



Date of Council Meeting: June 28, 2016

**TOWN OF LEESBURG
TOWN COUNCIL MEETING**

Subject: Encroachment Agreement with Spanky's Enterprises, Inc.

Staff Contact: Barbara Notar, Town Attorney

Council Action Requested: Authorize the Mayor to execute an Encroachment Agreement with Spanky's Enterprises, Inc.

Staff Recommendation: Staff recommends Council authorize the Mayor to execute an Encroachment Agreement with Spanky's Enterprises, Inc.

Commission Recommendation: Not Applicable

Fiscal Impact: None.

Work Plan Impact: Minimal.

Executive Summary: An Encroachment Agreement is necessary to allow any type of structure to enter or "encroach" upon or into a Town easement. In the rear of the restaurant leased by Spanky's Enterprises, Inc., d/b/a Spanky's Shenanigans ("Spanky's"), the President of Spanky's constructed a wooden deck extension within a portion of the Town's waterline easement. The Director of Utilities agreed to allow the deck to remain subject to the conditions set forth in the Encroachment Agreement which includes no liability to the Town if the deck must be removed or destroyed during an emergency repair to the waterline.

Background: Modern Town waterline easements expressly prohibit the construction or presence of structures within the easement areas. However, the 1967 waterline easement conveyed to the Town by the Deed of Easement in Deed Book 481, Page 303 (Exhibit A of the Encroachment Agreement) does not expressly include this prohibition, but the Town must have easy access to the facilities within waterline easement areas, and does not normally allow structures within them. The president/owner of Spanky's Enterprises, Inc., (Spanky's) constructed a deck extension into the Town's waterline easement behind Spanky's without prior permission. In order to allow this deck extension to remain, staff suggests the parties enter into an Encroachment Agreement. The Encroachment Agreement drafted by the Town sets forth the conditions in which the deck is able to remain—most notably, that in the event the Town responds to an emergency in the waterline easement area, no liability will attach to the Town for damage or destruction to the deck. Finally, the owner of the shopping center, Federal Realty, Inc., has been notified of this Encroachment Agreement.

Attachments:

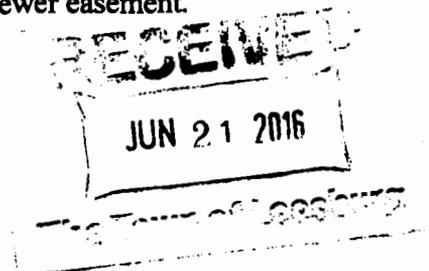
- 1) Resolution
- 2) Encroachment Agreement

**WATERLINE AND SANITARY SEWER EASEMENT
ENCROACHMENT AGREEMENT**

THIS ENCROACHMENT AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 2016, by and between Spanky Enterprises, Inc., d/b/a Spanky's Shenanigans ("Spanky's") and the Town of Leesburg, Virginia ("Town").

RECITALS

- A. 532 East Market Street, Leesburg, Virginia 20176 ("primary address") is owned by Federal Realty Investment Trust and contains multiple retail and commercial units.
- B. 538 East Market Street, Leesburg, Virginia 20176 ("leased address") is one of those multiple retail and commercial units and is leased by Spanky's from Federal Realty Investment Trust.
- C. The legal description of the property subject to this Agreement is: 532 East Market Street, Leesburg, Virginia 20176, PIN # 188-16-3572-000.
- D. On or about December 1, 1967, the Town was conveyed a 15' waterline and sanitary sewer easement along the rear of the primary address by Deed of Easement recorded in Book 481, Page 303 a copy of which is attached as "**Exhibit A**" and is part of this Agreement;
- E. A survey, site plan or illustration, drawn to an engineer's scale and which depicts the existing and proposed encroachments in relation to the Town's waterline and sanitary sewer easements is attached as "**Exhibit B**" and is part of this Agreement.
- F. The Town has provided a depiction of the location of water valves within the Town's easements which is attached as "**Exhibit C**" and is part of this Agreement.
- G. Spanky's constructed a platform deck in the rear of the leased address without the permission of and approval from the Town.
- H. Spanky's now requests that the Town approve the already-existing platform deck and landscape planters, and seeks approval from the Town for a proposed deck extension.
- I. The aforementioned platform deck, landscape planters and proposed deck extension interfere with the Town's normal operations, maintenance and potential replacement of water main, water valves, sanitary sewer main and sanitary sewer manhole. Specifically, the existing deck covers a water meter, water main, and the landscape planters encroach upon a manhole within Town sanity sewer easement.



- J. The parties desire to enter into this Agreement to set forth the terms and conditions upon which Spanky's will be permitted to encroach upon the Town's Waterline Easement and Sanitary Sewer Easement.

NOW THEREFORE, WITNESSETH: the Recitals set forth above being incorporated herein by reference and in consideration of the mutual covenants and promises contained herein, the Parties agree as follows:

1. Town Approval. The Town hereby approves the encroachment upon the Waterline Easement and Sanitary Sewer Easement by Spanky's subject to the terms and conditions set forth in this Agreement.
2. Plans. Prior to the execution of this Agreement by the Town, Spanky's shall submit a survey, site plan or illustration, drawn to an engineer's scale and which depicts the existing and proposed encroachments in relation to the Waterline Easement ("**Exhibit B**") and Sanitary Sewer Easement to the Town's Department of Planning and Zoning, 25 W. Market Street, Leesburg, Virginia 20176, and Department of Utilities, 1385 E. Market Street, Leesburg, Virginia 20176, for approval and in order to obtain a Town Zoning Permit. The Town's approval and issuance of a Zoning Permit shall not be unreasonably withheld, conditioned or delayed, provided that the survey, site plan or illustration drawn to an engineer's scale adequately provide for the protection of any Town facilities located within the easements and do not otherwise adversely impact the Town's continued use of the aforementioned easements, all in the reasonable discretion of the Town.
3. Water Emergency. In the event of a water emergency as determined by the Town, the water valves as depicted on Exhibit C will be closed/shut off until the existing deck structure is removed and the Town has access to the site as it requires. At that time, the Town will complete the necessary emergency repairs and resume water service to the building units. Spanky's understands and agrees that in the event of a water emergency, some or all of the building units at the leased address and/or primary address will be without water service until the necessary repairs can be made. Spanky's further agrees and that the timing of repairs may depend on the removal of the existing deck structure, landscaping planters and possible deck extension. Spanky's understands and agrees that water quality confirmation must be ascertained prior to water resumption. Finally, Spanky's understands and agrees that it will relay the information contained in this paragraph to Federal Realty Investment Trust.
4. Water and/or Sewer Emergency/No liability, no replacement, repair or reimbursement by Town. In the event of a water and/or sewer emergency as determined by the Town in its sole discretion, the Town accepts no responsibility or liability for any damage to the deck, deck extension, planters, or any other structure or appurtenant caused by the Town's efforts to enter the Town's easements and will not replace or repair or reimburse for any structure or appurtenances damaged by the Town within or without the Waterline Easement and/or Sanitary Sewer Easement.

5. **Interference With Meter Readings.** In the event the deck and/or any other encroachments interfere with any automated meter readings, Spanky's accepts responsibility and agrees to pay for all applicable service calls and trips by the Town to obtain meter readings. In the event meter readings are not or cannot be obtained, the Town accepts no responsibility for limitation of high usage alerts and tracking of daily usage resulting in high consumption.
6. **Water/Sewer Maintenance.** In the event of waterline or sanitary sewer line maintenance, the Town will provide 48 hours' notice to Spanky's to request that the impacted platform deck and/or appurtenances be removed for maintenance to be performed.
7. **Access Panel.** Spanky's acknowledges and understands that its proposed four-foot access panel for the existing Town water meter is unacceptable as the Town cannot properly access the meter within the meter crock with the additional framing depth. Therefore, Spanky's shall construct a six-foot section of both decking and framing, which shall be removable. Further it shall be the responsibility of Spanky's to remove such six-foot section of decking and framing when requested by the Town after 48 hours' notice.
8. **Indemnification.** The Town accepts no responsibility for the cost of removal, repair or replacement of such deck and associated structures, appurtenances and plantings. Spanky's hereby assumes all responsibility for such cost, repair or replacement, and agrees to defend, hold harmless and indemnify the Town for any damage to the leased address, primary address or any damage to any third party, caused during any water emergency, sewer emergency, water maintenance and/or sewer maintenance.
9. **Full Force and Effect.** This Agreement shall remain in full force and effect so long as the present encroachments remain in present form, and that upon removal, demolition, destruction or replacement thereof, all rights to Spanky's shall cease, and this Agreement shall become null and void.
10. **Signatories.** The signatories of this Agreement affirm that they have the authority to execute this Agreement on behalf of their respective entities.
11. **Execution.** This Agreement shall become effective upon execution by the Parties.
12. **Amendments.** This Agreement may be amended in writing only by mutual agreement of the Parties.
13. **Governing Law.** The Parties agree that this Agreement will be governed by the laws of the Commonwealth of Virginia and shall be binding upon the Parties and their respective successors and/or assigns. The Parties further agree that any dispute that may occur as a result of the terms of this Agreement will be resolved in the Loudoun

County Circuit Court or the Loudoun County General District Court. In the event of such dispute, each party shall be responsible for its own attorney's fees and costs incurred as a result of such dispute.

IN WITNESS WHEREOF, the parties hereto have executed this instrument under seal effective as of the _____ day of _____, 2016.

SPANKY ENTERPRISES, INC., d/b/a SPANKY'S
SHENANIGANS

By:  _____ [SEAL]
Date: 6/21/16
Printed Name: Azmi Zarav
Title: President

Approved as to form:

TOWN OF LEESBURG

By: _____
Date: _____
Barbara Notar
Town Attorney

By: _____ [SEAL]
Date: _____
David S. Butler
Mayor

THIS DEED OF EASEMENT, made this 1st day of December, 1967, by and between AARON A. PAULSON and ROSALIE K. PAULSON, his wife; HARRY MALASKY and DORA L. MALASKY, his wife; and JOHN A. WALLACE and HELEN G. WALLACE, his wife, parties of the first part; and the TOWN OF LEESBURG, in Virginia, a municipal corporation, party of the second part;

W I T N E S S E T H :

That for and in consideration of the sum of ONE DOLLAR (\$1.00) paid by the party of the second part unto the parties of the first part, and other good and valuable consideration, the receipt whereof at and before the signing and delivery of this deed is hereby acknowledged, the said Aaron A. Paulson and Rosalie K. Paulson, his wife; Harry Malasky and Dora L. Malasky, his wife; and John A. Wallace and Helen G. Wallace, his wife, parties of the first part, do hereby give, grant, dedicate and convey unto the Town of Leesburg, in Virginia, a municipal corporation, party of the second part, a perpetual easement for storm water drainage, sanitary sewer and water line, and all appurtenant sub-grade structures, on, over, and across that certain tract of land owned by the parties of the first part abutting on the North side of the Leesburg Turnpike (State Route No. 7) on the East side of the Town of Leesburg, Loudoun County, Virginia, as shown on plat attached hereto and made a part hereof, of Eldon E. Snider & Associates, Inc., Land Surveyors, dated 5 September 1967, and which easement is described by metes and bounds by said survey as follows:

PART 1 - 15-foot wide right-of-way for a storm drain to the Town of Leesburg and/or the Commonwealth of Virginia

"Beginning for the same at a point on the northeasterly side of Leesburg Turnpike, 80 feet wide, Virginia State Route No. 7, said point being situate 150.00 feet from the common front corner on said Leesburg Turnpike between the said Leesburg Plaza Shopping Center property and the deButts property, as delineated on the aforementioned Plat of Survey; thence continuing with said northeasterly side of Leesburg Turnpike 1. North 46° 46' 20" West, 34.60 feet to a point; thence leaving said Leesburg Turnpike and running so as to cross and include a part of said Leesburg Plaza Shopping Center property, the three (3) following courses and distances,

EXHIBIT

A

2. South 69° 16' 20" East, 21.14 feet to a point; thence 3. North 43° 13' 40" East, 156.90 feet to a point; thence 4. South 46° 46' 20" East, 164.26 feet to a point on said dividing line between Leesburg Plaza Shopping Center property and the deButts property; thence with a part of said dividing line 5. South 42° 56' 50" West, 15.00 feet to a point; thence leaving said dividing line and running so as to cross and include a part of said Leesburg Plaza Shopping Center property, the two (2) following courses and distances 6. North 46° 46' 20" West, 149.26 feet to a point; thence 7. South 43° 13' 40" West, 150.00 feet to the place of beginning, containing a computed area of 4,804 square feet of land."

PART 2 - 35-foot wide right-of-way for a storm drain to the Town of Leesburg and/or the Commonwealth of Virginia

"Beginning for the same at a point on the northeasterly side of the aforementioned Leesburg Turnpike, said point being situate 577.49 feet from the common front corner on said Leesburg Turnpike between the said Leesburg Plaza Shopping Center property and the deButts property, as delineated on the aforesaid Plat of Survey; thence continuing with said northeasterly side of Leesburg Turnpike 1. North 46° 46' 20" West, 46.73 feet to a point; thence leaving said Leesburg Turnpike and running so as to cross and include a part of said Leesburg Plaza Shopping Center property, the three (3) following courses and distances: 2. North 01° 43' 40" East, 192.52 feet to a point; thence 3. South 88° 16' 20" East, 35.00 feet to a point; thence 4. South 01° 43' 40" West, 223.49 feet to the place of beginning, containing a computed area of 7,280 square feet."

PART 3 - Right-of-way for a water line and sanitary sewer to the Town of Leesburg

"Beginning for the centerline of said strip or parcel of land at a point on the northeasterly side of the aforesaid Leesburg Turnpike, said point being situate 651.00 feet from the common front corner on said Leesburg Turnpike between the said Leesburg Plaza Shopping Center property and the deButts property, as delineated on the aforementioned Plat of Survey; thence leaving said Leesburg Turnpike and running so as to cross and include a part of said Leesburg Plaza Shopping Center property, along the centerline of said easement, the two (2) following courses and distances: 1. North 43° 13' 40" East, 483.00 feet to a point; thence 2. South 46° 46' 20" East, 265.00 feet to the place of beginning, containing 13,900 square feet of land, said right-of-way being twenty (20) feet wide, ten (10) feet on each side of the centerline described as line one (1) above and being sixteen (16) feet wide, eight (8) feet on each side of the centerline described as line two (2) above."

The party of the second part, its successors, agents, and assigns shall have the right to inspect, maintain, repair, and rebuild sub-grade facilities and sub-grade structures upon the same provided that the party of the second part, its successors, agents, and assigns shall restore the surface thereof to the same condition as existing prior to any such work, without expense to the parties of the first part, or their successors in title.

BOOK 481 PAGE 305

The parties of the first part, and their successors in title, reserve, as a condition to this conveyance, the free and absolute right to relocate and/or modify said easement and facilities to be constructed thereon at their expense in any manner and at any location, provided such relocation and modification shall continue to permit the passage of storm water at rates in accordance with accepted engineering practices:

WITNESS the following signatures and seals:

[Signature] (SEAL)
Aaron A. Paulson

[Signature] (SEAL)
Rosalie K. Paulson

[Signature] (SEAL)
Harry Malasky

[Signature] (SEAL)
Dora L. Malasky

[Signature] (SEAL)
John A. Wallace

[Signature] (SEAL)
Helen G. Wallace

LEESBURG PLAZA
STATE OF VIRGINIA)
COUNTY OF LOUDOUN) To-Wit:

[Signature] a Notary Public in and for the State and County aforesaid, do hereby certify that Aaron A. Paulson, and Rosalie K. Paulson, his wife, Harry Malasky and Dora L. Malasky, his wife, and John A. Wallace and Helen G. Wallace, his wife, whose names are signed to the foregoing writing bearing date on the 21st day of December 1967, have this day acknowledged the same before me in my State and County aforesaid.

Given under my hand this 21st day of December, 1967.

[Signature]
Notary Public

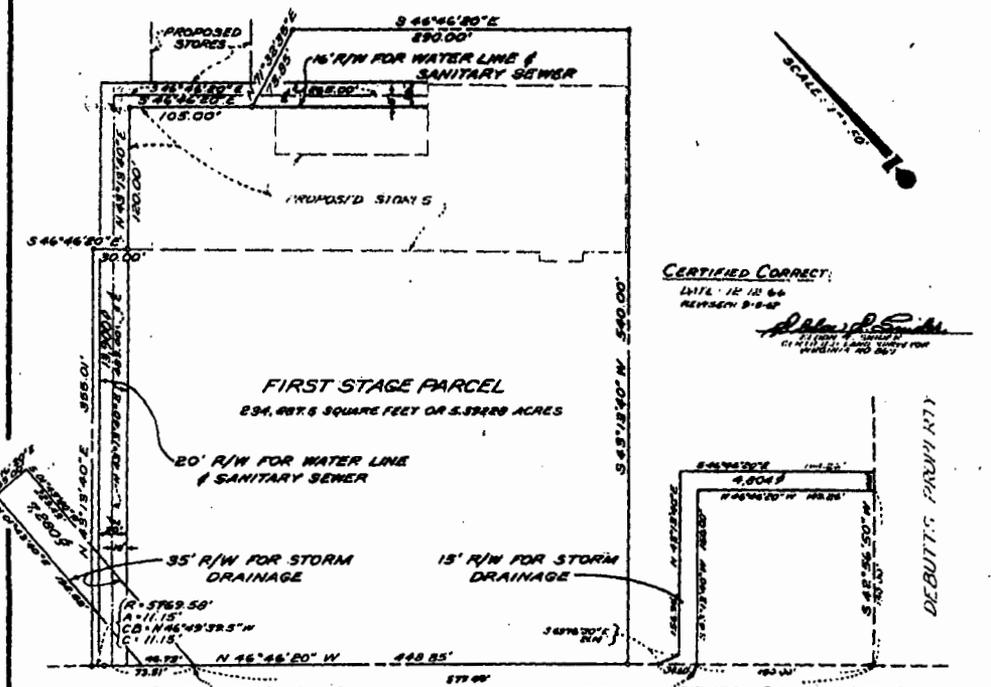
My Commission Expires: September 1970

VIRGINIA: In the office of the Clerk of the Circuit Court of Loudoun County, December 21, 1967 at 4:24 P.M. The foregoing instrument was this day presented in said office and, with certificate annexed, admitted to record.

Teste: [Signature] Clerk
By Louise S. Skidmore, Deputy

Received:
L. S. Skidmore
1-5-68

NO 481 OR 308



CERTIFIED CORRECT:
 DATE: 12 12 64
 REVISION: 9-18-65
Edson E. Snider
 LAND SURVEYOR
 STATE OF VIRGINIA
 NO. 11114

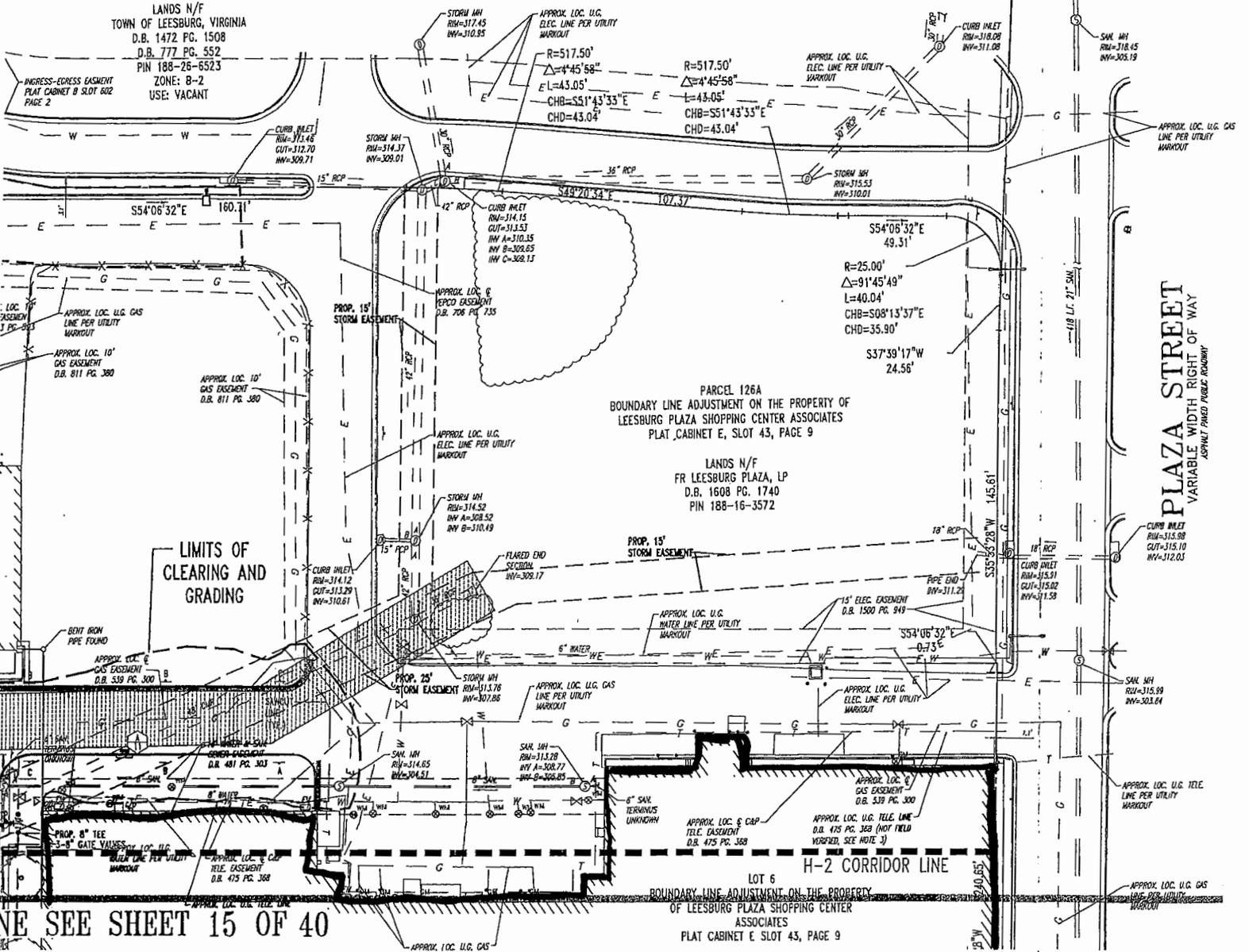
LEESBURG TURNPIKE (90' WIDE RIGHT OF WAY) VIRGINIA (STATE ROUTE NO. 7)
 POINT OF BEGINNING - PART 2 (WATER SEWER) POINT OF BEGINNING - PART 1 (STORM DRAIN)

PLAT OF SURVEY
FIRST STAGE CONSTRUCTION PARCEL
5.39228 ACRES
LEESBURG PLAZA
SHOPPING CENTER
 TOWN OF LEESBURG
 LOUDOUN COUNTY, VIRGINIA

ELDON E. SNIDER & ASSOCIATES
 LAND SURVEYORS
 LAND PLANNING CONSULTANTS
 215 N. FREDERICK AVENUE, GAITHERSBURG, MARYLAND
 442-3235

TM 48 PARCEL 126B
 THE TOWN OF LEESBURG IN VIRGINIA
 BOUNDARY LINE ADJUSTMENT AND INGRESS-EGRESS EASEMENT
 ON THE PROPERTY OF
 LEESBURG PLAZA SHOPPING CENTER ASSOCIATES AND THE TOWN OF LEESBURG IN
 VIRGINIA
 PLAT CABINET B, SLOT 601 PAGES 1 & 2

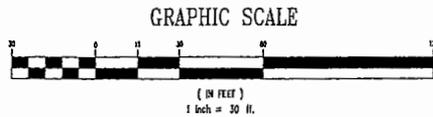
LANDS N/F
 TOWN OF LEESBURG, VIRGINIA
 D.B. 1472 PG. 1508
 D.B. 777 PG. 552
 PIN 188-26-6523
 ZONE: B-2
 USE: VACANT



PLAZA STREET
 VARIABLE WIDTH RIGHT OF WAY
 ASPHALT PAVED PUBLIC ALLEWAY

SEE SHEET 15 OF 40

Edge of building
 Water & Sewer Esmt
 DB. 401 Pg. 303

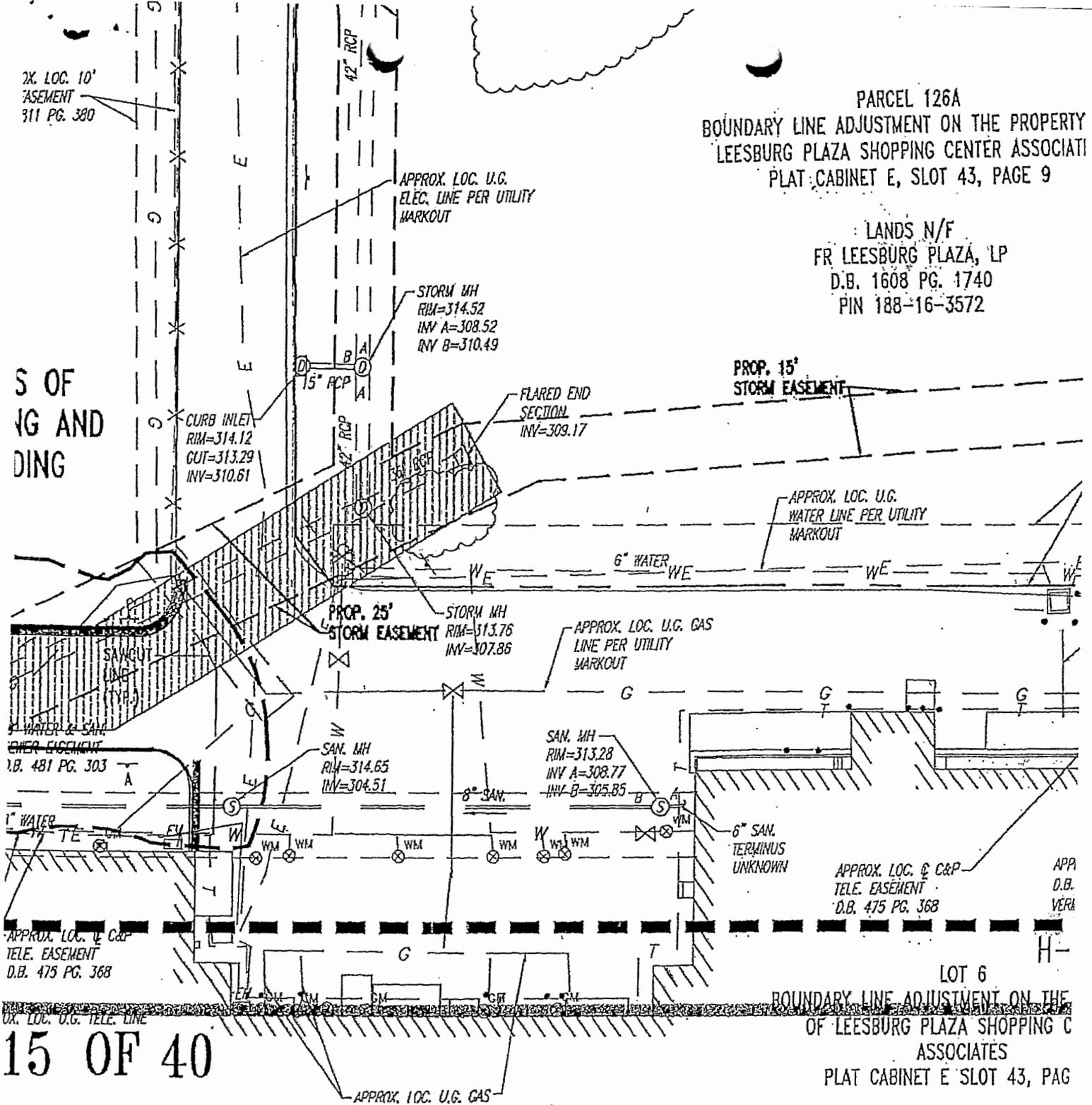


2X LOC. 10' EASEMENT 311 PG. 380

PARCEL 126A
BOUNDARY LINE ADJUSTMENT ON THE PROPERTY
LEESBURG PLAZA SHOPPING CENTER ASSOCIATI
PLAT CABINET E, SLOT 43, PAGE 9

LANDS N/F
FR LEESBURG PLAZA, LP
D.B. 1608 PG. 1740
PIN 188-16-3572

S OF
ING AND
DING



APPROX. LOC. U.G. C&P TELE. EASEMENT D.B. 475 PG. 368

APPROX. LOC. U.G. GAS LINE PER UTILITY MARKOUT

15 OF 40

LOT 6
BOUNDARY LINE ADJUSTMENT ON THE
OF LEESBURG PLAZA SHOPPING C
ASSOCIATES
PLAT CABINET E SLOT 43, PAG

- Deed Book 481 Page 303 - 15' Waterline & Sanitary sewer Esmt,

GRAPHIC SCALE



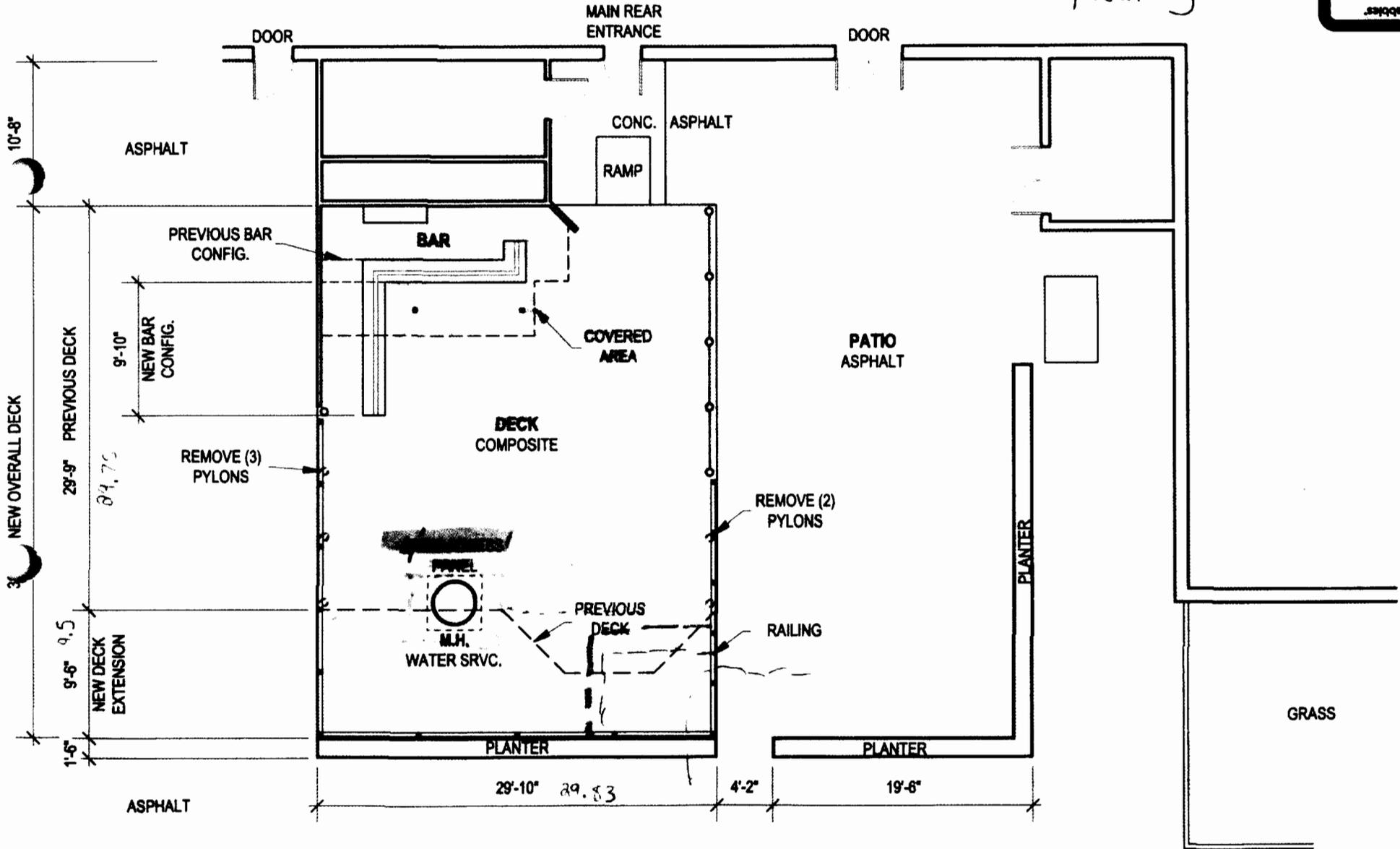
(IN FEET)
1 Inch = 30 ft.

SPANKY'S SHENANIGANS
538 E. MARKET STREET
LEESBURG, VIRGINIA 20176
(703) 777-2454
WWW.SPANKYSPUB.COM
3/15/2016

Existing

*Area over
Main
we could
Detach*

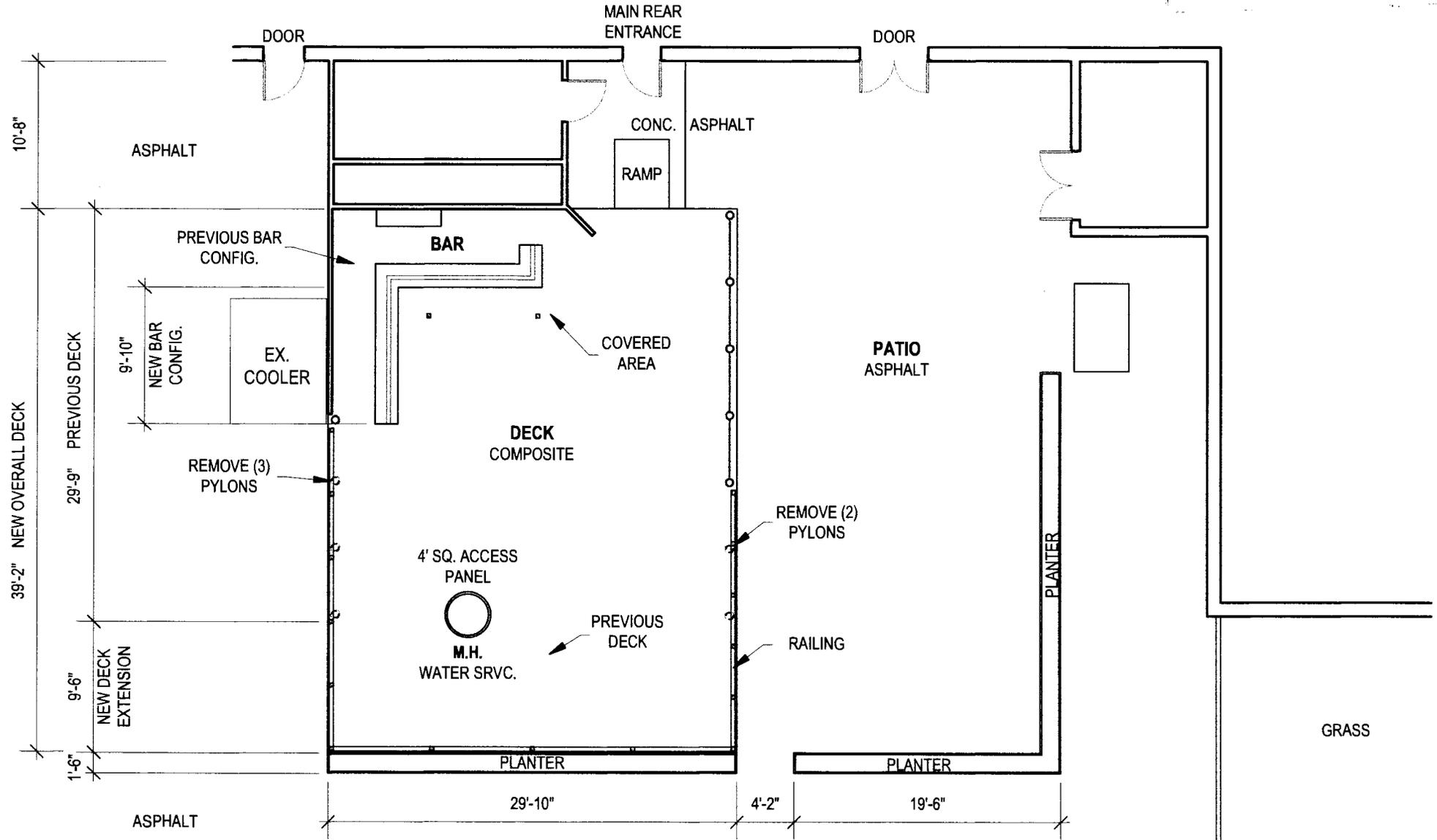
*It's all Non-
Permanent
Floating*



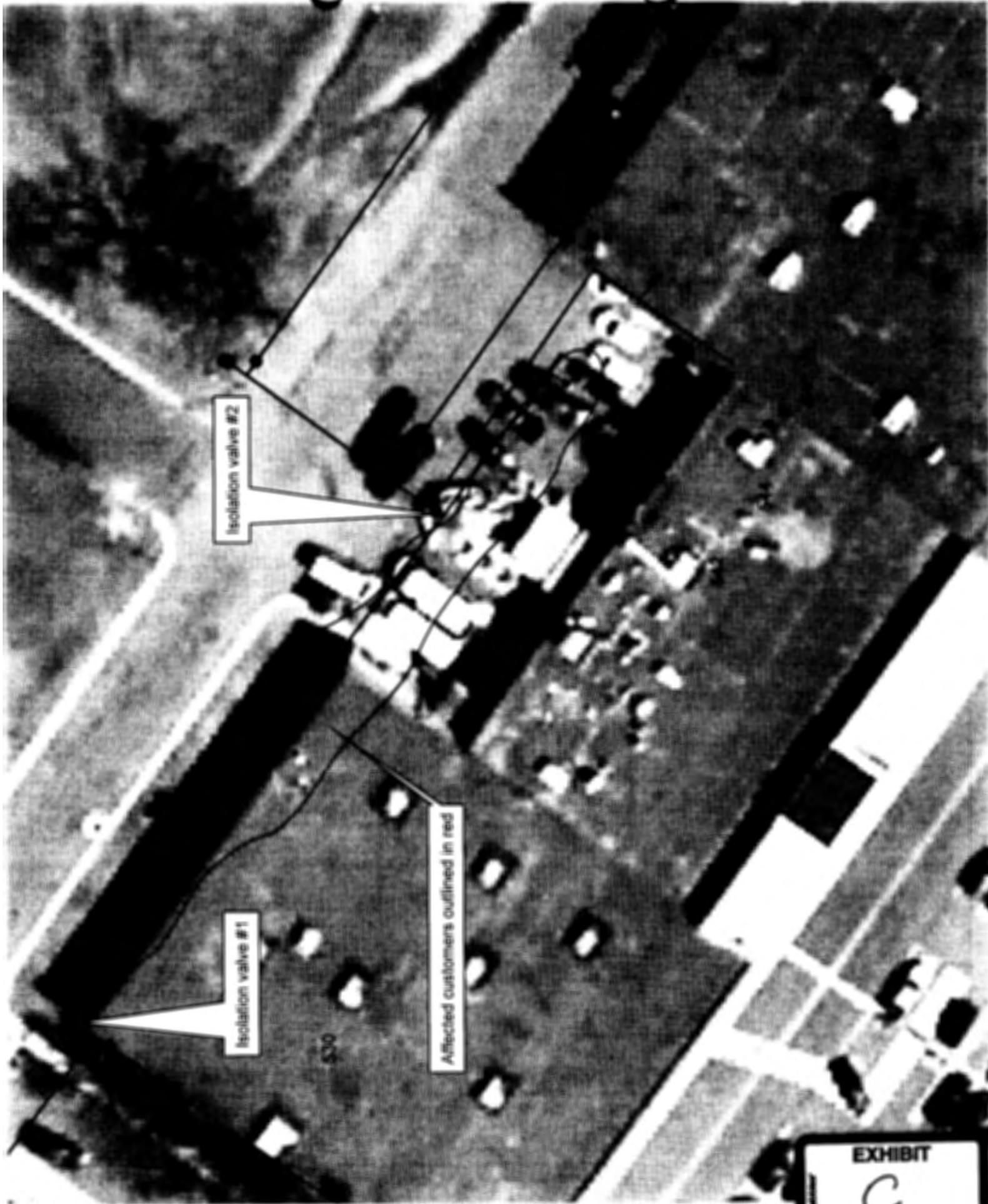
OUTDOOR PATIO & DECK PLAN
1" = 10'-0"

SPANKY'S SHENANIGANS
 538 E. MARKET STREET
 LEESBURG, VIRGINIA 20176
 (703) 777-2454
 WWW.SPANKYSPUB.COM
 3/15/2016

RECEIVED
 JUN 21 2016
 The Town of Leesburg



OUTDOOR PATIO & DECK PLAN
 1" = 10'-0"



Isolation valve #2

Isolation valve #1

Affected customers outlined in red

EXHIBIT
C

PRESENTED: June 28, 2016

RESOLUTION NO. _____

ADOPTED _____

A RESOLUTION: AUTHORIZING THE MAYOR TO EXECUTE AN ENCROACHMENT AGREEMENT BETWEEN THE TOWN OF LEESBURG, VIRGINIA AND SPANKY’S ENTERPRISES, INC., TO ALLOW A REMOVABLE STRUCTURE TO ENCROACH UPON A TOWN WATERLINE EASEMENT

WHEREAS, the Town of Leesburg, Virginia (“Town”) owns a waterline easement in the rear of 538 East Market Street, Leesburg, Virginia, a retail establishment leased by Spanky’s Enterprises, Inc. (“Spanky’s”); and

WHEREAS, Spanky’s has constructed a wooden deck and other appurtenances without prior permission which encroaches into a portion of the area of the Town’s waterline easement; and

WHEREAS, ordinarily, the Town prohibits structures from being constructed within the Town’s waterline easements; and

WHEREAS, in order to allow Spanky’s deck to encroach upon the Town’s waterline easement, an encroachment agreement can be entered into by the Spanky’s and the Town; and

WHEREAS, Spanky’s Enterprises, Inc., has been notified that in the event the Town is required to perform emergency work within the waterline easement, the wooden deck and appurtenances may be removed, damaged or destroyed and this understanding is memorialized within the Encroachment Agreement.

THEREFORE, RESOLVED, the Council of the Town of Leesburg in Virginia authorizes the Mayor to execute an Encroachment Agreement between the Town of Leesburg, Virginia and Azmi Zarou, President of Spanky’s Enterprises, Inc., d/b/a Spanky’s Shenanigans.

PASSED this _____ day of _____, 2016.

David S. Butler, Mayor
Town of Leesburg

ATTEST:

Clerk of Council