

**OCTOBER 20, 2015 ZONING HEARING  
“OTHER BUSINESS”  
COMMISSION DISTRICT 4**

**ITEM # 045**

**PURPOSE**

To consider amending the site plan and stipulations for Poma Glass & Specialty Windows, Inc. regarding rezoning application #217 of 1978, for property located on the west side of Austell Road and on the south side of Pair Road in Land Lot 706 of the 19th District.

**BACKGROUND**

The subject property was rezoned to Heavy Industrial in 1978 for a glass fabrication business subject to the revised site plan marked Exhibit A (attached). Over the years the property has been improved with buildings and parking that are not reflected in the zoning file minutes. The property has been in its current configuration for at least 15 years, but probably longer than that. The glass fabrication business may vacate the property and a company that builds window frames, doors, molding and other building related materials may occupy the property if the site plan problem can be fixed. No other site improvements are planned at this time. If amended, all other zoning stipulations including buffers and access stipulations would remain in effect.

**FUNDING**

N/A

**RECOMMENDATION**

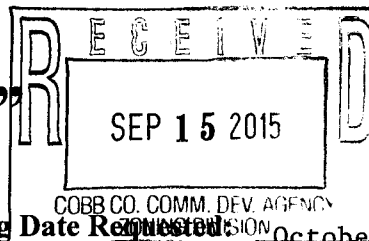
The Board of Commissioners conduct a Public Hearing and consider the proposed site plan and stipulation amendment.

**ATTACHMENTS**

Other Business application and stipulations.

# Application for "Other Business" Cobb County, Georgia

(Cobb County Zoning Division - 770-528-2035)




OB-045-2015

BOC Hearing Date Requested: October 20, 2015

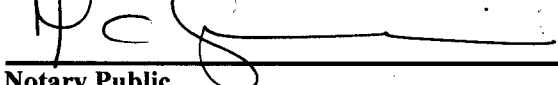
**Applicant:** Poma Glass & Specialty Windows, Inc. **Phone #:** \_\_\_\_\_  
(applicant's name printed)

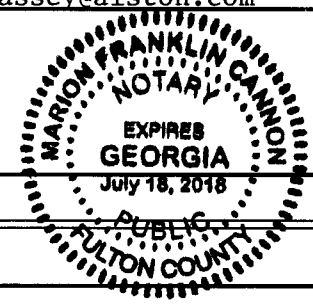
**Address:** 1117 Cicero Drive, Suite 400, Alpharetta, GA **E-Mail:** \_\_\_\_\_  
Alston & Bird, LLP

W. Clay Massey **Address:** 1201 W. Peachtree St., Atlanta, GA 30309  
(representative's name, printed)

 **Phone #:** 404-881-4969 **E-Mail:** clay.massey@alston.com  
(representative's signature)

Signed, sealed and delivered in presence of:

 **My commission expires:** \_\_\_\_\_  
Notary Public



**Titleholder(s):** See attached Exhibit "A" **Phone #:** \_\_\_\_\_  
(property owner's name printed)

**Address:** \_\_\_\_\_ **E-Mail:** \_\_\_\_\_

(Property owner's signature)

Signed, sealed and delivered in presence of:

\_\_\_\_\_ **My commission expires:** \_\_\_\_\_  
Notary Public

**Commission District:** 4 **Zoning Case:** #217

**Date of Zoning Decision:** 11-1-1978 **Original Date of Hearing:** 11-1-1978

**Location:** 3200 Austell Road  
(street address, if applicable; nearest intersection, etc.)

**Land Lot(s):** 706 **District(s):** 19

**State specifically the need or reason(s) for Other Business:** To amend the site plan approved as a condition of zoning per Zoning Case #217 on 11-1-1978 to reflect current structures and configuration that have existed on the subject property for decades.

(List or attach additional information if needed)

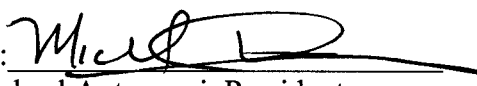
**EXHIBIT "A"**

**ATTACHMENT TO APPLICATION FOR OTHER BUSINESS**

Application No: Other Business Item  
Hearing Dates: October 6, 2015  
October 20, 2015

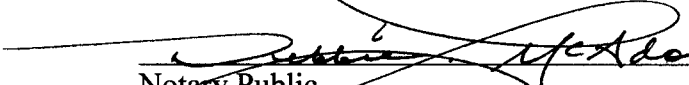
Applicant: Poma Glass & Specialty Windows, Inc.  
Titleholder: Poma Glass & Specialty Windows, Inc.,  
as successor by merger with AFGD, Inc.

POMA GLASS & SPECIALTY  
WINDOWS, INC., as successor by merger  
with AFGD, Inc.

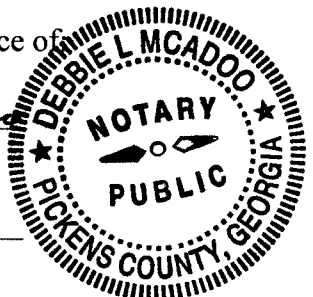
By:   
Michael Antonucci, President

Date Executed: 9/11/2015

Signed, sealed, and delivered in the presence of

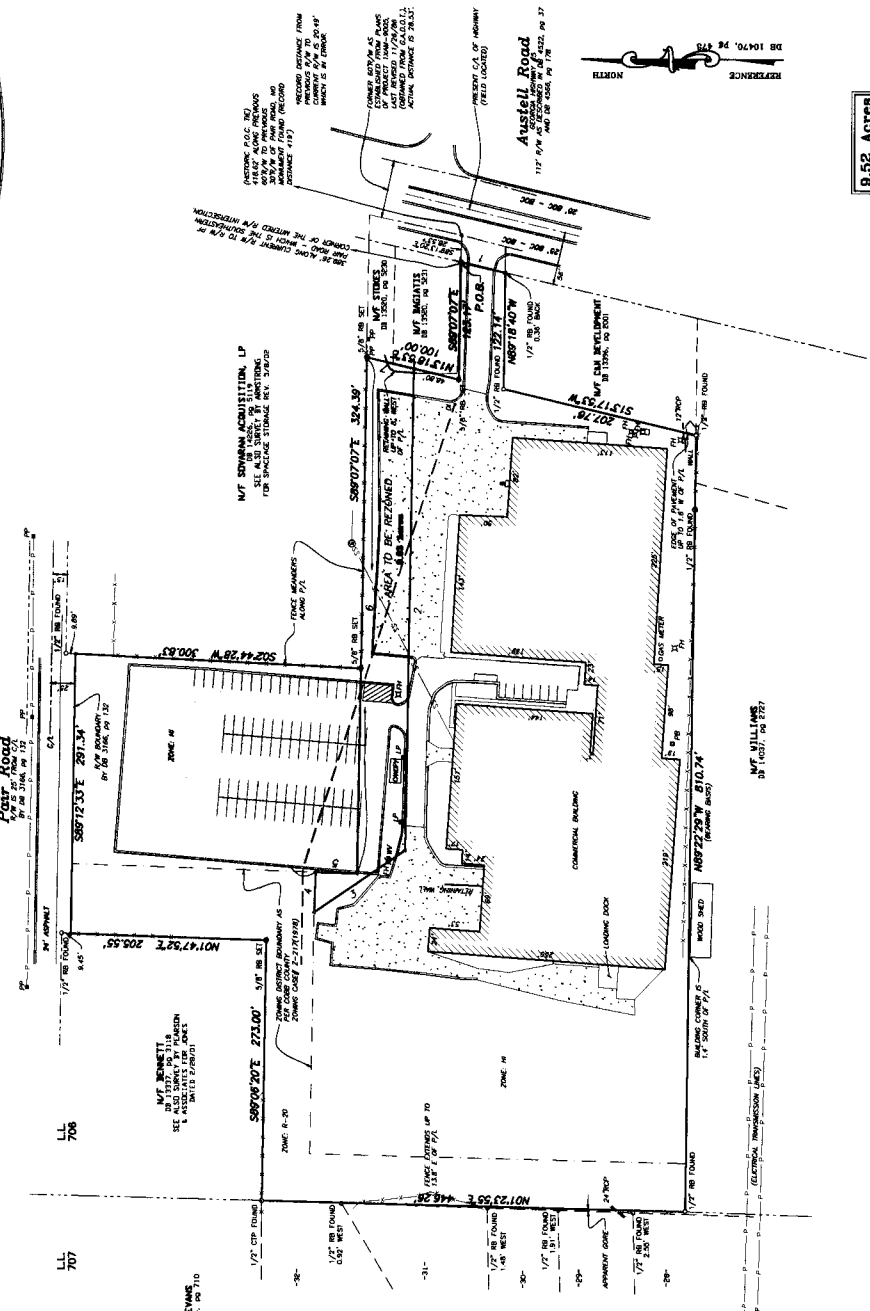
  
Notary Public

Commission Expires: 2/25/2018



**LEGEND**

1. BOUNDARY	2. EASEMENT	3. EGRESS	4. EGRESS	5. EGRESS	6. EGRESS	7. EGRESS	8. EGRESS	9. EGRESS	10. EGRESS
11. EGRESS	12. EGRESS	13. EGRESS	14. EGRESS	15. EGRESS	16. EGRESS	17. EGRESS	18. EGRESS	19. EGRESS	20. EGRESS
21. EGRESS	22. EGRESS	23. EGRESS	24. EGRESS	25. EGRESS	26. EGRESS	27. EGRESS	28. EGRESS	29. EGRESS	30. EGRESS
31. EGRESS	32. EGRESS	33. EGRESS	34. EGRESS	35. EGRESS	36. EGRESS	37. EGRESS	38. EGRESS	39. EGRESS	40. EGRESS
41. EGRESS	42. EGRESS	43. EGRESS	44. EGRESS	45. EGRESS	46. EGRESS	47. EGRESS	48. EGRESS	49. EGRESS	50. EGRESS



**9.52 Acres**

**SITE PLAN FOR:**  
 Carter Lumber Company

LAND LOT: 706  
 DISTRICT: 1998  
 COUNTY: COBB  
 STATE: GEORGIA  
 DATE: JANUARY 4, 2015  
 SHEET: 1 OF 1  
 GRAPHIC SCALE - FEET

NOTE: THE LOTS AND TRACTS AS SHOWN ON THIS PLAN ARE THE RESULT OF A SURVEY CONDUCTED BY THE SURVEYOR AND NOT FOR CONSTRUCTION.

LINE	BEARING	DISTANCE
1	S172°12'27\"	48.03'

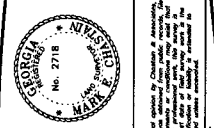
**SURVEY NOTES**

- CLOSURE PRECISION:** THIS IS A SECOND CLASS SURVEY. THE MEASUREMENTS WERE OBTAINED BY USE OF TOTAL STATION. THE MEASUREMENTS WERE OBTAINED BY USE OF TOTAL STATION. THE MEASUREMENTS WERE OBTAINED BY USE OF TOTAL STATION.
- FIELD SURVEY:** THE FIELD SURVEY WAS CONDUCTED ON 11/15/14. THE FIELD SURVEY WAS CONDUCTED ON 11/15/14. THE FIELD SURVEY WAS CONDUCTED ON 11/15/14.
- ADJUSTMENT:** THE ADJUSTMENT WAS CONDUCTED BY THE LEAST SQUARES METHOD. THE ADJUSTMENT WAS CONDUCTED BY THE LEAST SQUARES METHOD. THE ADJUSTMENT WAS CONDUCTED BY THE LEAST SQUARES METHOD.
- BOUNDARY:** THE BOUNDARY WAS ESTABLISHED BY THE SURVEYOR. THE BOUNDARY WAS ESTABLISHED BY THE SURVEYOR. THE BOUNDARY WAS ESTABLISHED BY THE SURVEYOR.
- PROPERTY OWNER:** THE PROPERTY OWNER IS THE SURVEYOR. THE PROPERTY OWNER IS THE SURVEYOR. THE PROPERTY OWNER IS THE SURVEYOR.
- PARCEL NUMBER(S):** 197000000

**BUSINESS OFFICE INFORMATION:**  
 Chastain & Associates, P.C.  
 1100 Peachtree Street, N.E.  
 Atlanta, Georgia 30309  
 Telephone: (770) 276-7528  
 Fax: (770) 276-7529  
 Website: www.chastainassociates.com

LINE	BEARING	DISTANCE
1	S172°12'27\"	48.03'
2	S89°06'20\"	273.00'
3	S58°12'33\"	297.34'
4	S02°44'28\"	300.83'
5	S07°46'08\"	44.02'
6	S89°07'07\"	538.17'
7	S172°12'27\"	517.00'

**RECEIVED**  
 SEP 15 2015  
 COBB CO. COMM. DEV. AGENCY  
 ZONING DIVISION



**DISCLOSURE TO BUYER**

THE SURVEY WAS CONDUCTED BY CHASTAIN & ASSOCIATES, P.C. THE SURVEYOR HAS CONDUCTED A VISUAL INSPECTION OF THE PROPERTY AND HAS FOUND NO OBVIOUS ENCUMBRANCES OR EASEMENTS. THE SURVEYOR HAS CONDUCTED A VISUAL INSPECTION OF THE PROPERTY AND HAS FOUND NO OBVIOUS ENCUMBRANCES OR EASEMENTS.

**FLOOD STATEMENT:**  
 THIS PROPERTY IS NOT LOCATED IN A SPECIAL FLOOD HAZARD AREA AS SHOWN ON THE FLOOD INSURANCE RATE MAP (FIRM) 130602014H. THE PROPERTY IS NOT A CONTRIBUTION OF FLOOD HAZARD. THE PROPERTY IS NOT A CONTRIBUTION OF FLOOD HAZARD.

**PREPARED BY**  
**CHASTAIN & ASSOCIATES, P.C.**  
 1100 Peachtree Street, N.E.  
 Atlanta, Georgia 30309  
 Telephone: (770) 276-7528  
 Fax: (770) 276-7529  
 Website: www.chastainassociates.com

# ALSTON & BIRD LLP

One Atlantic Center  
1201 West Peachtree Street  
Atlanta, GA 30309-3424

404-881-7000  
Fax: 404-253-8743  
www.alston.com

W. Clay Massey

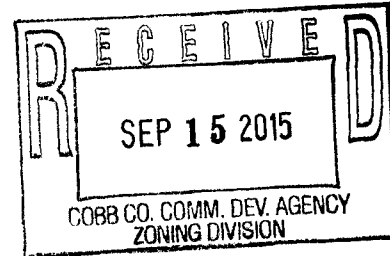
Direct Dial: 404-881-4969

Email: clay.massey@alston.com

September 15, 2015

VIA HAND DELIVERY

Mr. John P. Pederson, AICP, Manager  
Cobb County Community Development Agency  
Zoning Division  
1150 Powder Springs Road  
Suite 400  
Marietta, Georgia 30064



Re: Other Business Application of Poma Glass & Specialty Windows,  
Inc. to Amend the Site Plan for Parcel 30 in Land Lot 706, 19<sup>th</sup>  
District, Cobb County, Georgia

Mr. Pederson:

My client Poma Glass & Specialty Windows, Inc. ("Poma Glass") respectfully requests that the November 1, 1978 site plan for its property located at 3200 Austell Road, Marietta, Georgia 30008 (the "Subject Property") be amended as proposed in the attached Other Business application (the "Application"). I write to explain the need and justifications for the requested site plan amendment.

The Subject Property consists of approximately 9.0 acres on which a glass manufacturing facility has existed since the late 1970s (the "Poma Glass Property"). In 1978, the Subject Property was rezoned to HI (Heavy Industrial) for that purpose and became governed by a site plan that the County approved with that rezoning (the "1978 Site Plan"). Over the years (and before Poma Glass purchased the Subject Property in 1997), the structures and configuration on the Subject Property changed from what was reflected in the 1978 Site Plan to what currently exists on the Subject Property. The current structures and configuration on the Subject Property are what have generally existed on the Subject Property for decades.

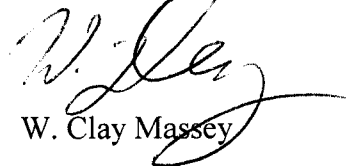
Poma Glass's Application seeks to simply amend the approved 1978 Site Plan to reflect the current structures and configuration on the Subject Property that have existed for many years, as shown in the site plan included with Poma Glass's Application. Poma Glass's Application does not seek to allow any different structures or configuration on the Subject Property from what currently exist on the Subject Property.

September 15, 2015  
Page 2

Poma Glass asserts the Objections and Assertion of Rights set forth in **Exhibit A** hereto.

Thank you for your consideration of Poma Glass's Application. If you have any questions, please do not hesitate to contact me.

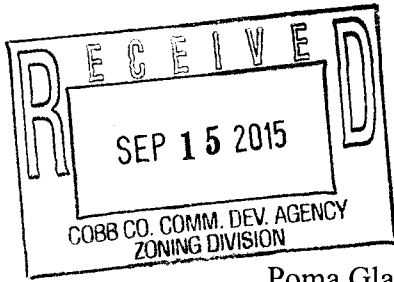
Very truly yours,



W. Clay Massey

cc: Chairman Tim Lee (*via hand delivery w/ enclosures*)  
Cobb County Commissioners (*via hand delivery w/ enclosures*)  
Commissioner Lisa Cupid, District 4 (*via hand delivery w/enclosures*)  
Deborah Dance, Esq., County Attorney (*via hand delivery w/ enclosures*)  
Christopher F. Correnti, Esq. Poma Glass & Specialty Windows, Inc. (*via email w/ enclosures*)

LEGAL02/35861502v1



## EXHIBIT A

### OBJECTIONS AND ASSERTION OF RIGHTS

Poma Glass & Speciality Windows, Inc. ("Poma Glass") hereby respectfully asserts the following objections and rights with respect to its application to amend the site plan for its property located at 3200 Austell Road, Marietta, Georgia 30008 (the "Application"):

1. The Cobb County Zoning Ordinance (the "Zoning Ordinance") presently in effect lacks adequate standards for the Board of Commissioners to exercise its power to zone or rezone. The standards are insufficient to contain the discretion of the Board of Commissioners or to provide the courts with a reasonable basis for judicial review. Because the stated standards (individually or collectively) are too vague and uncertain to provide reasonable guidance to the Board of Commissioners or to restrict the Board of Commissioners' discretion, the Zoning Ordinance violates the Fifth and Fourteenth Amendments of the United States Constitution, as well as Article I, Section III, Paragraph 1 and Article I, Section I, Paragraphs 1 and 2 of the Georgia Constitution.
2. Article IX, Section II, Paragraph 4 of the Georgia Constitution gives Cobb County (the "County") the power to zone and rezone, which power must be fairly exercised under the Georgia Constitution. An application or disregard of the Zoning Ordinance in a way to deny the Application would violate this constitutional requirement.
3. Denying the Application would be a manifest abuse of the County's rezoning power to the detriment of Poma Glass, which would cause Poma Glass special and substantial damages.

4. Denying the Application would be a significant deprivation of and detriment to Poma Glass's property rights that is insubstantially related to the public health, safety, morality and welfare of the citizens of the County and constitutes an unconstitutional arbitrary and capricious act, resulting in an unconstitutional taking of Poma Glass's property in violation of Article I, Section I, Paragraphs 1 and 2 of the Constitution of the State of Georgia, 1983; Article I, Section III, Paragraph 1 of the Constitution of the State of Georgia, 1983; and Article I, Section II, Paragraph 3 of the Constitution of the State of Georgia, 1983. Furthermore, denying the Application would violate the due process clause and equal protection clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States of America.

5. Denying the Application would deprive Poma Glass of an economically viable use of its property without just and adequate compensation in violation of the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section I, Paragraph I, and Article I, Section III, Paragraph 1(a) of the Constitution of Georgia.

6. Denying the Application would treat Poma Glass and its property unequally to and different from other persons and properties under like circumstances and conditions without a legitimate ground for differentiating Poma Glass and its property from those other persons and properties. Accordingly, denying the Application would violate Poma Glass's constitutional right to equal treatment and protection under the law in violation of the Fourteenth Amendment of the United States Constitution and Article I, Section I, Paragraph 2 of the Constitution of the State of Georgia.

7. Any limitation of Poma Glass's time or opportunity for presentation of the issues before the Board of Commissioners would violate the guarantees of free speech



under Article I, Section I, Paragraph 5 of the Georgia Constitution and the First Amendment of the United States Constitution. Further, such limitations would violate Poma Glass's right to petition and assemble, in violation of Article I, Section I, Paragraph 9 of the Georgia Constitution, and the First Amendment of the United States Constitution as well as the due process and equal protection clauses of the Georgia Constitution, and the United States Constitution.

COBB COUNTY BOARD OF COMMISSIONERS OF ROADS AND REVENUES

COBB COUNTY PLANNING COMMISSION

Date of Application September 29, 1978 Date of Hearing, Wed. Nov. 1, 1978 1:00 P.M.

Titleholder Robert S. Michael Freddie L. Michael Mark A. Michael

Address 3200 Austell Road, Marietta, Ga. Phone 434-2041

Applicant Same /S/

Address \_\_\_\_\_ Phone \_\_\_\_\_

To Zone From R-20 & GC To HI LAND USE \_\_\_\_\_

FOR THE PURPOSE OF Glass Fabrication & Warehousing

Land Lot (s) 706, District 19th, Sec., 2nd Cobb County, Ga.

CONTAINING 9.0 acres

LOCATED at 3200 Austell Road, S.E., Marietta, Ga.

This property being more particularly described as follows:

Beginning at a point on the westerly side of Austell Road a distance of 419 feet southwesterly of the intersection of the rights-of-way of Austell Road and Pair Road; Thence continuing along the right-of-way of Austell Road S 12° 56' W a distance of 51.3 feet to a point; thence N 89° 30' W a distance of 150.0 feet to a point; thence S 12° 56' W a distance of 207.9 feet to a point; thence N 89° 30' W a distance of 960.37 feet to a point on the west line of Land Lot # 706; thence North along the Land Lot Line a distance of 445.0 feet to a point; thence East a distance of 273.0 feet to a point; thence North a distance of 215.0 feet to the south right-of-way of Pair Road; thence East along the south right-of-way of Pair Road a distance of 72.0 feet to a point; thence South a distance of 310.0 feet to a point; thence S 89° 30' E a distance of 693.8 feet to a point; thence S 12° 56' W a distance of 100.0 feet to a point; thence S 89° 30' E a distance of 150.0 feet to the point of beginning on the Westerly right-of-way of Austell Road.

Recommendation of Planning Commission: 11/1/78 Planning Commission recom-  
mended application be approved subject to revised plan marked exhibit A  
showing buffer and no access to Pair Road. Motion by Thompson, seconded by  
Fowler; carried 6-0.

BP 11 AMPs, Chairman

Final Decision of Board of Commissioners: 11/1/78 Board of Commissioners  
approved application as stated above. Motion by Ruff, seconded by Barrett;  
carried 5-0.

Barrett W. Barrett, Chairman

1978 Approved  
site plan

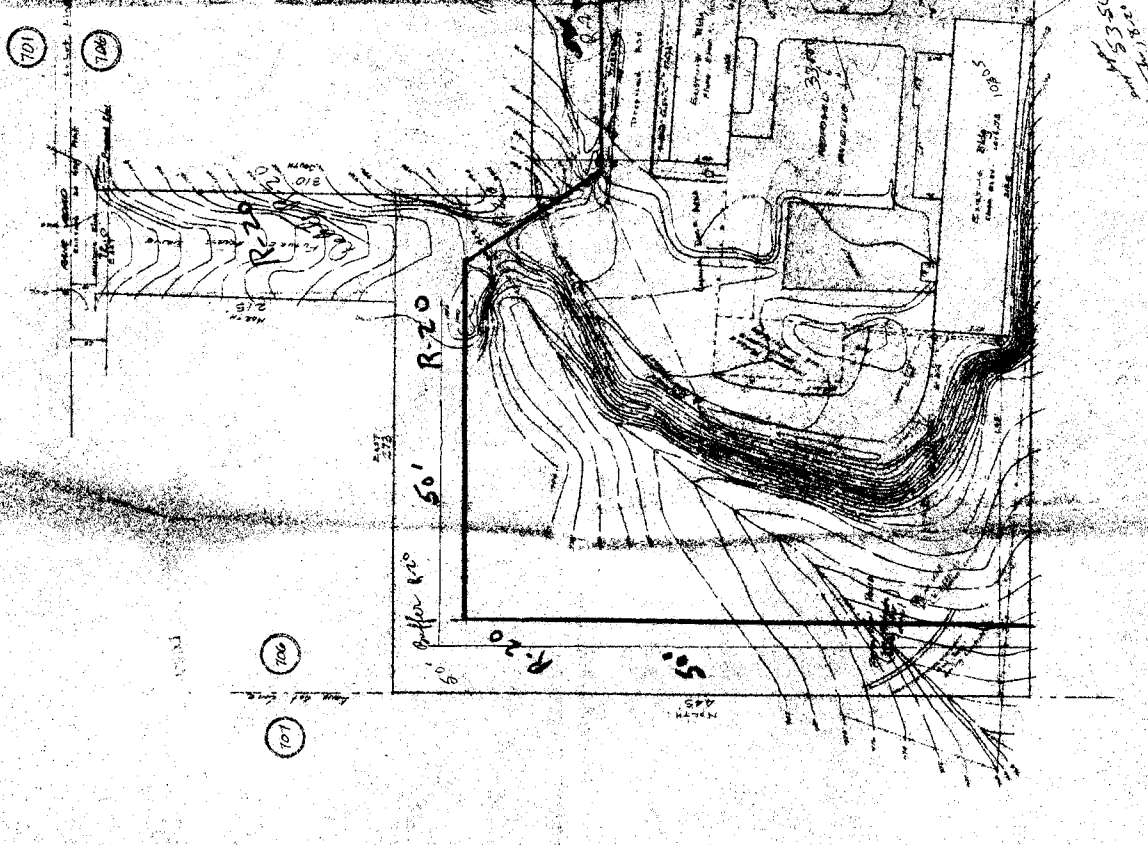
PROPOSED QUARRY FOR  
**SOUTHERN WHOLESALE GLASS, INC.**  
LOCATED IN LAUGHLIN TWP, 19TH DISTRICT  
2285 COUNTY, 00026-A  
SCALE: 1"=40'



EXHIBIT 'A'  
11-1-78  
GPK

Notes:  
1. This drawing is a site plan.  
2. It is to be used in conjunction with the site plan.  
3. It is to be used in conjunction with the site plan.

Natural Buffer except for  
Drainage structures required  
BY ENGINEERING DEPT.



Notes:  
1. This drawing is a site plan.  
2. It is to be used in conjunction with the site plan.  
3. It is to be used in conjunction with the site plan.

Southern Wholesale Glass, Inc.  
1978 Approved Site Plan  
Gerald P. Galka, P.E.  
No. 10000, State of Michigan