the April Post was not false and that this action is to prevent Plaintiff's from speaking on public issues.

## **II. STANDARD FOR MOTION TO DISMISS**

For purposes of a motion to dismiss for failure to state a cause of action, the movant admits as true all material facts well-pleaded and all reasonable inferences arising from those facts. *Orlando Sports Stadium, Inc. v. State*, 262 So. 2d 881 (Fla. 1972); *Simon v. Tampa Electric Co.*, 202 So. 2d 209 (Fla. 2d DCA 1967). To state a cause of action, a complaint must allege sufficient ultimate facts to show that the pleader is entitled to relief. Fla. R. Civ. P. 1.110(b).

## **III. MEANING OF THE WORD "FELON"**

"Felon is an ugly label that confirms the debased status that accompanies conviction. It identifies a person as belonging to a class outside many protections of the law, someone who can be freely discriminated against, someone who exists at the margins of society. In short a 'felon' is a legal outlaw and social outcast. But the words 'felon' does more work than that. It arouses fear and loathing in most of us." *What is in a Name A Lot, When the Name is "Felon"* by Margaret Colgate Love.

"Felony is as bad a word as you can give a man or thing." *Staples v. United States*, 511 U.S. 600 (1994).

“This Court has recognized repeatedly that a legislature constitutionally may prohibit a convicted felon from engaging in activities far more fundamental than the possession of a firearm.” *De Veau v. Braisted*, 363 U.S. 144, 158-60, (1960).

“The term ‘felony’ as used herein and in the laws of this state shall mean any criminal offense that is punishable under the laws of this state, or that would be punishable if committed in this state, by death or by imprisonment in the state penitentiary.” *Section 10, Article X, Florida Constitution*.

In the State of Florida, a felony conviction means:

- One cannot own a firearm
- If one possesses a firearm, it is a crime requiring a minimum mandatory prison sentence of three (3) years. *Section 790.23, Florida Statute*.
- One cannot serve on a jury. *Section 40.013, Florida Statute*.
- One cannot hold public office. *Article IV, Section 4, Florida Constitution*.
- One cannot vote. *Id.*
- One must register with the local sheriff. *Section 775.13, Florida Statutes*.
- One must identify themselves as a felon on most job applications.
- One is barred from receipt of many professional licenses.

“Felon” a person who has been convicted of a felony. *Black’s Law Dictionary*.

“Felony” is a serious crime usually punishable by imprisonment for more than one year or by death. Also termed a major crime; serious crime. *Black’s Law Dictionary*.

#### **IV. DEFAMATION**

Under Florida law, to assert a claim for defamation a plaintiff must establish that: (1) the defendant published a false statement; (2) about the plaintiff; (3) to a third party; and (4) that the statement caused injury.

Under Florida law, defamation is generally defined as, “the unprivileged publication of false statements which naturally and proximately result in injury to another.” *Bongino v. Daily Beast Co., LLC*, 477 F. Supp. 3d 1310 (S.D. Fla. 2020) citing *Wolfson v. Kirk*, 273 So. 2d 774, 776 (Fla. 4th DCA 1973).

A defamatory statement, “tends to harm the reputation of another by lowering him or her in the estimation of the community or, more broadly stated, one that exposes a plaintiff to hatred, ridicule, or contempt or injures his business or reputation or occupation.”

#### A. Defamation *Per Se*

To state a claim for defamation *per se*, a plaintiff is not required to allege damages<sup>2</sup> because defamation *per se* is so obviously defamatory and damaging to reputation that it gives rise to an absolute presumption of both malice and damage. *Wallis v. Cueto*, No. 17-cv-21014-UU, 2017 U.S. Dist. LEXIS 127247 (S.D. Fla. Aug. 9, 2017).

“The significance of the classification of a communication as actionable *per se* lies in the fact that its victim need not plead or prove malice (except where a privilege is involved) or special damage because malice and the occurrence of damage are both presumed from the nature of the defamation.” *Wolfson v. Kirk*, 273 So. 2d 774 (Fla. 4th DCA 1973)

“Under Florida law, a publication is libelous *per se* when it imputes to another a criminal offense **amounting to a felony**, or conduct, characteristics, or conditions incompatible with the

<sup>2</sup> Plaintiff in this matter has alleged damages.

proper exercise of one's lawful business, trade, profession, or office. . . . At the very least, the publication in question accuses appellant of conduct incompatible with the proper exercise of his employment or profession which is clearly actionable *per se*.” *Drennen v. Westinghouse Elec. Corp.*, 328 So. 2d 52, 54 (Fla. 1st Dist. 1976). (emphasis added).

### 1. Misrepresenting Someone as a Felon is Defamation *Per Se*

Under Florida law, a publication is libelous *per se* when it imputes to another a criminal offense **amounting to a felony**. *Id.* (emphasis added). A publication is libelous, by itself; that is, actionable, by itself; without a showing of special damage, if it imputes to another a criminal offense **amounting to a felony**. *Miami Herald Publ'g Co. v. Brautigam*, 127 So. 2d 718 (Fla. 3d Dist, 1961). (emphasis added), *Petricca v. Saxony Condo. Ass'n, Inc.*, No. 23-cv-81581-Can, 2024 U.S. Dist. LEXIS 68152 (S.D. Fla. Apr. 15, 2024) (emphasis added); *Wolfson v. Kirk*, 273 So. 2d 774 (Fla. 4th DCA 1973); *Bass v. Rivera*, 826 So. 2d 534 (Fla. 2d DCA 2002).

Specifically using of the word “felony” makes a statement about another’s conduct defamatory *per se*. “Without more, the publication lacks sufficient detail for a reader to conclude the crime involved is a felony.” *Aflalo v. Weiner*, No. 17-61923-CIV, 2018 U.S. Dist. LEXIS 110134 (S.D. Fla. July 2, 2018).

Defendant deliberately misrepresented Plaintiff as a “felon” and doctored records to support said misrepresentation to defame Plaintiff, hurt his credibility and lower his standing in the eyes of anyone who read the April Post.

Falsely labeling someone as a felon under Florida law is defamation *per se* because conviction of a felony carries serious penalties and consequences (described above) which label and otherwise connote that an individual is untrustworthy because they committed a serious crime.

In *Carroll v. TheStreet.com, Inc., No. 11-CV-81173, 2014 U.S. Dist. LEXIS 156499, 2014 WL 5474061, (S.D. Fla. July 10, 2014).*, the plaintiff was labeled a “convicted felon” by a media outlet and Plaintiff sued for defamation.

In *Carroll* where defendant labeled plaintiff a felon despite not having a felony conviction<sup>3</sup> the court granted summary judgment for the plaintiff on whether such a label is defamatory and explained that such a statement is “injurious on [its] face and require no extrinsic evidence to establish their defamatory meaning” and such a statement, as a matter of law, is “defamatory *per se.*” *Id.* at 45-46.

In *Carroll* the court emphasized that the article was in 2008 and the plaintiff’s charges were from 1992. The court explained,

“Carroll’s felony charges related to a false statement he made to his insurance company about electronic equipment he claimed as lost on a personal boat; the Article labels Carroll a convicted felon in the context of an alleged insurance fraud scheme by a publicly-traded company. The Article did not clarify these facts; rather, it labeled Carroll a ‘convicted felon,’ ‘con artist,’ and ‘troubling character’ as it related to then-suspected Arthrocare and PBLSC medical insurance fraud. The Court finds that a jury could determine that the import of the Article was more pejorative than if TheStreet had accurately reported the 1992 criminal charges in their proper context.”

In the case *sub judice*, Plaintiff was never charged with a felony, was not convicted of a felony, never admitted to any actions which constitute a felony and Defendant is not media outlet. Instead, Defendant is an individual who took it upon herself to falsely label Plaintiff a felon and doctor records in response to a comment from an individual **WHO IS NOT PLAINTIFF.**

<sup>3</sup> In *Carroll*, the plaintiff was arrested for and charged with felony insurance fraud and felony grand theft but entered into a pre-trial intervention program where his felony charges were “nol prosequi.” *Id.* at 4. The plaintiff also submitted a sworn statement under oath admitting to the factual basis for the felony charges. *Id.* at 28. The charges were not dismissed with prejudice but without prejudice, “for the State’s Attorney’s ability to resume prosecution if he saw fit” and “his nolle prosequi disposition did not operate as an acquittal. *Id.* at 29.

Defendant makes the following argument as to why labeling Plaintiff a “felon” was not “literally untrue.”

Legal terms are used in a general, colloquial sense all the time in the English language. An act of voluntary manslaughter might be described as a murder. The victim of a burglary might call the police and say, “I’ve been robbed.” Or someone who has committed sexual battery under section 794.011, Florida Statutes, might be described as a rapist. In none of these cases would the statement be considered false—even though the statement did not use the technically correct legal term under the modern statute. Accordingly, when Crosby used the word “felony” to describe conduct that for most of history has been considered a felony, she did not make a false statement. *Page 3, Motion.*

Defendant clearly misunderstands why falsely labeling someone a felon is *per se* defamatory. A felony is a serious crime. A misdemeanor is not. That is Florida law. Those arrested for felonies are treated differently by law enforcement (no notices to appear), prosecutors (more experienced prosecutors handle felonies), judges (circuit judges) and sentencing (misdemeanors score 0.2 on criminal scoresheets whereas felonies score a minimum of 4 points) than those arrested for misdemeanors. In every way possible those convicted of felonies are treated differently by the government and society than those convicted of misdemeanors.

Defendant curiously uses examples of crimes that are categorically felonies in a misguided attempt provide analogies. To use Defendant’s examples, both “voluntary manslaughter” and “murder” are felonies punishable by prison and the consequences identified in Section III above. Burglary and Robbery are both felonies with corresponding applicable prison sentences and post-prison consequence. As for sexual battery, there is no “misdemeanor” sexual battery, all forms are felonies. Moreover, “rape” is synonymous with “sexual battery.”<sup>4</sup> Misdemeanor is not synonymous with felony. All of Defendant’s examples are felonies. The difference between

<sup>4</sup> “A comparison of the elements of the respective offenses demonstrates that they are so similar as to be virtually synonymous.” *Miller v. Dugger*, 565 So. 2d 846, 848 (Fla. 1st DCA 1990)

misdemeanors and felonies is the seriousness assigned by the law and in society. That is why the law makes it defamation *per se* to falsely label that someone committed a felony.

Is Plaintiff a convicted felon? No. Did Defendant know that? Yes. Did Plaintiff commit a felony? No. Did Plaintiff know that? Yes. Did Defendant doctor records to bolster said misrepresentation? Yes. Defendant's actions are defamation *per se* and Defendant's arguments to the contrary are devoid of merit.

## **2. Injury to Trade or Profession is Defamation *Per Se***

A publication is also defamation *per se* if, when considered alone without innuendo, it tends to injure a person in their trade or profession, or if it imputes to another conduct, characteristics, or a condition incompatible with the proper exercise of his lawful business, trade, profession, or office. *Perry v. Cosgrove*, 464 So. 2d 664, 666 (Fla. 2d DCA 1985).

Defendant's publication of the doctored records coupled with falsely identifying Plaintiff as a "felon" injured Plaintiff in his profession. (*Compl.* ¶ 46-50.).

Falsely identifying Plaintiff as a felon injured Plaintiff in his profession, and is therefore defamation *per se*. As such, Plaintiff has stated a cause of action for defamation *per se*.

## **B. Defamation With Damages**

Defamation *per se* does not require a showing of damages, as damages are presumed. While Plaintiff has alleged defamation *per se* (*Compl.* ¶ 57), Plaintiff has also alleged that Defendant acted with malice (*Compl.* ¶ 58<sup>5</sup>) and that Defendant's dishonest post and doctored records caused damage to Plaintiff. (*Compl.* ¶ 58-59). Allegations of severe emotional stress and harmed reputation are sufficient allegations for damages even if the statement at issue is not *per*

<sup>5</sup> An error in the paragraph labels in the complaint misidentified two paragraph "58s."

se defamatory. *Klayman v. Judicial Watch, Inc.*, 22 F. Supp. 3d 1240 (S.D. Fla. 2014). Plaintiff alleged said damages, as well as economic damages. (*Compl.* ¶ 47-48, 58.).

“A communication is ‘defamatory’ if it tends to harm the reputation of another as to lower him or her in estimation of community or deter third persons from associating or dealing with the defamed party.” *Mile Marker, Inc. v. Petersen Publ'g, L.L.C.*, 811 So.2d 841, 845 (Fla. 4th DCA 2002) (citing *Thomas v. Jacksonville Television, Inc.*, 699 So.2d 800, 803 (Fla. 1st DCA 1997)). In short, any statement can be defamatory if it is untrue and causes damages.

The Complaint provides sufficient allegations of damages that resulted from Defendant’s untrue post and doctored records. Therefore Plaintiff has stated a cause of action for defamation *per quod*.

## V. SUBSTANTIAL TRUTH

Defendant’s argument is that Defendant’s statement about Plaintiff was not false because, “While Higbee evidently pleaded (sic) guilty to a statutory<sup>6</sup> misdemeanor, it appears to a near certainty that the conduct at issue – stealing goods from a retail store, **was the common law felony of larceny.**” (*Pages 1-2, Motion.*)(emphasis added).

Defendant now argues that labeling Plaintiff a felon is true because, “felonious intent” means “intent to steal” so any theft conviction can be labeled a felony, whether that is true or not. *Defendant’s Supplemental Memorandum.*

Defendant believes labeling Plaintiff a felon on the internet and doctoring records demonstrating that Plaintiff is not a felon is not defamatory because, in Defendant’s opinion, a misdemeanor is a common law felony and therefore Defendant’s libelous post was “substantially

<sup>6</sup> All misdemeanors are statutory, as are all felonies.

true.” Defendant’s opinion is expressly contradicted by Florida law because Florida does not recognize common law felonies. *Garcia v. State*, 114 So. 3d 424, 426 (Fla. 2nd Dist. 2013); *State v. Watso*, 788 So. 2d 1026, 1029 (Fla. 2nd Dist. 2001) and *Smith v. State*, 215 So. 3d 113, 114 (Fla. 1st Dist. 2017).

Therefore, Defendant’s argument is absurd and has no basis in law.

Defendant’s “new” argument (not contained in the actual motion to dismiss but in a supplemental brief) is that mislabeling Plaintiff a felon is not “untrue” because any theft is “acting with felonious intent” and “felonious” means “intent to steal.”<sup>7</sup> *Defendant’s Supplemental Memorandum, Page 2*. Setting aside that Defendant’s argument grammatically makes no sense, the use of the word “felony” and the doctored records show a clear intent to label Plaintiff as having been convicted of “felony.” To put another way, why even add the label of felony except to communicate to the reader that Plaintiff is a convicted felon?

While not clear from Defendant’s motion, it appears Defendant seeks some form of safe harbor on “technical” grounds. *Page 2, Motion to Dismiss*. On the issue of “technical inaccuracies” in reporting on crimes, courts have held that such a defense is reserved *only* for media defendants reporting *in real-time*. *Carroll* at 31. Defendant is not media and the April Post was not a real-time report. It was a doctored record and false statement which Defendant knew to be false.

Even if this Court were to entertain Defendant’s absurd “common law felony” or “felonious intent” theories, the issue of “substantial truth” is an affirmative defense which (should it survive a motion to strike and/or motion in *limine*) is a question of fact that is inappropriate for summary judgment, let alone a motion to dismiss. “Because the trier of fact must consider the context of the

<sup>7</sup> Defendant cites to several civil theft cases where “felonious intent” is an element of the charge. As a matter of law labeling someone a felon who is not a felon is defamation *per se*.

publication in determining whether the gist or sting associated with it differs from the actual truth, the Court **cannot grant summary judgment in favor of Defendant on its affirmative defense.**” *Klayman* at 1254. (emphasis added). Thus, Defendant’s claim has no basis in fact or law, but also has no place in a motion to dismiss (or motion for summary judgment).

Defendant’s argument that misdemeanor means felony and therefore Defendant defamatory post is “substantially true” is contracted by the law, common sense and the fact that words have meaning and the law makes this particular word defamatory. Even if this was not the case, Defendant’s argument is an affirmative defense not a basis for a motion to dismiss.

## **VI. ANTI-SLAPP**

Defendant alleges that the Complaint is a strategic lawsuit against public participation in violation of Section 768.295, Florida Statutes. *Page 4, Motion.*

Upon a motion to dismiss a complaint for failure to state a cause of action, all material allegations of the complaint are taken as true. Those allegations are then reviewed in light of the applicable substantive law to determine the existence of a cause of action. Therefore, all allegations of the complaint must be taken as true and all reasonable inferences drawn therefrom must be construed in favor of the non-moving party. *Lam v. Univision Communs., Inc.*, 329 So. 3d 190 (Fla. 3d DCA 2021)

As a preliminary matter, in asserting a violation of Section 768.295, the initial burden is on Defendant. *Gundel v. AV Homes, Inc.*, 264 So. 3d 304, 314 (Fla. 2nd Dist. 2019).

Defendant has failed this burden by bringing only insufficient conclusory statements which parrot the words of the statute. “A plaintiff is as much entitled to be aware of the ground upon which it is claimed he should not recover as is a defendant to be apprised of the basis of the

plaintiff's claim." *Walker v. Walker*, 254 So.2d 832, 834 (Fla. 1st DCA 1971). "It is insufficient to plead opinions, theories, legal conclusions or argument." *Barrett v. City of Margate*, 743 So.2d 1160, 1162-63 (Fla. 4th DCA 1999).

Defendant fails to allege what public matter Plaintiff seeks to prevent Defendant from participating in. Defendant simply argues, "The internet post on which this action is based is a work of free speech in connection with a local political election and is therefore free speech in connection with a public issue as defined in section 768.295(2)(a)."

How misrepresenting Plaintiff as a multiple-time felon and doctoring a record to support said misrepresentation is a, "work of free speech in connection with a local political election" is not addressed by Defendant nor is it within the four-corners of the complaint.

#### **A. Public Issue**

Section 768.295(2)(a), Florida Statutes defines "Free speech in connection with public issues" as

[A]ny written or oral statement that is protected under applicable law and is made before a governmental entity in connection with an issue under consideration or review by a governmental entity, or is made in or in connection with a play, movie, television program, radio broadcast, audiovisual work, book, magazine article, musical work, news report, or other similar work.

Florida's anti-SLAPP statute prohibits a person from filing a cause of action that is: (a) without merit; and (b) **primarily because** the defendant exercised the constitutional right of free speech in connection with a public issue. *Lee v. Animal Aid, Inc.*, 2024 Fla. App. LEXIS 1508 (Fla. 4th DCA Feb. 28, 2024) (emphasis added)

The April Post has nothing to do with, "a play, movie, television program, radio broadcast, audiovisual work, book, magazine article, musical work, news report, or other similar work." Nor

does it directly have anything to do with a “local political election.” The April Post was not a “public issue” it was a complete non-sequitur which sought to defame Plaintiff by misrepresenting him as a felon as part of Defendant’s *ad hominin* attack in response to an individual who was NOT Plaintiff. (*Compl. Exhibit B*).

If Defendant’s argument were true, anytime someone on social media makes an initial post regarding a “public issue” they would be free to post in the comments section any defamatory comment on any person they wish and be free from liability. This would effectively grant the comments section in social media absolute immunity from libel actions. In Defendant’s view of anti-SLAPP, Defendant could post doctored images of Plaintiff’s criminal background on a social media page dedicated to the election of President Trump and be immune from liability because the actual social media page is about politics. Similarly, in Defendant’s view, if someone takes a picture with a public official anyone can post defamatory statements about the non-public official in the picture and be immune from liability. This argument is not supported by any facts or any law.

The language in the anti-SLAPP statute requires the defendant to show that the litigation was brought “**primarily because**” defendant exercised their free speech rights in connection with a public issue.

The purpose of anti-SLAPP statute is to prevent unmeritorious litigants from using defamation lawsuits to prevent defendants from commenting on matters of public importance. Plaintiff’s cause of action has merit (See below), however, Plaintiff in no way seeks to prevent Defendant from speaking on any public issue. Plaintiff simply seeks to prevent Defendant from labeling Plaintiff a felon (which he is not), posting doctored records about Plaintiff and for Plaintiff

to be compensated for Defendant's previously committing said actions. That is the goal of this action. Nothing sought in this matter will prevent Defendant from writing about local elections, endorsing candidates or speaking about any other issue she has with any government at any level.

The goal of this action is to prevent Defendant from lying about Plaintiff and for Plaintiff to be compensated for Defendant's previous lies. Defendant has the right to say what she wants (and will continue to have said right after this litigation has concluded) but she does not have the right to be free from the consequences of defamatory speech and actions.

### **B. Merit**

Defendant claims that Plaintiff's cause of action is without "merit" because "misdemeanor" means "felon" despite the law promulgated by the Florida legislature, the Florida courts and the Florida constitution and the fact that words have meaning.

Labeling someone a felon when they are not is defamation *per se*. *See above*. Labeling someone a felon and it impacting their career is defamation *per se*. *See above*. Labeling someone a felon and it causes them actual damages is defamation *per quod*. *See above*. As such, this action is meritorious.

Courts have found that, while in the anti-SLAPP context the burden is not on plaintiffs to show their claim has merit, where there are sufficient allegations of *malice*, a claim has merit so that a dismissal under the anti-SLAPP statute should be denied. *Lam v. Univision Communs., Inc.*, 329 So. 3d 190 (Fla. 3d DCA 2021). Actual malice occurs when a statement is made with knowledge that it was false or with reckless disregard of whether it was false or not. *Id.* citing *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964).

Per the Complaint:

- In the April Post Defendant labeled Plaintiff a felon (*Compl.* ¶ 40.);
- Plaintiff has never been charged with a felony (*Compl.* ¶ 41.);
- Plaintiff has never been convicted of a felony (*Compl.* ¶ 42.);
- Defendant knew Plaintiff had never been charged with a felony (*Compl.* ¶ 43.);
- Defendant knew Plaintiff had never been convicted of a felony (*Compl.* ¶ 44.).

Defendant's actions constitute actual malice.

Per the applicable law and the facts alleged, the Complaint has merit and therefore the second prong of the anti-SLAPP fails.

### **VII. Conclusion**

WHEREFORE, Plaintiff respectfully requests that this Court enter an Order denying Defendant's Motion to Dismiss and directing Defendant to file an answer to the Complaint.

Respectfully submitted on this 25th day of July 2024.

By: /s/ Zachary Miller  
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### **CERTIFICATE OF SERVICE**

I certify that, in compliance with Fla. R. Gen. Prac. & Jud. Admin. 2.516, the foregoing document has been furnished via e-mail to the following counsel of record identified as Electronic Service Recipients upon filing with the Florida Courts E-Filing Portal on this 25th day of July, 2024:

W. Bradly Russell, Esq. (via email)  
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**ZACHARY MILLER, ESQ.**

By: /s/ Zachary Miller  
ZACHARY MILLER, ESQ.

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

JWB REAL ESTATE CAPITAL,  
LLC, a Florida Limited Liability Company,  
HOOSE HOMES AND INVESTMENTS, LLC,  
a Florida limited liability company, and  
BCEL 5, LLC, a Florida limited liability company

Plaintiffs,

CASE NO.: 3:17-cv-00960-TJC-PDB

v.

CITY OF JACKSONVILLE BEACH, a municipal  
Corporation of the State of Florida,

Defendant,

**PLAINTIFFS' RESPONSE IN OPPOSITION TO MOTION TO SERVER, MOTION  
FOR MORE DEFINITE STATEMENT AND MOTION TO DISMISS THE SECOND  
AMENDED COMPLAINT AND MEMORANDUM OF LAW**

Plaintiffs, JWB REAL ESTATE CAPITAL, LLC (“JWB”), HOOSE HOMES AND INVESTMENTS, LLC (“HOOSE”) and BCEL 5, LLC (“BCEL”) (the “Plaintiffs”), by and through the undersigned attorney, hereby file this Response in Opposition to Defendant’s Motion to Server, Motion for More Definite Statement and Motion to Dismiss the Second Amended Complaint (“Complaint”) and Memorandum of Law.

**I. RESPONSE AND MEMORANDUM OF LAW**

**A. OPPOSITION TO MOTION TO SERVER**

Defendant moves this Court to sever Plaintiffs. (DK. 40, p. 11). Fed. R. Civ. P. 20(a)(1) allows plaintiffs to join in one action when: (a) they assert any right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and (b) any question of law or fact common to all plaintiffs will

arise in the action. In determining whether claims arise from the same series of transactions or occurrences, the logical relationship test is applied. See *Smith v. Trans-Siberian Orchestra*, 728 F. Supp. 2d 1315, 1319 (M.D. Fla. 2010). There is a logical relationship when the same operative facts serve as the basis of all plaintiffs' claims. *Id.* The logical relation test is a loose standard which permits a broad realistic interpretation in the interest of avoiding a multiplicity of suits. *Plant v. Blazer Fin. Servs., Inc.*, 598 F.2d 1357, 1361 (5th Cir. 1979) citing 3 *Moore's Federal Practice* P 13.13 at 300. All "logically related" events entitling a person to institute a legal action against another generally are regarded as comprising a transaction or occurrence. *M.K. v. Tenet*, 216 F.R.D. 133 (D.D.C. 2002).

Defendant made the same argument in asking to sever the Plaintiffs in the First Amended Complaint. (DK. 17, p. 5). This Court, in reviewing these arguments and letting BCEL join as additional plaintiff (as to a fourth application) stated that it did not believe that it would be, "...granting a motion to sever." (DK. 36, Pg. 53). The Court explained to counsel for Defendant, that, "I have told you that I'm not particularly interested in the motion to sever. (DK. 36, Pg. 54).

The properties at-issue are located where Townhouses are allowed. (DK. 33, ¶18-17). Plaintiffs JWB, Hoose and BCEL submitted development plan applications and BCEL attempted to submit another development plan. (DK. 33, ¶54-65). All Plaintiffs' applications were rejected by Defendant's planning department due to the planning department's opinion that driveways, walkways/porches are "parking areas<sup>1</sup>" and "accessory structures", respectively. (DK. 33, ¶66-113). All Plaintiffs were informed that variances for the driveways, walkways and porches would be required for the development plans to be processed. (DK. 33, ¶66-113). Plaintiffs have provided a multitude of Townhouses that have driveways, walkways and/or porches which are

<sup>1</sup> Defendant's planning department initially decided that driveways were accessory uses but then changed its mind. (DK. 33, ¶66).

within five (5) feet of property lines and for which Defendant approved development plans and permits without requiring a variance for the driveways, walkways and/or porches. (DK. 33, ¶114-244). Thus the same “transaction or occurrence” was applied to each of the Plaintiffs while not being applied to similarly situated developments. Plaintiffs are all seeking the same relief based upon the same operative facts.

Severing all three Plaintiffs and forcing each to file their own complaint would be the opposite of judicial economy as the same facts would be litigated and the same law would be applied in each situation. Thus, as Plaintiffs’ claims meet the requirements of Fed. R. Civ. P. 20(a)(1) for joinder Defendant’s motion to sever JWB, Hoose and BCEL should be denied.

**B. MOTION FOR MORE DEFINITE STATEMENT**

Defendant moves to require Plaintiffs to provide a more definite statement pursuant to Fed. R.Civ. P. 12(e). (DK, 40, p. 13-14). Rule 12(e) provides that a party may move for a more definite statement where, “a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a response pleading.” Rule 12(e) further requires such a motion to “point out the defects complained of and the details desired.” Defendant does not claim that the complaint is ambiguous or vague nor does it point out any defects or details desired<sup>2</sup>. Respectfully, it is difficult to discern what Defendant is requesting.

Defendant brought a similar motion against Plaintiffs’ First Amended Complaint. (DK. 17). As to that motion, this Court advised Plaintiffs to expand upon the details of comparators listed (which Plaintiffs did, *see* DK. 33, ¶114-244, *Ex. W*) before explaining, “I think the complaint, by and large, would be sustainable.” (DK, 36 p. 53).

<sup>2</sup> Defendant claims that Plaintiffs are asking for attorney’s fees for both counts. (DK. 40, p. 14). This is incorrect, Plaintiffs’ claims for fees is limited to the equal protection claim, thus the reference to 42 USC § 1988(b). (DK. 33, p. 54-55, 61)

The rules require a, “short and plain statement of the claim that will give the defendant fair notice of what the plaintiff’s claim is and the grounds upon which it rests.” This is why motions for a more definite statement are not favored. *Campbell v. Miller*, 836 F. Supp. 827, 832 (M.D. Fla. 1993). A motion for a more definite statement should not be used as a substitute for discovery. A motion for more definite statement “is designed to strike at unintelligibility rather than simple want of detail . . . . [It] must be denied where the subject complaint is not so vague or ambiguous as to make it unreasonable to use pretrial devices to fill any possible gaps in detail.” *Schwable v. Coates*, 2005 U.S. Dist. LEXIS 38419 (N.D. Ohio Aug. 18, 2005) citing *Scarborough v. R-Way Furniture Co.*, 105 F.R.D. 90, 91 (E.D. Wis. 1985); and *Sun Co., Inc. v. Badger Design & Constructors, Inc.*, 939 F. Supp. 365, 374 (E.D. Pa. 1996). Motions for a more definite statement are disfavored for their dilatory effect. Fed. R. Civ. P.12(e) contemplates a major ambiguity or omission that renders a complaint unanswerable. *Potts v. Howard Univ.*, 269 F.R.D. 40, 43 (D.D.C. 2010). It is appropriate to deny a motion for more definite statement when the complaint, “commingle[d]’ claims under various statutes in one count because the factual allegations were ‘detailed and specific’ and each claim related to the same ‘series of events....’” *Id.*

The Complaint provides clear and unambiguous statements of fact. The Complaint provides that all three Plaintiffs each submitted or attempted to submit similar applications for development of Townhouses. (DK. 33, ¶54-113). The Complaint details the Defendant’s planning department’s refusal to process the applications without a variance for the driveways, walkways and porches that were within five (5) feet of property lines. (DK. 33 ¶66-113). The Complaint lists similarly situated Townhouse developments where driveways, walkways and/or

porches are within five (5) feet of property lines but those developments were not required to get a variance for their respective driveways, walkways or porches. (DK. 33 ¶114-244, Ex. W).

Plaintiffs provide sufficient detail to put Defendant on notice to respond, “in good faith without prejudice.” Motions for more definite statement are denied where, “a review of the defendants’ submissions establishes that the defendants understand the crux of the complaint.” *Potts* at 43. The fact that a defendant has filed a motion to dismiss proves that the complaint can be responded to. *Potts* citing *Prudhomme v. Proctor & Gamble Co.*, 800 F. Supp. 390, 396 (E.D. La. 1992). Defendant’s own motion evidences that they understand the Complaint sufficiently enough to respond. (DK. 40, p. 14-25). For these reasons, Defendant’s motion for a more definite statement should be denied.

### C. MOTION TO DISMISS

#### 1. Ripeness

Defendant moves to dismiss the Complaint on the basis that Plaintiffs’ claims are not ripe. (DK. 40, p. 14-18). Defendant asserts in its motion that, as to whether the requirement that Plaintiffs seek a variance for the at-issue driveways and walkways, the City has not reached final decisions as to the application of the LDC to Plaintiffs’ desired developments.” (DK. 40, p. 15-16). Specifically, Defendant argues, “The true issue remains whether the final decision-maker has reached determinations applying the LDC to plaintiff’s desired developments, the answer remains ‘no’.” (DK. 40, p. 15). Defendant argues that Plaintiffs need to “appeal” to the Planning Commission (DK. 40, p.15-16). Defendant, strangely, argues that Plaintiffs need to apply for the variances requested by Defendant in order for there to be a final decision as to whether Plaintiffs have to apply for a variance. (DK. 40, p. 17).

Plaintiffs requested, and received, formal interpretations from Defendant’s planning director as to whether driveways constitute parking areas, walkways/porches constitute accessory C and whether Townhomes that feature both that are within five (5) feet of an internal property line are required to receive variances. (DK. 33, ¶98-108). Plaintiffs have appealed these interpretations to the Board of Adjustment, which on two (2) occasions upheld the planning director’s interpretation. (DK. 33, ¶101-100, 109-113).

During the hearing on Defendant’s Motion to Dismiss the First Amended Complaint, as to the issue of “final decision” for purposes of “ripeness” the following was stated:

THE COURT: So, Mr. Scott, if –under your view of the world, if these applicants had gotten interpretation letter from Mr. Mann, which would have said something like, “We don’t think these applications can go forward without a variance attached to it” – you’re saying that the interpretation then could have gone up – or could go to the Board of Adjustment, and the Board of Adjustment would either agree with that interpretation or disagree with that interpretation?

Is that correct?

MR. SCOTT (Counsel for Defendant): Yes, sir.

THE COURT: And if that happens – and let’s say they agreed with Mr. Mann’s interpretation, and that meant the applicant was out of luck, is that a final decision for the equal protection purposes and ripeness purposes?

MR. SCOTT: I think it would depend on the nature of what was being interpreted. It probably could be. I don’t know that that interpretation process could be used to fully bypass the variance requirements or process under the code, which is a whole separate action, but I would think that, yes, it could be a final decision on the matter that’s being interpreted, assuming comparators and all of that is also shown, in terms of equal protection. (DK.36, p. 42).

Defendant agreed a final decision is reached upon the Board of Adjustment upholding the interpretation of the planning director. This was done, twice. (DK. 33, ¶101, 111).

Setting aside that Defendant’s argument as to what constitutes a “final decision” is contradicted by the answers Defendant’s counsel gave to this Court, Defendant’s argument is

flawed both factually and legally. Plaintiffs requested to appeal the planning director's "decision" on the applications to the Planning Commission, only to be told that they could not file such an appeal because "there was no "decision" to appeal. (DK. 33, ¶102-103). Subsequent follow ups to the planning director on this issue were ignored. (DK. 33, ¶103). Defendant's argument that Plaintiff need to appeal to the Planning Commission is contradicted by Defendant's own actions in this case.

Defendant cites to *Digital Props., Inc. v. City of Plantation*, 121 F.3d 586, 589-91 (11th Cir. 1997) as to the issue of ripeness. In *Digital Properties*, the applicant's agent spoke to an assistant zoning technician who provided that the City would not allow the requested use. The technician then advised the agents to speak with the city's director of zoning because the scope of her job did not *include the acceptance of over the counter building plans*. *Id.* at 589 (emphasis added). The agents did not speak to the zoning director and instead the applicant filed suit. *Id.* Here, Plaintiffs met with the director of planning and development (repeatedly), who is charged with interpreting the LDC, on the material issues and he has held firm on the decision. The director has ignored requests for further meetings on this issue. Plaintiffs asked for formal interpretations and appealed those interpretations to the Board of Adjustment, which upheld those interpretations.

What is required for a case to be ripe is a showing that the proceedings have reached some sort of an impasse and the position of the parties has been defined. *Open Homes Fellowship, Inc. v. Orange Cty.*, 325 F. Supp. 2d 1349, 1363 (M.D. Fla. 2004). Where an applicant has submitted applications only to be told to "pick up" the applications by the local government because it will not process them and the applicant tries to resolve the issues with local government, a § 1983 claim is ripe for review. *Bay Area Remodelers, Inc. v. Manatee Cty.*,

2009 U.S. Dist. LEXIS 6627 (M.D. Fla. Jan. 21, 2009). A letter from a city to a landowner directing the landowner towards a course of action under the ordinance code is a conclusive enough response so as to make a claim “ripe” for review. *Flanigan's Enter., Inc. v. City of Sandy Springs*, 2006 U.S. Dist. LEXIS 79228 (N.D. Ga. Oct. 30, 2006). Moreover, the “conclusive response” does not need to come at the end of any available appeal, but may be obtained at any time. *Id.* at 7. A final permitting decision is not required prior to bringing an equal protection claim where the wrong alleged is that a local government “has selectively enforced certain provisions [of its local code].” *Bill Salter Advert., Inc. v. City of Brewton*, 2007 U.S. Dist. LEXIS 62427 (S.D. Ala. Aug. 23, 2007). A complaint is ripe when a final and binding decision is made rejecting an application. *Carver Middle Sch. Gay-Straight All. v. Sch. Bd. of Lake Cnty., Fla.*, 842 F.3d 1324, 1329 (11th Cir. 2016). Rejection of an application by officials with apparent authority to do so is sufficiently concrete of a denial so that a claim against the city is ripe for adjudication. *Paramount Contractors & Developers, Inc. v. City of L.A.*, 2011 U.S. Dist. LEXIS 156023 (C.D. Cal. Feb. 7, 2011) (citing to *Digital Properties*).

In the present case, Plaintiffs have pursued their applications “beyond the zoning counter” to no avail. The planning director has refused to process the applications and has reiterated this position in multiple meetings and refuses to meet further. His interpretation has been appealed and that appeal has been upheld.

The cases cited by Defendant are distinguishable from the matter before this Court. In *Strickland v. Alderman*, 74 F.3d 260 (11th Cir. 1996), the plaintiff did not, “fill out an application” and at “no time traveled to city hall to make inquiries about obtaining building permits...” *Id.* at 265-266. In *Adrian v. Town of Yorktown*, 341 F. App’x 699, 700 (2d Cir. 2009)

the court held there was no final decision since the matter at issue (inclusion on a map) apparently changed. *Id.* at 700. Moreover, no revised application was submitted. *Id.*

Defendant also cites to *Grosscup v. Pantano*, 725 F. Supp. 2d 1370, 1379 (S.D. Fla. 2010) despite the case's holding only addressing a regulatory taking claim not an equal protection claim<sup>3</sup>. *Id.* at 1379. Defendant cites to *Goldfine v. Kelly*, 80 F. Supp. 2d 153 (S.D. N.Y. 2000), where the Court held that final decision in terms of ripeness requires submittal for the necessary approvals, which the plaintiff failed to do. *Id.* "In this case there is no question that there has been no final decision because plaintiff has yet to apply to the DEP for the necessary approval for his subdivision." *Id.* Plaintiffs submitted or attempted to submit development plan applications, applied for interpretations of the relevant code sections and appealed said interpretation. Defendant also cites to *Reserve, Ltd. v. Town of Longboat Key*, 933 F. Supp. 1040 (M.D. Fla. 1996). In *Reserve*, the court held that the claims were not ripe because as to the "application to their property of Longboat Key's 1984 and 1986 zoning decisions, (which were the changes to zoning and comprehensive plan, *see* footnote 15 of opinion)." because *no* application was filed. *Id.* at 1046.

Defendant argues that Plaintiffs should have pursued the variances Defendant mandate they receive for approval for there to be a final decision. (DK. 40, p. 17). This is nonsensical; the "final decision" at-issue is whether Plaintiffs must apply for and receive variances, not whether Plaintiffs meet the requirements for variances<sup>4</sup>. The equal protection claim is based upon the fact that Defendant is requiring Plaintiffs to get variances when it did not require comparators to get the same variances.

<sup>3</sup> *Grosscup* cites to *Exec. 100 v. Martin Cnty.*, 922 F.2d 1536 (11th Cir. 1991) which held that in order for an equal protection claim to be ripe the plaintiff only need show that the reviewing agency (in that case a board, in the case *sub judice* the planning department) reached a final decision. *Id.* at 1541.

<sup>4</sup> Which Defendant has told Plaintiffs they do not. (DK. 36, ¶78-80 ).

Defendant argues that Plaintiffs need to subject themselves to Defendant's unequal treatment prior to bringing a claim pointing out Defendant's requirement for unequal treatment. The Middle District has rejected this theory, explaining that an applicant is not required to obtain an application that other similarly situated applicants were not required to pursue prior to filing a suit for equal protection violation. *Open Homes* at 1364. As explained in *Bill Salter Adver., Inc.*,

“[t]he wrong alleged in the proposed Amended Complaint is not that the May 2007 applications were denied, but is instead that the City has imposed trumped-up information requests and procedural requirements on Salter, and has selectively enforced certain provisions of its sign ordinance against Salter...” *Id.* at 11-12.

Defendant's planning director has informed Plaintiffs that they would not be eligible for the variances required because they do not meet the hardship requirement<sup>5</sup>. (DK. 33, ¶78-80). Defendant's mandate that Plaintiffs pursue variances not required by previous applicants is a hollow offer to pursue an ultimate dead end as they would not qualify for the variances (as confirmed by the director). Pursuing such option is not just the basis of the equal protection violation – it would be futile.

It is well settled that exhaustion of administrative remedies is not a prerequisite to filing suit under 42 U.S.C. § 1983. *Beaulieu v. City of Alabaster*, 454 F.3d 1219 (11th Cir. 2006) and *Konikov v. Orange Cnty.*, 410 F.3d 1317, 1322 (11th Cir. 2005), citing *Patsy v. Bd. of Regents*, 457 U.S. 496 (1982). Plaintiffs were not required to exhaust administrative remedies prior to bringing its claims<sup>6</sup>.

<sup>5</sup> A variance is allowed only if an applicant meets the “undue hardship” requirement. Sec. 34-286, LDC. Under Florida law, the hardship necessary to obtain a variance may not be found unless there is a showing that under the existing zoning regulations the property in question is, “virtually unusable.” *Auerbach v. City of Miami*, 929 So.2d 693 (Fla. 3rd Dist. 2006), *Bernard v. Town Council of Palm Beach*, 569 So. 2d 853 (Fla. 4th DCA 1990), *Hemisphere Equity Realty Co. v. Key Biscayne Prop. Taxpayers Ass'n*, 369 So. 2d 996 (Fla. 3rd Dist. 1979) and *Thompson v. Planning Com'n of City of Jacksonville*, 464 So. 2d 1231 (Fla. 1st Dist. 1985).

<sup>6</sup> As Plaintiffs also seek declaratory relief pursuant to Florida law, Florida law is applicable. The doctrine of administrative exhaustion is not a strict jurisdictional matter but a flexible concept tailored to the administrative

Plaintiffs had their applications rejected. (DK. 33, ¶66-76). Plaintiffs met with the planning director several times on this matter. (DK. 33, ¶70, 85). Plaintiffs' counsel offered to meet with the planning director and Defendant's attorney. (DK. 33, ¶76). Plaintiffs obtained formal interpretations from Defendant that variances were required. (DK. 33, ¶99,108). Plaintiffs appealed these interpretations to the BOA which upheld the decision. (DK. 33, ¶101, 111). Defendant told this Court that such appeal and BOA ruling was sufficient for ripeness. (DK.33, p. 42). Defendant will not allow Plaintiffs to appeal to the Planning Commission. ((DK. 33, ¶102-103)). Based on the foregoing, the decision that Plaintiffs were required to get variances was sufficiently final so as to make the claims ripe.

## **2. Similarly Situated Townhouse Developments**

Defendant argues that the similarly situated Townhouse developments cited by Plaintiffs in the Complaint are not sufficient comparators for an equal protection claim. (DK. 40, p.18-25). As a preliminary matter, such an argument is inappropriate for a motion to dismiss as determining whether a comparator is similarly situated is generally an issue to be resolved at trial or summary judgment. *Eggleston v. Bieluch*, 203 F. App'x 257, 264 (11th Cir. 2006). Indeed, the cases cited by Defendant raise this issue at the summary judgment phase of the proceedings or as a judgement as a matter of law in a jury trial. *Campbell v. Rainbow City, Ala.*, 434 F. 3d 1306, 1309 (11<sup>th</sup> Cir. 2006); *Purze v. Winthrop Harbor*, 286 F.3d 452 (7th Cir. 2002) and *Cordi-Allen v. Conlon*, 494 F.3d 245, 253 (1st Cir. 2007).

statutes and circumstances. *Bruce v. Deerfield Beach*, 423 So. 2d 404 (Fla. 4th Dist. 1983) citing *Ecology Center of Louisiana, Inc. v. Coleman*, 515 F.2d 860, 865 (5th Cir. 1975). As a matter of law, a plaintiff does not need to exhaust its administrative remedies against a local government before seeking relief in the courts if they are making a general attack and are not limiting the attack to their own particular property. *Miami Beach v. Perell*, 52 So. 2d 906 (Fla. 1951). In the case *sub judice*, Plaintiffs are not limiting their Chapter 86 claim to just their own particular property but are generally attacking Defendant's interpretation of its code. (DK. 36, ¶327).

In class of one equal protection cases there are two types of cases: those in which the government's decision is multi-dimensional and those where the decision is one-dimensional. *Grider v. City of Auburn*, 618 F.3d 1240 (11th Cir. 2010); *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441 (1923) and *Village of Willowbrook v. Olech*, 528 U.S. 562 (2000). In the multi-dimensional class of one case, the government makes decisions which, "by their nature involve discretionary decision-making based on a vast array of subjective, individualized assessments." *Engquist v. Or. Dep't of Agric.*, 553 U.S. 591, 603 (2008). In multi-dimensional cases, the comparator standard is more difficult to meet than in the one-dimensional cases because the former requires comparators to be "identical in all relevant respects." *Grider* at 1265, citing *Griffin* at 1204.

In the one-dimensional class of one cases, the government's decision only involves, "a single answer to a single question." This allows the reviewing court to analyze the "similarly situated requirement succinctly and at a high order of abstraction. *Grider* at 1265 citing *Griffin Industries, Inc. v. Irvin*, 496 F. 3d 1189, 1195 (11th Cir. 2007). In these cases, the burden on the plaintiff is easier. *Leib v. Hillsborough Cty. Pub. Transp. Comm'n*, 558 F.3d 1301 (11th Cir. 2009).

Defendant inappropriately relies on *Griffin Industries* for the factual analysis as to comparators (DK. 40, p. 20) as it is a discretionary and multi-dimensional case. *Griffin Industries* concerned a chicken rendering plant which was supposedly "harassed" by the government which placed "additional burdens" on said plant." *Id.* at 1195. The government decisions regulating the chicken rendering plant involved an evaluation of a "full variety of factors" including odor regulations (plural), new water quality controls (plural), a concurrent criminal investigation, "alarmingly high" pollution readings (plural), and incorrectly maintained required records

(plural). *Id.* at 1208-1209. In short, a wide variety of factors spanning a buffet of regulations and statutes were at-issue.

The case *sub judice* is a one-dimensional class of one case. The “questions” at-issue is whether driveways and walkways can be less than five (5) feet from a property line. Defendant answered “no” as to Plaintiffs’ applications but answer to “yes” to the comparators.

The “*one-dimensionality*” of this case is similar to *Village of Willowbrook v. Olech*, 528 U.S. 562 (2000). *Olech* concerned a residential development and a requirement that the plaintiff provide a 33-foot easement as a condition of connecting the property to the municipal water line whereas only a 15-foot easement was required for other property owners. *Olech* at 563. This case is also similar to *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441 (1923) where the state tax assessor assessed plaintiff at “100 per cent of its true value and all other real estate and its improvements in the county at 55 percent” (*Id.* at 445) and *Allegheny Pittsburgh Coal Co. v. County Commission of Webster County*, 488 U.S. 336 (1989) where plaintiff was also assessed more than comparable properties. *Id.* at 344. The court in *Griffin* explained the differences between these types of cases and those relied on by Defendant,

This is not to say that the governmental decisions challenged in those cases were simple. For example, *Sioux City Bridge* involved a factual dispute over the current value of the bridge, which was thirty-five years old and, “while in good repair [was] too light for modern traffic.” The bridge also crossed the Missouri River, which delineates the boundary between Nebraska and Iowa, so the percentage of the bridge's value allocable to each state was part of the underlying dispute. Similarly, the market value dispute in *Allegheny Pittsburgh Coal* involved the “topography, location, access, development, mineral content and forestation” of the allegedly overtaxed parcel. In each case, however, the Court was able to analyze the “similarly situated” requirement succinctly and at a high order of abstraction. This was because the challenged governmental decisions were ultimately one-dimensional -- they involved a single answer to a single question. In *Olech*, the only relevant factor was the size of the easement required in return for connection to the municipal water supply. In *Allegheny Pittsburgh Coal* and *Sioux City Bridge*, the only relevant factor was the market value of the property. *Griffin* at 1203. (internal citations omitted).

In *Engquist*, the Supreme Court further analyzed one-dimensional cases, explaining,

What seems to have been significant in *Olech* and the cases on which it relied was the existence of a clear standard against which departures, even for a single plaintiff, could be readily assessed. There was no indication in *Olech* that the zoning board was exercising discretionary authority based on subjective, individualized determinations—at least not with regard to easement length, however typical such determinations may be as a general zoning matter. Rather, the complaint alleged that the board consistently required only a 15-foot easement, but subjected *Olech* to a 33-foot easement. This differential treatment raised a concern of arbitrary classification, and we therefore required that the State provide a rational basis for it. *Id.* at 602-603. (internal citations omitted).

In *Leib*<sup>7</sup>, the circuit court explained the difference between the type of cases Defendant relies upon and cases similar to those brought by Plaintiff, holding,

Furthermore, we have observed that where the challenged governmental decision is simple or one-dimensional -- for example, where the decision involves the application of a single criterion to a single issue -- making out a "class of one claim" is generally easier than in cases where governmental action is "multi-dimensional, involving varied decisionmaking criteria applied in a series of discretionary decisions made over an extended period of time." *Id.* at 1307. (internal citations omitted).

Similarly, the comparators provided demonstrate a clear standard (driveways and walkways within five (5) feet of a property line that did not require a variance) that was consistently applied, but for Plaintiffs' applications, a "differential treatment" (requiring a variance) was applied. This decision did not require a wide variety of subjective, discretionary, complex factors and therefore can be analyzed with a high level of abstraction with an easier burden as to valid comparators.

Defendant ignores this distinction and argues that Plaintiff has failed to present "similarly situated" comparators in the Complaint. (DK. 40, p. 18-25). Defendant's misunderstands the *Olech*-type analysis applicable in this case. "A valid comparator must be similarly situated with

<sup>7</sup> *Leib* involved a "variegated set of factors" including aesthetic considerations and comparison with industry. In this present case, as repeatedly stated, the only issue is whether driveways and walkways can be within five (5) of an internal property line.

respect to all factors that an objectively reasonable governmental decision maker would have found relevant in making a decision.” *Disser v. City of Tampa*, 2013 U.S. Dist. LEXIS 107428 (M.D. Fla. July 31, 2013). (emphasis added). The key term is “relevant” in that there is no requirement that comparators be similar *in all respects*, just those respects material to the equal protection violation. The issue is whether driveways/walkways that are within five (5) feet of an internal property line need a variance. Any analysis of the comparators in this case that concerns something other than the driveways or walkways and the distance to the property line is not relevant. Despite this, Defendant attempts to differentiate the comparators, while conspicuously ignoring any analyses as to materiality of the differences presented.

Defendant argues that fourteen (14) of the comparators are inappropriate because they were built “over a decade before plaintiffs commenced their efforts.” (DK. 40, p. 23). Defendant argument is factually incorrect. Plaintiffs “commenced their efforts” in 2017 (DK. 33, ¶¶66-70, 72 and *Ex. L.*) and only nine (9) of the comparators were built prior to 2007<sup>8</sup>. (DK. 33, *Ex. W.*) Still, Defendant refers to these projects as having been submitted in a “different time period” and cites to *Purze*. In *Purze*, the alleged comparator was filed “over 20 years ago” and sought different applications for relief from different sections of the “Subdivision Code.” *Id.* at 454-456<sup>9</sup>. There is no bright line rule on how old a project can be before it ceases to be a valid comparator, however, no comparator listed is as old as the one in *Purze*. Moreover, the ordinance as to what constitutes “parking areas” has been the same since 1991 (DK. 33, ¶47) and the ordinance as to what constitutes “accessory structures” has been the same since 2004 (DK. 33, ¶46). Timing as

<sup>8</sup> Six (6) of these were built in 2005 or 2006 and eighteen (18) of the comparators were built within four (4) years of “Plaintiff’s efforts.” (DK. 36, *Ex. W.*)

<sup>9</sup> In *Purze* different subdivision code sections were at-issue between the comparators and the plaintiffs and thus the comparators and plaintiffs requested different forms of relief. *Purze* at 455. In the present case, the same code sections are at issue, it is the application of those sections that is different.

to comparators is only critical if there is a change in the regulations at issue. *Cordi-Allen* at 253. The comparators are not from a different “time period” as there has been no applicable change in the provisions. Defendant’s superficial argument against the comparators lacks any analysis as to how the time difference is material.

Defendant attempts to compare this case to *Cordi-Allen*, (DK. 40, p. 22), however, in that case, the plaintiff was attempting to use a small expansion to an existing home as a comparator to new construction of 3,000 square foot structure on an undersized lot with a large pool and deck area. *Id.* at 252-253<sup>10</sup>. Defendant ignores that the court in *Cordi-Allen* explained that in the “class-of-one” cases one must distinguish, “the expansion of an existing use from the construction of a new facility.” *Id.* The comparators listed were not expansions of existing non-conformities. Plaintiffs’ projects are also new facilities. Both should have the LDC applied equally, but Defendant has refused to do so.

Defendant relies on *Campbell* but admits the comparators offered in that case were for different uses that involved different applications. (DK. 40, P. 19), *Campbell* at 1315-16. Here, all the comparators are townhouses, all of the Plaintiffs’ projects are townhouses and the only issue is whether the driveways/walkways are within five (5), a condition which exists for both groups. (DK. 33, ¶66-76).

Plaintiffs’ townhouses have already been approved by the zoning code and/or approved conditional uses. (DK. 33, ¶22-26, 30-36). Neither the size of the townhouses or the number of townhouses is relevant, as those items are already authorized by the zoning code, the concept plats and/or the conditional use approvals. (DK. 33, ¶22-26, 30-36). The issue is the distance

<sup>10</sup> The projects in *Cordi-Allen* also concerned a multitude of different regulations covering undersized lots, use of floats for a dock, construction on a coastal dune, use of a solid foundation instead of pilings, and use of a septic tank. *Id.* at 253-255. In other words, the issue was multi-dimensional.

between the driveways/walkways and internal property lines. Defendant offers no material difference between the comparators' driveways/walkways and those proposed by Plaintiffs.

Defendant argues that some of the comparators are invalid because they received, "some form of variance." (DK. 40, p. 23). Defendant leaves out that these variances had nothing to do with the comparators' driveways or walkways. Nor does Defendant explain why comparators that received variances for items unrelated to driveway/walkway setbacks were not required to get variances for their driveways/walkways. Receipt of other variances is not relevant to the issue in this case. A project receiving a variance for the required building setback or a variance for the building coverage (DK. 2, ¶43, 50, 59, 60, 78 and 81) has no bearing on whether the same project should be required to get a variance for a driveway/walkway setback. It make no sense for Defendant to advocate that some of the comparators can be treated differently than Plaintiffs as to walkways and driveway setbacks because they received variances for items that have nothing to do with walkways or driveways. There is no rational basis for Defendant to favor applications that do not comply with the LDC over those that do (Plaintiffs' projects). The issue is Defendant making Plaintiffs apply for variances for their driveways/walkways when it did not make the comparators apply for the same variance, even though the same driveway/walkway conditions exist for both Plaintiffs and comparators.

Defendant argues that comparators that are "two-unit buildings" are not valid comparators. (DK. 40, p. 23-24). The LDC sections at-issue make no distinction between the number of the townhouses for a project. Sections Sec. 34-373 (parking areas) and Sec. 34-392 (accessory uses) that Defendant seeks to apply to Plaintiffs provide no limiting language that they do not apply to developments with less units. Therefore Defendant's argument that, "the regulations at issue (parking area and accessory use) may not apply" is false and it is

disingenuous for Defendant to argue as such. The LDC sections Defendant attempts to apply to Plaintiffs (should) apply equally to any development. (DK. 33, ¶40).

Defendant argues that the comparator at 418 7th Avenue North is not, “substantively identical” because of its’, “configuration, dimensions, lots sizes, garage capacity, number of floors and the like.” (DK. 40, p. 24). Defendant never explains what the “configuration, dimensions, lots sizes, garage capacity, number of floors and the like” has to do with whether the driveways and walkways can be less than five (5) feet from an internal property line. Defendant’s silence is likely because these metrics are not relevant to whether the driveways or walkways can be less five (5) feet from an internal property line. Again, the LDC **does not provide** that certain townhouses can have driveways/walkways within five (5) feet of an internal property line while others cannot. Still, Defendant’s assertion is, again, false. The Townhouse development at 418 7th Avenue North is in almost identical to Plaintiffs projects. (DK. 33, *Ex. W.*). In fact, it is identical to Plaintiff Hoose’s proposed development. (DK. 33, *Ex. W.*)

Defendant argues that the five (5) Townhouse developments near Beach Boulevard built in 2015 and 2016 are not sufficient comparators because they are “waterfront.” (DK. 40, p. 24). Again, Defendant never explains what the rear of properties abutting the intracoastal waterway has to do with whether the driveways or walkways can be five (5) feet from an internal property line. What “area” a Townhouse development is constructed is not relevant because Defendant, through its zoning code, has already determined which areas can have Townhouse developments. Defendant’s code **does not read**, “Townhouse developments are allowed in these zones, but only Townhouses on the water can have driveways and walkways within five (5) feet from an internal property line.” The reason the LDC does not contain such a provision is because it is absurd.

Even if location was relevant, Defendant fails to acknowledge that all of Plaintiff's projects are in the areas Defendant has, by law, decided to allow Townhouses. (DK. 33, ¶22-26, 30-36).

Defendant incorrectly argues that "18 of the potential comparators did not have driveways or walkways within five feet of a property line, which is the key characteristic cited by plaintiffs." Defendant, again, makes a false statement of fact. Every comparator listed in the Complaint has driveways or walkways that are within five (5) feet of an internal property line, and thirteen (13) feature both. (DK. 33, *Ex. W.*).

Defendant claims that 616-624 2nd Avenue North is an inappropriate comparator since it was a project of JWB. (DK. 40, p.25). Defendant misses a key point as to the analysis for comparators – it is the comparators that must be similar situated. "The analysis of Plaintiffs' equal protection claim requires a finding that there were *developments* which were similarly situated..." *Campbell* at 1314. The analysis is as to the relevant and material similarities of the developments, not the identity of the owner of the development. Defendant's apparent defense is that it is okay to discriminate against JWB because it did not discriminate against JWB in the past. Such a defense would render the constitutional right to equal protection meaningless as a government, without any rational basis, could discriminate against an applicant in an *ad hoc* manner so long as they did not discriminate against said applicant on a previous occasion.

This case before the Court **is not** a situation where Plaintiffs applied for particular variances, were denied, and are pursuing an equal protection claim using comparators who had the same variance approved. In such a situation a multitude of factors for each development would be relevant. The case before this court is a situation where the issue for Plaintiffs (setbacks for driveways/walkways) is the same as for the comparators, but the unequal treatment is Defendant forcing Plaintiff to receive a variance for that issue when it did not force to the

comparators to do the same despite the applicable regulations being exactly the same. As such, this is a one-dimensional case that can be addressed at a high level of abstraction and Defendant's arguments as to the comparators provided are without merit. The similarly situated Townhouse developments referenced in the Complaint are identical in all "relevant respects." As such they are sufficient to show that Defendant applied the LDC unequally.

## II. CONCLUSION

Based on the foregoing, Plaintiffs respectfully request this Court deny Defendant's motion to sever Plaintiffs Hoose and BCEL, Defendant's motion for a more definite statement and Defendant's motion to dismiss.

Respectfully submitted this 24th day of December, 2018, by:

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## CERTIFICATE OF SERVICE

I certify that a copy of this document has been furnished via CM/ECF on this 24th day of December 2018, to:

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IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT  
STATE OF FLORIDA

Case No.:

L.T. No.: 16-2014-CA-007689

SURF WORKS, LLC and  
NADIME KARAN KOWKABANY,

Appellants/Petitioners

vs.

CITY OF JACKSONVILLE BEACH,

Appellee/Respondent

\_\_\_\_\_ /

**PETITION FOR SECOND TIER WRIT OF CERTIORARI REVIEW**

Petitioners, Surf Works, LLC and Nadime Karan Kowkabany, (hereafter the “Petitioners”) file this Petition for Second Tier Writ of Certiorari Review seeking review of an Order Denying Petition for Writ of Certiorari rendered on June 22, 2016, (hereinafter the “Order”), by the Honorable Kevin Blazs in favor of the City of Jacksonville Beach (hereafter the “Respondent”). Judge Blazs reviewed a final order rendered by the Respondent on October 6, 2014. In his Order, Judge Blazs failed to observe the essential requirements of law in reviewing the actions of Respondent.

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## **I. JURISDICTION OF THE COURT.**

This Court has jurisdiction of this matter pursuant to Article I, Sec. 21 of the Florida Constitution and Rule 9.030(b)(2)(B), Florida Rules of Appellate Procedure (“Fla.R.App.”). Petitioners have submitted an Appendix of portions of the record necessary to understand the issues presented. Rule 9.220, Fla.R.App.

## **II. STATEMENT OF FACTS AND PROCEEDINGS BELOW.**

Petitioner, Surf Works LLC, entered into an agreement to provide for a long term ground lease for a .49 acre parcel of land located at 602 North 1st Street and 0 North 1st Street (collectively the “Property”) owned by Petitioner Nadine Karam Kowkabany. *Ex. A, Pages 1-3.*

The Property is currently zoned Central Business District (“CBD”) and designated CBD on the Future Land Use Maps of the City of Jacksonville Beach Comprehensive Plan (the “Comprehensive Plan”). Currently, the Property is the site of Mango’s Bar, which has a 4-COP license. The number of bars in Jacksonville Beach which may have a 4-COP license allowing for the service and sale of alcohol for on-site consumption without food sales is limited by state law. The gross square footage of Mango’s is approximately 3,880 square feet. *Ex. A, Page 3.*

On May 19, 2014, Surf Works, LLC and Nadime Karam Kowkabany filed an application which included the amount of land and building square footages for

the types of proposed uses, guidelines for development of the Property, sketches, a concept plan, as well as, the contents required by Section 34-347(c)(3)(b) of the Land Development Code (the “LDC”), which are requirements for a preliminary development plan for redevelopment district (“RD”) zoning district (as originally filed, and as later revised, referred to herein as the “Application”) *Ex. A, Pages 1-3*. Approval of a preliminary development plan for RD zoning district constitutes a change to RD zoning district for property subject to the plan on the local zoning map. *See Section 34-347(c)(3)(k) of the LDC, Ex. T, Page 6*. In order for property to be zoned to RD one must have a preliminary development plan for RD zoning district approved. *See Section 34-347(c)(1) of the LDC, Ex. T, Page 1*. The form used for the Application was the rezoning/text amendment form because Respondent does not have a form for an application for a preliminary development plan for an RD zoning district. *Ex. A, Page 1*. Prior to submission of the Application, the applicant’s representative had a pre-application conference. *See Section 34-347(c)(2)(c) of the LDC, Ex. T, Page 1*.

The Application proposed redeveloping the Property into a mixed-use facility consisting of office/retail space and the first bar to be licensed by Surfer Magazine in the continental United States. The bar portion of the mixed-used development would inherit the current bar’s 4-COP license to comply with Respondent’s charter. The proposed Surfer Bar is allowable by state law only if

Mangos is closed. *Ex. A, Pages 1-6.* Upon its receipt of the Application, the City of Jacksonville Beach Planning and Development Department (the “Planning Department”) designated the Application PC#15-14 and introduced it as Ordinance No. 2014-8058. *Ex. B, Page 1.*

As originally proposed in the Application dated May 19, 2014, the development would consist of an approximately 7,889 square foot two-story bar (3,605 square foot interior and 918 square foot exterior patio at ground level and 2,297 square foot rooftop lounge, a 400 square foot exterior bar with 669 square feet of passive interior space on the second level) and a one-story approximately 1,000 square foot office/retail space. The ground floor of the bar would feature two (2) outdoor patios partially enclosed by knee walls. The second level of the bar would include a rooftop lounge and food trucks would provide food service. The proposal included twenty-two (22) parking spaces on-site. *Ex. A, Pages 1-6.*

The Application **expressly** set forth that the mixed-use development was within five-hundred (500) feet of two (2) establishments that served alcohol contrary to Section 34-393 of the LDC. *Ex. A, Page 4.* The Application also **expressly** set forth that the mixed-use development contained more outdoor seating that was allowed under Section 34-407(b) of the LDC. *Ex. A, Page 4.* The professional planning staff accepted the Application despite being contrary to Sections 34-393 and 34-407(b) of the LDC, noting that these characteristics were

allowed to be modified per the RD zoning process. *Ex. B, Page 2 and Ex. D, Page 2.* The Planning Department has the authority to interpret the LDC. *See Section 34-21(a) of the LDC.*

The Jacksonville Beach Community Redevelopment Agency (the “CRA”) is a five (5) member board appointed by the City of Jacksonville Beach City Council (“City Council”) to implement and oversee redevelopment projects in the downtown area. Section 34-347(c)(3)(d) of the LDC provides that the CRA is responsible for reviewing and offering comments to the City Council on the Application. Per the LDC, the process under Section 34-347 of the LDC contains additional procedural requirements not placed on “conventional” rezonings. For instance, no review on conventional rezonings is done by the CRA. On June 16, 2014, the CRA met and considered the Application based on the standards in Section 34-347(c)(3)(i) of the LDC and voted 4-1 to recommend approval of the Application by the City Council without condition. *Ex. B, Page 3 and Ex. D, Page 3.*

The Respondent’s planning commission (the “Planning Commission”) serves as the local planning agency required by Florida Statutes. The Planning Commission is responsible for preparing Respondent’s Comprehensive Plan and the LDC. *Section 34-71 of the LDC.* It is also tasked with initiating, reviewing,

hearing, considering, and making recommendations to the City Council on applications for amendments to the official zoning atlas. *Section 34-71 of the LDC.*

On June 23, 2014, the Planning Commission met and conducted a public hearing on the Application and voted to recommend approval. *Ex. D, Page 4.* Per Section 34-347(c)(3)(g) of the LDC, the Planning Commission reviewed the Application per the standards in Section 34-347(c)(3)(i) of the LDC.

The Planning Commission voted to approve the Application with two conditions:

1. No music or amplified sound devices of any kind shall be allowed within the outdoor bar areas; and
2. The applicant shall augment the areas of the westerly edge of the second floor not already screened by building space with architectural screen walls measuring six (6) to eight (8) feet in height. *Ex. B, Page 3 and Ex. D, Page 4.*

On July 7, 2014, the Planning Department issued a memorandum (the “First Staff Report”) to the City Manager regarding the Application. In the First Staff Report, the Planning Department stated that the Application had been, “specifically reviewed against the LDC standards for **RD rezonings** (Section 34-347(c)(3)(i)” (parenthetical included in the First Staff Report and emphasis added) and specifically analyzed how the Application met all of the applicable standards found in Section 34-347(c)(3)(i). *Ex. B, Page 1-4.* The First Staff Report found that the Application was allowed to depart from the alcohol establishment separation

requirement (Section 34-393 of the LDC ) and the outdoor seating limitation (Section 34-407). *Ex. B, Page 2.*

The CRA, the Planning Commission and the Planning Department were all aware that the Application included a component for service of alcohol within 500 feet of other establishments that serve alcohol, (Section 34-393 of the LDC) as well as, the size of the outdoor seating area because those facts were plainly stated in the Application (Section 34-407 of the LDC). *Ex. A, Page 4.* However, because all three reviewed the Application pursuant to the standards Section 34-347(c)(3)(i) of the LDC, the inclusion of these two items in the Application was not a road block to all three approving the Application.

The first reading of Ordinance No. 2014-8058 by City Council and a public hearing on the Application occurred on July 21, 2014. At the end of the meeting, the City Council voted for a continuance until August 18, 2014, to give Petitioners time to address the concerns raised by the citizens and City Council members. *Ex. E, Page 1.* Subsequently, Petitioners exercised the right to a continuance of a public hearing at the August 18, 2014 City Council meeting. The hearing was ultimately set for the September 15, 2014 City Council meeting. *Ex. E, Page 1.*

In the interim, Petitioners submitted revisions to the Application. The revised version was dated September 15, 2014 (which would be the date on which the City Council would hold a hearing on the Application). The revisions reduced

the two-story bar building from 7,889 square feet to 6,429 square feet, reduced the outdoor bar portion from 3,615 square feet to 2,033 square feet, established a voluntary maximum occupancy for the bar building to 325 people (the Florida Building Code allows a maximum of 352 people) and incorporated the Respondent's current Mobile Food Vending regulations. Petitioners also increased the retail component from 1,000 square feet to 3,000 square feet. The Application, as revised, also included the sound walls recommended by the Planning Commission and included the previously incorporated condition banning outside speakers. *Ex. C. Pages 3-6.*

Per the Application the proposed mixed-used development would have less "customer space" than the current bar on the Property. The gross area of current bar on the Property is approximately 3,880 square feet (2,500 square feet inside and 1,380 square feet outside) less the 400 square feet for the non-ADA bathrooms which yields 3,480 square feet of "customer space." *Ex. C, 3-6.*

The total "bar area" in Petitioners' final proposal was 3,161 square feet per the site plan submitted with the revised narrative, which is less space than exists in the current bar on the Property due the fact that the proposed project is a two story building with an elevator, stairs, ADA compliant bathrooms, office space, etc. The current bar facility pre-dates the most current requirements and is therefore exempt. *Ex. C, Pages 3-6, 11-12.*

Petitioners further agreed per the request of the Planning Commission, City Council members, and citizens that it would: 1) build the office/retail space simultaneously with the bar space; 2) food would be served from the food truck at all times the bar is open for business; 3) the food truck would be governed by provisions substantially similar to the local food truck ordinance in place at the time of the September 15, 2014 meeting, even if the ordinance was later repealed, and 4) no live amplified music would be permitted in the outside bar seating area. *Ex. F., Page 13.*

On September 9, 2014, the Planning Department issued a memorandum (the “Second Staff Report”) to the City Manager regarding the Application, as amended and revised. *Ex. D, Page 1.* In the Second Staff Report, the Planning Department explained,

“[T]hese characteristics are allowed to be addressed and modified from the normal standards as part of the Redevelopment District zoning process, which was created to allow flexibility from traditional standards in an effort to encourage redevelopment activity in the Downtown Redevelopment Area.” *Ex. D, Page 2.*

The Second Staff Report again stated that it reviewed the Application against the LDC standards for RD rezonings found in Section 34-347(c)(3)(i) of the LDC. *Ex. D, Page 3.* The Second Staff Report then went through every applicable standard contained in Section 34-347(c)(3)(i) of the LDC and concluded that the Application met all applicable standards. *Ex. D, Page 3.*

The Second Staff Report further explained that the development set forth in the Application met the LDC definition of a “shopping center” for the purposes of calculating parking requirements and that twenty-two (22) parking spaces, including one ADA space, are all that is required for the proposed project. The Application included twenty-three (23) parking spaces, including one ADA space. *Ex. D, Pages 2-3.*

The Application and the First and Second Staff Reports make clear that the proposed location for the development would be within the distance-limitation to other establishments serving alcohol contrary to Section 34-393 of the LDC and would have outdoor seating which exceeds the limit imposed by Section 34-407(b) of the LDC. *Ex. A, Page 2; Ex. B, Page 2 and Ex. D, Page 2.* The First and Second Staff Reports deemed the Application sufficient – that is it met the applicable LDC requirements – and recommended approval. *Ex. B, Page 4 and Ex. D Page 4.*

At the September 15, 2014 City Council meeting, the City Council members were presented with the Application. After a public hearing, the City Council voted to deny the Application. *Ex. J, Page 7.* On October 6, 2014, the City Council provided four (4) reasons for its denial (the “Findings of Fact”). *Ex. E, Pages 1-3.*

The reasons provided by the City Council for the denial were as follows:

1. The application does not meet the provisions of the LDC that require a 500 foot separation between alcohol beverage establishments. See LDC Sec. 34-393. (referred to herein as the “*Alcohol Separation Limitation*”).

2. The application significantly exceeds the amount of outdoor seating that is allowed under the LDC. See LDC Sec. 34-407(b). (referred to herein as the “*Outdoor Seating Limitation*”)
3. The application called for a significant increase in the intensity of the use of the property in both physical size and capacity from a current capacity of 84 patrons to 325 patrons which would lead to an increased demand for the already strained supply of public parking spaces in the area. According to public testimony, area residents and business owners reported problems with parking spillover into adjacent residential area, increased noise in adjacent residential areas and increased alcohol related nuisances in adjacent residential and business area that included late night shouting, urinating, trash and other secondary effects related to the already intense alcoholic beverage consumption in the area as well as increased need for law enforcement patrol. (referred to herein as the “*Additional Parking Requirement*”).
3. The evidence established that the proposed development replaced a small bar with a larger bar with a food truck and a small but unspecified retail space area. Ultimately, the proposed development could constitute a more aesthetically pleasing but more intense use of a similar business rather than a creative mixed use alternative that could lead to a family friendly, safe, desirable environment in the surrounding area. (referred to herein as the “*Family Friendly Requirement*”). *Ex. E, Pages 2-3.*

The Findings of Fact, in denying the Application, do not make a distinction as to whether these reasons applied to the insufficiency of any particular subpart of the Application.

On October 31, 2014, Petitioners filed a Petition for Writ of Certiorari (the “First Tier Petition”) asking the Circuit Court to reverse the decision of the City

Council. The First Tier Petition argued that in denying the Application, Respondent failed to follow the essential requirements of the law and that its decision was not supported by competent substantial evidence. *Ex. F., Page 1.*

On November 25, 2014, the Circuit Court issued an Order to Show Cause directing Respondent to provide information as to why the Circuit Court should not grant the relief requested. *Ex. G, Page 1.*

On January 21, 2015, Respondent filed a response brief. *Ex. J, Page 1.*

On February 10, 2015 Petitioners then filed a reply brief. *Ex. K. Page 1.*

On February 18, 2015, Petitioners filed a motion for oral argument. *Ex. L, Page 1.* After hearing oral argument from Petitioners and Respondents as to why oral argument should be held, the Circuit Court denied the motion for oral argument and entered an order to that effect on February 27, 2015 *Ex. M., Page 1.*

Subsequently, on May 23, 2015, the Circuit Court vacated its order denying the motion for oral argument and granted the motion. *Ex. N, Page 1.*

Oral argument on the First Tier Petition was held on June 23, 2015. *Ex. O, Page 1.*

On December 16, 2015, a status conference was held whereat the Circuit Court asked both Petitioners and Respondent to submit supplemental briefs on whether the Circuit Court had the authority to reverse Respondent's denial of the

Application and order Respondent to follow the correct law. *Ex. P, Page 1* and *Ex. Q, Page 1*.

On January 11, 2016, supplemental briefs were submitted by both Petitioners and Respondent. *Ex. Q, Page 1 and Ex. R, Page 1*.

On June, 22, 2016, approximately one (1) year after holding oral arguments on the matter, twenty (20) months after the First Tier Petition was filed, and six (6) months after the status conference, the Circuit Court rendered an Order denying the First Tier Petition. *Ex. S, Page 1*. The Order held that the entire LDC was applicable to the City Council's decision on the Application, not just those standards found in Section 34-347(c)(3)(i). *Ex. S, Pages 7 -9*.

Specifically, the Order held that the *Alcohol Distance Limitation* and the *Outdoor Seating Limitation* were applicable criteria for Respondent to consider in denying the Application. *Ex. S, Pages 7 -9*. The Order held that the *Additional Parking Requirement* and *Family Friendly Requirement* were not applicable. However, the Order held that there was competent substantial evidence on the face of the Application that the Application did not comply with the *Alcohol Distance Limitation* and the *Outdoor Seating Limitation*. *Ex. S, Pages, 14, 18, 20*. The Order held that the entire LDC, including standards not listed in Section 34-347 of the LDC, was applicable to the City Council's decision on the Application. As a result, the *Alcohol Distance Limitation* and the *Outdoor Seating Limitation* were

applicable to review of the Application, per the Order. The Order further held that the criteria in Section 34-347(c)(3)(i) of the LDC only applies to “preliminary development plan(s) for an RD zoning district, but not rezonings.” *Ex. S, Page 7.*

### **III. THE NATURE OF RELIEF SOUGHT**

Petitioners seek issuance of a writ of certiorari reversing the Order Denying the Petition of the Circuit Court and reversing the order of the Respondent’s City Council which denied the Application.

### **IV. SUMMARY OF ARGUMENT**

In holding that every provision of the LDC - including the *Alcohol Distance Limitation* and the *Outdoor Seating Limitation* - are applicable standards for the City Council to consider in approving or denying the Application, the Circuit Court departed from the applicable law and therefore failed to follow the essential requirements of law. Specifically, the Order: ignored the plain meaning of the LDC; failed to follow the law regarding the rules of statutory interpretation as to the LDC; rendered a ruling which contradicts the Order’s conclusions of law and mandates an absurd result for Petitioners and future applicants.

#### **A. SCOPE AND METHOD OF REVIEW OF THIS COURT.**

District Courts of Appeal in the State of Florida have jurisdiction to review by writ of certiorari final orders of Circuit Courts, acting in their review capacity pursuant to Rule 9.030(b)(2)(B) of Fl. R. App. P. which provides as follows:

(2) Certiorari jurisdiction. The certiorari jurisdiction of District Courts of Appeal may be sought to review...

(B) Final orders of Circuit Courts acting in their review capacity.

The review of this Court on matters such as this has been deemed by the Florida Supreme Court as “second tier cert review.” Florida Power and Light Company v. City of Dania, 761 So. 2d 1089, 1092 (Fla. 2000); Dusseau v. Metro Dade County Board of County Commissioners, 794 So. 2d 1270, 1274 (Fla. 2001) and Parker Family Trust v. City of Jacksonville, 804 So.2d 493 (Fla. 1st DCA 2001). In second tier review, this Court should determine whether the Circuit Court “afforded due process” and “applied the correct law.” Parker Family Trust at 496.

Failure to apply the correct law is a departure from the essential requirements of law. Orange City v. Shay, 649 So.2d 343 (Fla. 5th DCA 1995). Petitioners concede that this Court is unable to consider in second tier certiorari review a question as to whether competent substantial evidence existed. Furthermore, while this Court is authorized to determine if the Circuit Court afforded procedural due process, no procedural due process violation is claimed by Petitioners.

Questions of statutory interpretation are reviewed de novo. Raymond James Fin. Servs. v. Phillips, 126 So. 3d 186, 190 (Fla. 2013). The Order departed from the essential requirements of law (failed to apply the correct law) by determining

that the all of the LDC standards apply to the City Council’s determination and not just those found in Section 34-347(c)(3)(i) of the LDC.

**THE ORDER FAILED TO OBSERVE THE ESSENTIAL REQUIREMENTS OF LAW BY NOT FOLLOWING THE PLAIN MEANING OF THE LDC.**

Section 34-347(c)(3)(h)(2) of the LDC provides,

“After the close of the public hearing, the city council **shall** approve, approve with conditions or deny **the application** and **preliminary development plan pursuant to the standards in section 34-347(c)(3)(i).**” (emphasis added).

“Municipal ordinances are subject to the same rules of construction as are state statutes.” Rose v. Town of Hillsboro Beach, 216 So. 2d 258, 259 (Fla. 4th DCA 1968). The analysis of a statute/ordinance begins with the plain meaning of its language. Parker v. Bd. of Trs. of the City Pension Fund for Firefighters & Police Officers in the City of Tampa, 149 So. 3d 1129, 1133 (Fla. 2014).

The plain meaning of Section 34-347(c)(3)(h)(2) of the LDC is that the decision of the City Council in approving, approving with conditions or denying the Application and the preliminary development plan is to be based on the standards in Section 34-347(c)(3)(i) of the LDC. This language provides specific guidance and thus limits the standards the City Council shall consider in approving or denying an application and a preliminary development plan.

The Planning Department staff is the professional staff charged with interpreting the text of the LDC. *See Section 34-21(a) of the LDC.* Respondent’s

professional planning staff determined that the criteria for reviewing the Application is Section 34-347(c)(3)(i) of the LDC. In fact, this is the very section the Respondent's professional planning staff used in its analysis in the First and Second Staff Reports and is the mandatory criteria used to evaluate the sufficiency of the Application pursuant to Section 34-347(c)(3)(d) of the LDC. *Ex B, Page 2* and *Ex. D, Page 3*. This is why the Application was rendered sufficient and recommended for approval by the professional staff, the CRA and the Planning Commission despite the Application **on its face not** complying with the *Alcohol Distance Limitation* or the *Outdoor Seating Limitation*.

The LDC makes clear that the Application is to be approved or denied based on a particular set of criteria set forth in Section 34-347(c)(3)(i) of the LDC. However, the Order reasons,

“Such a result would require the Court to ignore the remaining provisions contained in the City's LDC and analyze this matter under a restricted view of the Code provisions, rather than referencing the entire Code.” *Ex. S, Page 7*.

Respectfully, just such a result is required by a plain reading of Section 34-347(c)(3)(h)(2) of the LDC.

A plain reading of the ordinance section titled “Action by the City Council” limits the City Council's review for denial or approval of an **application** and **preliminary development plan** to a certain set of criteria.

“Where a statute is free from ambiguity, a court must follow its plain meaning. When the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning.” State Farm Mut. Auto. Ins. Co. v. Nichols, 932 So. 2d 1067 (Fla. 2006).

The section of the LDC at-issue provides that the City Council is limited to a particular set of criteria for its review of the Application. The applicable LDC section uses the word “shall”, (which means mandatory), approve or deny “the application” “pursuant” (which means in accordance with) to the standards in Section 34-347(c)(3)(i) of the LDC.

The Circuit Court disregards the words “shall” and “pursuant” by finding that the entire LDC applies to the City Council’s review of the Application. If the entire LDC applied, then there would be no point in Section 34-347(c)(3)(h)(2) of the LDC existing. Why insert express directives on what law the City Council is required to follow if the City Council is supposed to apply every criteria in the entire LDC to every application? Such a result renders portions of Section 34-347(c)(3)(i) of the LDC redundant as said subsections are found elsewhere in the LDC.

In order to reach its conclusion, the Order must ignore the plain meaning of Section 34-347(c)(3)(i) of the LDC. Therefore the Order’s ruling that the City Council’s decision on the Application was pursuant to every portion of the LDC was a failure of the Circuit Court to follow the plain meaning of Section 34-

347(c)(3)(h)(2) of the LDC and thus was a failure to follow the essential requirements of law.

**C. THE ORDER FAILED TO OBSERVE THE ESSENTIAL REQUIREMENTS OF LAW BECAUSE IT RENDERS MEANINGLESS WORDS, PHRASES AND ENTIRE SUBSECTIONS CONTAINED IN THE LDC.**

Courts must give significance and effect to every word, phrase, sentence, and part of the statute if possible, and words in a statute should not be construed as mere surplusage. Raymond James Fin. Servs. v. Phillips, 126 So. 3d 186, 191 (Fla. 2013). It is a cardinal rule of statutory interpretation that courts should avoid readings that would render part of a statute meaningless. Forsythe v. Longboat Key Beach Erosion Control Dist., 604 So. 2d 452, 456 (Fla. 1992).

The Order disregards this requirement of law when it held,

Moreover Section 34-347(c)(3)(i) addresses “Preliminary development plan for an RD zoning district” not rezonings. *Ex. S. Page 7.*

Sec. 34-347(c) addresses Procedure. Subsection (3) addresses “Preliminary development plan for an RD zoning district and subsection (h) is listed as ‘Action by the City Council.’” This Court finds that **none** of the **provisions** cited by Petitioners **address** text amendments or **rezonings**. *Ex. S, Page 8.* (emphasis added)

These conclusions of law in the Order are rendered despite explicit provisions contained in Section 34-347(c) of the LDC. Section 34-347(c)(3)(h)(2) of the LDC, provides,

“After the close of the public hearing, the city council **shall** approve, approve with conditions or deny **the application AND preliminary development plan pursuant to the standards in section 34-347(c)(3)(i).**” (emphasis added).

This section of the LDC – which controls the criteria the City Council **shall** consider – is not limited to review of a preliminary development plan. It expressly concerns applicable standards for review by the City Council of the **application and the preliminary development plan.**

The inclusion of the word “application” as part of the review by the City Council is intentional because the procedures contained in Section 34-347 of the LDC do **not** just concern approval of a preliminary development plan, they concern amendment of the official zoning map to the RD zoning district for the at-issue property. This is logical because Section 34-347 of the LDC clearly provides that a preliminary development plan **constitutes** a change to the official zoning map (*See Section 34-347(c)(3)(k) of the LDC, Ex. T, Page 6*) and other subsections in Section 34-347(c) of the LDC refer to “application for RD Zoning” and “amendment.”

Section 34-347(a)-(b) of the LDC provides that the area surrounding the Property and the area including the Property is, prior to the filing or approval of any application, designated as RD district. The remainder of Section 34-347 of the LDC sets forth how that classification is ultimately effectuated to allow for development.

Section 34-347(c)(2)(c) of the LDC sets forth the guidelines for the mandatory pre-application conference, specifically providing,

“At the preapplication conference, the planning and development director, the applicant, representatives of the Jacksonville Beach Community Redevelopment Agency, and the representatives from other city departments, state and federal state agencies shall discuss the proposed development and the following issues as they relate to **the application for an RD zoning district designation...**” (emphasis added).

The Order inexplicably provides that no section in 34-347(c) of the LDC references rezonings. However, Section 34-347(c)(2)(c) of the LDC makes clear the term “application” (as used in Section 34-347(c)(3)(h)(2) of the LDC) refers to the “application for RD zoning district.” Again, this is logical because approval of a preliminary development plan for RD zoning constitutes a rezoning of the property subject the at-issue application. *See 34-347(c)(3)(k) of the LDC, Ex. T, Page 6.*

Section 34-347(c)(3)(e) of the LDC sets forth the procedure for the number of public hearings on an application, providing,

“The planning commission and the city council each shall hold at least one (1) public hearing **on a proposed preliminary development plan for a RD zoning district when that amendment** would affect less than five (5) percent of land in the city. The public hearings shall be held after 5:00 p.m. on a weekday.” (emphasis added).

In the above cited subsection the word “that” preceding the word “amendment” clearly references the preceding phrase “preliminary development plan for a RD zoning district.” The plain reading of this sentence is the preliminary

development plan for a RD zoning district constitutes an amendment to the zoning map.

The above quoted subsection clearly describes the public hearing at which the City Council is supposed to make its decision and clearly provides that the plan for RD zoning district equates to an amendment. There is no other legally (or logical) recognized method of reading this portion of the ordinance. On its face, this subsection contradicts the Order's holding that Section 34-347(c) of the LDC does not concern rezoning to RD.

The required plain reading that Section 34-347(c) of the LDC concerns rezonings to RD is further confirmed by Section 34-347(c)(3)(f) of the LDC, which provides,

“Notice. The planning and development director shall provide notice of the public hearings pursuant to the **requirements of section 34-154(b).**” (emphasis added).

There is no Section 34-154(b) in the LDC, but Section 34-154(2) of the LDC governs, “**boundaries of the official zoning atlas (including RD and PUD Zoning District designations)**” (emphasis added; parenthetical not added). Thus the LDC sections detailing meetings on the Application, the hearing on the Application and the notice of the hearing on the Application all provide that the Application concerns a rezoning to RD zoning. The required plain reading of each section described above is ignored in the Order.

There is no method under the LDC to apply for an RD zoning district separate and apart from applying for a preliminary development plan for an RD zoning district. The actions are one in the same which is why Section 34-347(c)(3)(h)(2) of the LDC makes clear that the criteria the City Council shall consider applies to **both** the **application** (which Section 34-347(c)(2)(c) confirms is an application for an RD zoning district designation) and the **preliminary development plan**. This plain reading is logical because Section 34-347(c)(3)(k) of the LDC provides that approval of a preliminary development plan for an RD zoning district constitutes a rezoning to RD district, specifically providing,

*Effect of development order for preliminary development plan for an RD zoning district designation.* Issuance of a development order **for a preliminary development plan for an RD zoning district classification shall constitute an amendment to the official zoning map to RD zoning district.** (emphasis added).

Section 34-347(c)(3)(k) of the LDC provides the preliminary development plan for RD zoning district, upon approval, constitutes an amendment to the official zoning map – i.e. a rezoning. This is why the City Council is charged with approving the “application” and the “preliminary development plan” pursuant to the same standards and why “application” includes the rezoning. In short, 34-347 of the LDC makes the entire exercise one package and the City Council’s decision on that package is limited to the standards in Section 34-347(c)(3)(i) of the LDC, as a plain reading of that section demonstrates.

Given these subsections, it is both illogical and a misreading of the LDC for the Order to hold that Section 34-347(c) of the LDC fails to reference “rezonings.”  
*Ex. S, Page 8.*

For the Order’s interpretation of the LDC to be correct the Order must ignore the word “application” in Section 34-347(c)(3)(h)(2) of the LDC; ignore the phrase “application for an RD zoning district designation” in Section 34-347(c)(2)(c) of the LDC; ignore the word “amendment” in Section 34-347(c)(3)(e) of the LDC; ignore that the notice requirements for hearings are the notice requirements for changes to boundaries of the zoning map as mandated in Section 34-347(c)(3)(f) of the LDC, and - most importantly – ignore the entirety of Section 34-347(c)(3)(k) of the LDC, which provides that approval constitutes an amendment to the zoning map. In short, the Order renders all of these words, phrases and subsections found in 34-347(c) of the LDC meaningless.

Moreover, because the Order holds that the entire LDC is applicable, it renders seven (7) out of (13) subsections of Section 34-347(c)(3)(i) of the LDC meaningless<sup>1</sup>. Those seven (7) sections are contained in other portions of the LDC. Since the Order makes all provisions in the LDC applicable in approving or denying an application and preliminary development plan there is no point for inclusions of redundant subsections in Section 34-347(c)(3)(i) of the LDC.

<sup>1</sup> Section 34-347(c)(3)(i)(4);Section 34-347(c)(3)(i)(10);Section 34-347(c)(3)(i)(13);Section 34-347(c)(3)(i)(12); Section 34-347(c)(3)(i)(7); Section 34-347(c)(3)(i)(8); and Section 34-347(c)(3)(i)(9)

The law concerning statutory construction, which applies to local ordinances, requires that each and every word in an ordinance have meaning. The Order requires several words, phrases and entire subsections be ignored or rendered as “mere surplusage” – that is their use is vestigial to the LDC. Rendering words in an ordinance as surplus and ignoring words is contrary to the law. As a result the Court’s Order failed to follow an essential requirement of law - the requirement that all of the words in an ordinance have meaning

**D. THE ORDER FAILED TO OBSERVE THE ESSENTIAL REQUIREMENTS OF LAW BY NOT INTERPRETING SECTION 34-347 OF THE LDC IN FAVOR OF THE PETITIONERS.**

Since zoning regulations are in derogation of private rights of ownership, any doubt as to the meaning of a word or phrase in a zoning ordinance shall be decided in favor of the property owner *See Rinker Materials Corp. v. North Miami*, 286 So. 2d 552 (Fla. 1973) and *Shamrock-Shamrock, Inc. v. City of Daytona Beach*, 169 So. 3d 1253 (Fla. 5th DCA 2015).

Section 34-347(c)(3)(h)(2) of the LDC provides,

“After the close of the public hearing, the city council shall approve, approve with conditions or deny **the application** and preliminary development plan pursuant to the standards in section 34-347(c)(3)(i).” (emphasis added).

The Order simply ignores the word “application.” (*See Ex. S. Pages 7-8*). As provided in Section C, *supra*, this is contrary to essential requirements of law because words in an ordinance cannot be rendered meaningless.

The law not only prohibits ignoring words in an ordinance, the law also requires that any doubt as to the meaning of a zoning term should be construed in favor of the property owner. *Rinker* at 553. The Order's interpretation is contrary to this requirement of law as it requires Petitioners (or any other applicant) to file two applications (one for a preliminary development plan and one for rezoning) with two different sets of standards for approval (part of the LDC for one and the entire LDC for the other). This puts Petitioners, as well as any other property owner seeking to effectuate a change to RD zoning district, in the potential position of having a preliminary development plan approved but the underlying zoning denied. (*See* Section E). Such an interpretation is also erroneous for the simple reason that Respondent does not have an application for preliminary development plan. Thus the interpretation that favors the property owner is the interpretation that the word "application" means "application for RD zoning district designation." This is not only logical because of the references to "amendment" and "application for RD zoning district designation" (*See* Sections 34-347(c)(3)(e), 34-347(c)(3)(k) and 34-347(c)(2)(c) of the LDC) but such an interpretation is further required by law because it provides for one application to be filed for which all parts are evaluated by the same criteria. In contrast, the Order puts an applicant in the untenable position of having to file two interrelated

applications evaluated by two different sets of criteria instead of one application judged by one set of criteria.

Because the Order did not interpret the applicable sections of the LDC in a way which favors applicants the Order failed to observe the correct law and failed to follow the essential requirements of law.

**E. THE ORDER FAILED TO OBSERVE THE ESSENTIAL REQUIREMENTS OF LAW BECAUSE ITS HOLDING RENDERS AN ABSURD RESULT.**

Statutory construction should give effect to the plain language of the statute and not lead to an absurd or ridiculous result. Fla. Dep't of Bus. & Prof'l Regulation, Div. of Pari-Mutuel Wagering v. Inv. Corp., 747 So. 2d 374, 383 (Fla. 1999). A court shall not give a statute an interpretation if such an interpretation would result in an unreasonable or ridiculous conclusion. License Acquisitions, LLC v. Debary Real Estate Holdings, LLC, 155 So. 3d 1137, 1144 (Fla. 2014).

The Order holds that the preliminary development plan and a rezoning to an RD zoning district are two separate and distinct mechanisms for a landowner to pursue. *Ex. S, Page 7-9*. The Order further holds that the standards in Section 34-347(c)(3)(i) of the LDC apply to the City Council's decision on a preliminary development plan but that all of the provisions of the LDC apply to a rezoning to an RD zoning district. *Ex. S, Page 7-9*.

Pursuant to the Order's ruling a landowner could apply for a preliminary development plan which would have to be approved if there is competent substantial evidence demonstrating that it meets the criteria under Section 34-347(c)(3)(i) of the LDC even though – on its face - it does not meet the other portions of the LDC not contained in Section 34-347(c)(3)(i). Moreover, pursuant to Section 34-347(c)(3)(k) of the LDC, the approval of said preliminary development plan would constitute an amendment to the zoning map to designate the at-issue property RD zoning district.

Because the Order provides that a preliminary development plan and a rezoning to an RD zoning district are separate and distinct, the same landowner would need to apply for a rezoning to RD zoning district. Although the preliminary development plan could be approved because, per the Order, it only needs to comply with Section 34-347(c)(3)(i) of the LDC, the application for RD zoning district would be denied if it conflicts with any provision of the LDC outside Section 34-347(c)(3)(i) of the LDC.

Following the Order's directive, the landowner in this situation has received approval of a preliminary development plan and the zoning map is amended to reflect that property is zoned RD (*See Section 34-347(c)(3)(k) of the LDC, Ex. T, Page 6*) but the same landowners' application for rezoning to RD zoning district could be denied. In short, per the Order's holding, the landowner would have

acquired an approved preliminary development plan and the zoning for their property would be changed on the zoning map (*See Section 34-347(c)(3)(k) of the LDC, Ex. T, Page 6*) but simultaneously the request to change the zoning is denied. The landowner has then been placed in a conundrum of having concurrently been approved for rezoning to RD zoning district but also denied for rezoning to RD zoning district. This result is internally contradictory, unworkable and therefore absurd.

Because the Order's interpretation of the LDC mandates an absurd result for Petitioners it fails to follow the essential requirement of law which prohibits an interpretation which leads to an absurd result.

**F. THE ORDER FAILED TO OBSERVE THE ESSENTIAL REQUIREMENTS OF LAW BECAUSE ITS HOLDING IS CONTRADICTED BY ITS OWN CONCLUSIONS OF LAW.**

Contradictory findings cannot stand in an order because they destroy each other and render a court's judgment based on those findings erroneous. Crawford v. Di Micco, 216 So. 2d 769 (Fla. 4th DCA 1968); J. Sourini Painting v. Johnson Paints, 809 So. 2d 95 (Fla. 2d DCA 2002) and McGoldrick v. McGoldrick, 940 So. 2d 1275 (Fla. 2d DCA 2006). It is error for a circuit court sitting in its appellate capacity to issue an order which upholds a decision that requires contradictory conclusions. Wolk v. Bd. of County Comm'rs, 117 So. 3d 1219 (Fla. 5th DCA 2013).

As detailed in Section E. *supra*, the Order holds that the City Council is to apply the standards found in Section 34-347(c)(3)(i) in approving or denying a preliminary development plan **BUT** an application for rezoning to the RD zoning district requires consideration of the entire LDC. *Ex. S, Page 7-9*. Obviously this leads to an absurd result and therefore fails to follow the essential requirements of law; however, setting aside the absurd result, assuming *arguedo* that the Order is correct on this point, it is also contradictory and therefore fails to follow the essential requirements of law.

As part of the Application, Petitioners submitted a preliminary development plan. *Ex. A, Pages 11-12 and Ex. C, Pages 11-12, 20-23*. There was no evidence in the record demonstrating that any portion of the Application, including the preliminary development plan, did not comply with the standards in Section 34-347(c)(3)(i) of the LDC. The First and Second Staff Reports demonstrate that the Application complied with this section, which per the Order do not include the *Alcohol Separation Limitation* or the *Outdoor Seating Limitation*. *Ex. S, Pages 7-11*. The Order held that staff reports are competent substantial evidence. *Ex. S, Page 14*. Despite this, the City Council denied the entire Application, including the preliminary development plan contained therein and the Order upheld this denial by the City Council. *Ex. S, Page 14*. Respondent even argued in its response brief that Section 34-347(c)(3)(i) of the LDC applies to preliminary development plans

(*Ex. J, Page 15*) yet it denied the entire submittal, including the plan, and the Order upheld this denial.

The Order applies the standards in Section 34-347(c)(3)(i) of the LDC only to the approval of a preliminary development plan and not a rezoning despite words, phrases and subsections mandating applicability to both. *Ex. S, Page 7-9*. The record demonstrates that the portions of the Application which constitute the preliminary development plan met those standards, yet the Order does not rule that the City Council should have approved the preliminary development plan portion of the Application. The only way to reconcile the Order's result with its reasoning would have been for the Order to provide directions to Respondent that, logically, Respondent's interpretation of the LDC requires the approval of the portion of Petitioners' application which constitute preliminary development plan.

As the record shows, Respondent did not approve anything and instead simply denied the entire Application. *Ex. S, Page 23*. Thus the result of the Order – denial of the First Tier Petition and upholding the denial of the entire Application - contradicted the conclusions of law found in the Order – that the record supports approval of the preliminary development plan. This contradiction, as a matter of law, cannot stand, therefore the Order departed from the essential requirements of law.

**G. THE ORDER FAILED TO OBSERVE THE ESSENTIAL REQUIREMENT OF LAW WHICH PROVIDES THAT A SPECIFIC ORDINANCE CONTROLS OVER A GENERAL ORDINANCE.**

Where there is a conflict between two ordinances, the more specific ordinance controls; this axiom is known as *lex specialis derogat legi generali*. Murray v. Mariner Health, 994 So. 2d 1051, 1061 (Fla. 2008), Thrivent Fin. for Lutherans v. Dep't of Fin. Servs., 145 So. 3d 178, 182 (Fla. 1st DCA 2014), and Diaz v. Cobb, 435 F. Supp. 2d 1206, 1213 (S.D. Fla. 2006).

The Order held that the City Council was correct in denying the Application because it applied all of the criteria and standards in the entire LDC. *Ex. S, Page 23*. The Order bases this reading on the section titled “General Applicability” referenced in Sections 34-151, as well as, the 34-201 – 34-211 of the LDC. *Ex. S, Page 7*.

Section 34-151 of the LDC does not contain standards of review for applications related to RD zoning districts designations. In fact, 34-151 of the LDC only provides the general proposition that development permits must comply with this “division” of Article 6. (emphasis added). Section 34-153(a) of the LDC actually defers to Section 34-347(c)(2) of the LDC (the section which contains the term “amendment”) for pre-application conferences concerning RD zoning district designations.

Section 34-211(c) of the LDC provides that the City Council shall consider the adoption of an ordinance enacting a proposed amendment based on one (1) or more of ten (10) factors, with one factor including whether the amendment “is in conflict with any portion of the LDC.” The Order provides that this section of the LDC was the appropriate criteria for the City Council to consider in denying the Application. *Ex. S, Pages 7-8.*

Section 34-211 of the LDC is general, whereas Section 34-347(c)(2)(h)(2) of the LDC is specific. As stated above, Section 34-347(c)(2)(h)(2) of the LDC requires the City Council to approve or deny the Application pursuant to the standards in Section 34-347(c)(3)(i) of the LDC, a requirement the City Council by its own admission did not follow. Section 34-347(c)(3)(i) of the LDC lists specific requirements which are expressly referenced in other sections of the LDC including: 1) consistency with the Comprehensive Plan; 2) stormwater management, *Article VIII, Division 5*; 3) flood protection, *Article VIII Division 5*; 4) signage standards, *Article VIII, Division 4*; 5) landscaping, *Article VIII, Division 3*; 6) adequate public facilities, *Article IX*; and 7) mobile food vending requirements.

Section 34-347(c)(3)(i) of the LDC also contains requirements not applicable to conventional rezonings including: 1) different residential density

requirements<sup>2</sup>; 2) open space requirements<sup>3</sup>; 3) traffic circulation requirements<sup>4</sup>; 4) utility easements<sup>5</sup>; and 5) consistency with the Community Redevelopment Plan<sup>6</sup>. In fact, Section 34-347(c)(3)(i) of the LDC refers to things that are not included anywhere else in the LDC at all<sup>7</sup>. If Respondent in creating the RD zoning district procedures wanted to include consideration of other provisions of the LDC when reviewing an application then Respondent could have easily done so. As the plain reading of Section 34-347 of the LDC demonstrates, Respondent chose not to do so.

Because Section 34-347(c)(2)(h)(2) of the LDC directs the City Council to approve an application and preliminary development plan pursuant to standards in certain sections of the LDC and standards found nowhere else in the LDC, it is more specific than Section 34-211 of the LDC. Thus the Order departs from the essential requirements of law by ruling that the City Council should consider the entire LDC in evaluating the Application instead of considering the specific standards which the LDC expressly requires the City Council use in its evaluation of the Application.

<sup>2</sup> Section 34-347(c)(3)(i)(3)

<sup>3</sup> Section 34-347(c)(3)(i)(7)

<sup>4</sup> Section 34-347(c)(3)(i)(5)

<sup>5</sup> Section 34-347(c)(3)(i)(11)

<sup>6</sup> Section 34-347(c)(3)(i)(2)(i), Section 34-347(c)(3)(i)(4); Section 34-347(c)(3)(i)(5)(1).; and Section 34-347(c)(3)(i)(6).

<sup>7</sup> See Section 34-347(c)(3)(i)(2)(i)., and references to other RD zones that existed prior to January 1, 2014.

**H. THE ORDER FAILED TO OBSERVE THE ESSENTIAL REQUIREMENT OF LAW WHICH MANDATES THAT INCLUSION OF SPECIFIC PROVISIONS IN AN ORDINANCE EXCLUDES ITEMS NOT MENTIONED.**

Under the established statutory construction principle, *expressio unius est exclusio alterius*, the mention of one thing implies the exclusion of another. Hence, where a statute enumerates the things on which it is to operate, or forbids certain things, it is to be construed as excluding from its operation all those not expressly mentioned. Hillsborough County v. NcJ Inv. Co, 605 So. 2d 1287, 1288 (Fla. 2d DCA 1992).

The Order rules that it was appropriate for the City Council to deny the Application because it contradicted the *Alcohol Distance Limitation* and the *Outdoor Seating Limitation*. *Ex. S, Pages 10-11.*

The *Alcohol Distance Limitation* and the *Outdoor Seating Limitation* are included in *Article VIII, Division 2* of the LDC. *See* Sections 34-407 and 34-393 of the LDC. Section 34-347(c)(3)(i) of the LDC includes three (3) sections of *Article VIII* as criteria for evaluation by the City Council in approving or denying an application and preliminary development plan<sup>8</sup>. If Respondent wanted the *Alcohol Distance Limitation* and the *Outdoor Seating Limitation* included as standards for approving an application, Respondent could have included them in Section 34-347(c)(3)(i) of the LDC. Respondent did not.

<sup>8</sup> *See* Section 34-347(c)(3)i.8. (*Article VIII, Division 4*), Section 34-347(c)(3)i.9. (*Article VIII, Division 3*), and Section 34-347(c)(3)i.10. (*Article VIII, Division 5*). *Ex. T, Pages 5-6.*

The Order provides that *the Alcohol Distance Limitation and the Outdoor Seating Limitation* are applicable criteria for denial of the Application. *Ex. S, Pages 10-11*. This is in spite of these section's exclusion from Section 34-347(c)(3)(i) of the LDC.

The Order failed to observe the essential requirements of law by mandating the inclusion of standards found in *Article VIII, Division 2 (the Alcohol Distance Limitation and the Outdoor Seating Limitation)* when the express provisions of Section 34-347(c)(3)(i) of the LDC excluded Article VIII, Division 2 altogether.

## **V. CONCLUSION.**

In holding that every provision of the LDC - including the *Alcohol Distance Limitation* and the *Outdoor Seating Limitation* - are applicable criteria for the City Council to consider in approving or denying the Application, the Circuit Court: 1) ignored the plain meaning of the LDC; 2) rendered portions of the LDC meaningless surplus verbiage; 3) failed to interpret terms in the LDC in favor of Petitioners; 4) mandated an absurd result for Petitioners and future applicants; 5) made conclusions which are contradictory; 6) elevates a general provision of the LDC over a specific provision of the LDC; and 7) applied standards which were expressly excluded by the LDC in its decision to deny the Application.

While Section 34-347 is not a paragon of draftsmanship (note the last sentence in the entire section is left with a hanging "or" indicating a second option

that does not exist), the law requires that the *Alcohol Distance Limitation* and the *Outdoor Seating Limitation* were not applicable standards for the City Council to consider in its decision on the Application. Respondent's Planning Department agreed with this interpretation, Respondent's CRA agreed with this interpretation and Respondent's Planning Commission agreed with this interpretation.

Based on the foregoing reasons, Petitioners respectfully request this Court enter an Order granting the petition, quashing the Order of the Circuit Court denying the First Tier Petition and reversing the decision of the City Council for Jacksonville Beach denying the Application *See Pollard v. Palm Beach County*, 560 So.2d 1358 (Fla. 4th DCA 1990); *Rural New Town, Inc. v. Palm Beach County*, 315 So.2d 478 (Fla. 4th DCA 1975), and *Debes v. City of Key W.*, 690 So. 2d 700, (Fla. 3d DCA 1997).

**RESPECTFULLY SUBMITTED AND FILED** the 21st day of July 2016.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been forwarded by e-mail to: Susan Erdelyi Esq. ([serdelyi@marksgray.com](mailto:serdelyi@marksgray.com)) Marks Gray, P.A. , this 21st day of July, 2016.

*/s/ Paul M. Harden* \_\_\_\_\_

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**CETIFICATE OF COMPLIANCE WITH FLORIDA RULES OF  
APPELLATE PROCEDURE 9.100(1)**

I HEREBY CERTIFY that this petition complies with the font and formatting requirements set forth at rule 9.100(1), Florida Rules of Appellate Procedure.

*/s/ Paul M. Harden* \_\_\_\_\_

Paul M. Harden, Esq.