



APPLICATION FORM FOR APPEALS

APPEALS FROM:

- Decisions of the Community Development Director or His Designee; AND
- Actions/Decisions of the Planning and Zoning Commission (P&ZC)

FEES:

- I. Site Plan Projects:  
Appeal by project applicant: \$400.00  
Appeal by affected party: \$800.00
- II. Appeal of Staff Determination: \$800.00

Is this an appeal by a project applicant? YES

If so, please list the project name OCEAN CONCRETE, INC.

Property Owner(s): GEORGE MAIB

Address: 4234 Skyline Dr. Jensen Beach, FL 34957

Phone Number: 772-260-5727

Signature: [Signature] (or letter of authorization attached)

Applicant Name: OWNER

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Signature: [Signature]

Site Address (If Applicable): \_\_\_\_\_

1. What is being appealed? SITE PLAN EXTENSION REQUEST DENIAL BY BOB KEATING, DATED DEC. 4, 2007

2. Reason(s) for the appeal SEE ATTACHED EXHIBIT "A"

3. What staff (or P&ZC) error(s) is alleged? STAFF SHOULD HAVE GRANTED THE SITE PLAN EXTENSION. COMPLETED THEIR REVIEW AND DENY OR APPROVE THE PROJECT ON ITS MERITS.

4. What land development regulation (LDR) provision(s) have allegedly been improperly interpreted or applied 914.06 (5)(F)

5. What LDRs and/or Comprehensive Plan goals, objectives, policies support your position? 914.06 (1)(a)(4)(b) & 914.06 (5)(F)

SEE ATTACHED EXHIBIT "A" FOR COMPREHENSIVE DESCRIPTION

NOTE: Supplemental or additional information may be attached. If such information is being attached, please list here what is being attached:

1. LETTER TO IRC DATED 11-15-07 RE: SITE PLAN RE-SUBMITTAL
2. LETTER FROM IRC DATED 12-4-07 RE: RESPONSE TO SITE PLAN RESUBMITTAL
3. LETTER FROM IRC DATED 12-4-07 RE: SITE PLAN EXTENSION DENIAL
4. LETTER TO IRC DATED 12-6-07 RE: RESPONSE TO IRC LETTER DATED 12-4-07

OFFICE USE ONLY:

FEE PAID: \_\_\_\_\_

DATE RECEIVED: \_\_\_\_\_ DATE ACCEPTED: \_\_\_\_\_

cc: Will Collins - County Attorney

**Exhibit "A"**  
**Additional Information for Appeal of Denial to Extend Site Plan Application**

***#2. Reasons For The Appeal:***

**Reason No. 1- The Community Development Director should have granted the extension because the County Growth Management Staff failed to conduct a complete review of the site plan application final comments within the time specifically required by Code.**

On Nov. 21, 2007, Ocean Concrete, Inc. submitted a formal response to the Indian River County Growth Management Department in response to TRC comments. Based on County documentation, the site plan expiration date for the project was Dec. 6, 2007. The Indian River County Growth Management Department failed to complete its review as mandated by County Code, and issued an incomplete response to the materials submitted on Nov. 21, 2007. See attached letter from I.R.C. with highlighted sections of individual reviewers acknowledging that they did not finish a "complete" review of the enclosed materials submitted on Nov. 21, 2007. Pursuant to I.R.C. LDR Section 914.06(1)(a)(4)(b) I.R.C. was to process the site plan with the same approval process required of a minor site plan since the project proposed less than 150,000 sf of impervious area. Pursuant to I.R.C. LDR 914.06 (5) (f), the County was to finish a "complete" review within seven (7) working days. The County responded to Ocean Concrete on Dec. 4, 2007 with specific comments from three individual reviewers that they did not perform a "complete" review. Therefore, the Community Development Director should have granted the site plan extension request so I.R.C. staff could fulfill their obligations of a complete review and then either approve or deny the project based on the merits of the application.

**Reason No. 2- The Community Development Director's denial of the site plan extension is arbitrary and inconsistent with County staff's actions of the site plan review, and is based on inapplicable Code provisions.**

This is an appeal of the decision of the Community Development Director to deny a request for extension of a pending site plan application under the provisions of Section 914.06(4)(d) of the County Code. The Community Development Director's denial of the extension request is arbitrary, capricious, and taken in clear violation of the Applicant's property rights, and is based upon a misapplication of inapplicable County Code provisions. Further, the action, if upheld, amounts to a de facto denial of the site plan application, and appeal is hereby made of such decision to deny the site plan application.

The request for extension was made under Section 914.06(4)(d) of the County Code, which allows for a one year extension of time of a pending site plan application. The request for extension was filed on November 21, 2007 prior to the scheduled expiration date of the application, and was made simultaneously with detailed and complete responses to the Technical Review Committee's comments on the site plan application. The only reason offered for the denial of the extension request is that ***"the subject site plan application does not conform to the existing IL (Light Industrial) zoning district regulations."*** Thus the denial of the extension of the site plan application erroneously makes a determination on the merits of whether the site plan

application should be approved under existing County Code and the recent changes in LDR requirements, rather than simply addressing the issue of whether more time is needed to complete the site plan review process.

In his denial letter, the Community Development Director relies upon Section 914.08(2) as justification for reviewing and applying the affect of recently changed LDRs. However, by its own terms, Section 914.08(2) applies only to requests for extensions of final approved site plans in order to allow more time to commence construction of an approved project. The cited Section does not, by its express terms, apply to requests for approval of pending applications for site plan approval. Thus the Community Development Director relies upon a clearly inapplicable Code provision as the basis for his decision.

The proper question to be addressed under the applicable Section 914.06(4)(d) is whether there is "good cause" for the requested extension of a pending site plan application. Such good cause for an extension is clearly demonstrated in this matter by the County staff's own actions in reviewing the Applicant's Response to the TRC comments submitted on November 21, 2007. Contrary and completely inconsistent with the Community Development Director's denial of the extension request, the TRC and County staff did not deny the site plan application based upon the changed LDR for Light Industrial zoning. Instead, the TRC failed to complete its review, and offered additional comments, and requested additional information from the applicant. (See attached letter from County) Thus the TRC by its own actions, failed to complete the review, and specifically recognized that further review of the project and proposed site plan was needed. If the TRC and Community Development Director honestly believed that the pending site plan cannot be approved under any circumstances due to the changed LDRs, then the appropriate action would have been to deny the site plan application on the merits, and allow the Applicant to file a proper administrative appeal of such denial.

The issues raised by the TRC in its comment letter of December 4, 2007 were also promptly and completely addressed by the Applicant prior to the permit expiration date. Thus good cause is demonstrated for an extension, as additional time is clearly needed to allow the TRC to complete its review on the merits of the application. The TRC and Community Development Director cannot be permitted to fail to complete their review and request additional information on the one hand, and then deny a request for extension to allow staff to complete its review on the other. Such actions would clearly constitute bad faith in the site plan review process.

In sum, the actions of the Community Development Director are clearly arbitrary and capricious and are nothing more than a transparent and bad faith bureaucratic maneuver with the specific intent to deny the Applicant's property development rights.

**Reason No. 3- To the extent the Community Development Director's denial of extension is upheld, it constitutes a de facto denial on the merits of the site plan application, and the Applicant hereby appeals that decision on the grounds listed below in detail.**

The Community Development Director's denial of the site plan extension request is tantamount to a de facto denial of the site plan application, and constitutes a deliberate and bad

faith maneuver to arbitrarily allow the expiration of the site plan application. Accordingly, the Applicant hereby, through this appeal, also appeals, pursuant to Section 914.13 and 902.07 of the County Code, the decision to deny the site plan application. Pursuant to Section 902.07(3)(c) of the County Code, the reasons for this appeal, the errors alleged, and related matters include the following:

- 1) The Community Development Director has inappropriately applied LDRs that were changed after the site plan was submitted, and after the Applicant had expended substantial sums in reasonable reliance of the existing LDRs. The County's actions in changing the LDRs were taken in bad faith, in a concerted effort to deliberately deprive the Applicant of his legitimate property rights. The County's various actions including changing the LDRs are also the subject of a pending lawsuit filed in Circuit Court for the Nineteenth Judicial Circuit in and for Indian River County, Florida, styled Ocean Concrete, Inc. and George Maib v. Indian River County, Board of County Commissioners, Case No. 20071589-CA-17.
- 2) The Ordinances allegedly improperly applied include Section 911.11 which establishes the zoning requirements for Light Industrial districts. The Community Development Director improperly applied the Ordinance amendments that were adopted via Ordinance # 2007-027 on July 24, 2007, well after the date of the application, and after substantial investments of time, funds, and effort by the Applicant made in good faith reliance on published rules and regulations.
- 3) The LDRs supporting the Applicant's position include Section 911.11 as it existed prior to the adoption of the changed LDR for Light Industrial districts.
- 4) The goals, objectives, and policies of the Comprehensive Plan supporting the Applicant's position are contained in the elements of the Comprehensive Plan pertaining to provision of sufficient available land to meet the industrial development needs of Indian River County, including the need for location of certain types of such facilities along the FEC Rail Line, as a major materials delivery artery in the County.

For the foregoing reasons, the Applicant appeals the decision of the Community Development Director dated December 4, 2007 and respectfully requests:

1. That the decision to deny the Site Plan Application Extension Request be reversed.
2. That the matter be returned to the Community Development Director and TRC to complete their evaluation on the merits of the site plan, and to enter their final decision, allowing the Applicant and affected parties their due process rights to appeal such decision under the County Code.
3. Alternatively, consider the denial of the application extension as a de facto denial of the site plan application, and reverse such decision for the reasons specified herein.